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03/10/2022
Clerk of the Court
BY: SANDRA SCHIRO
Deputy Clerk

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

UNITED SF FREEDOM ALLIANCE,
BHANU VIKRAM, CARSON R.
SCHILLING, CHRISTA L. FESTA,
CHRISTIANNE T. CROTTY, DENNIS M.
CALLAHAN, JR., FAIMING CHEUNG,
and JESSICA KWOK-BO LINDSEY

Plaintiffs,

v.

CITY AND COUNTY OF SAN
FRANCISCO, a municipal corporation and
administrative division of the State of
California, CAROL ISEN, in her individual
capacity and in her official capacity as the
Human Resources Director of the City and
County of San Francisco, SUSAN PHILIP in
her individual capacity and in her official
capacity as the Health Officer of the City
and County of San Francisco, JEANINE R.
NICHOLSON in her individual capacity and
in her official capacity as the Chief of
Department of the San Francisco Fire
Department, PHILLIP A GINSBURG, in his
individual capacity and his official capacity
as the General Manager for the San
Francisco Recreation and Parks,
KIMBERLY ACKERMAN, in her
individual capacity and her official capacity
as the Chief People Officer for the San
Francisco Municipal Transportation Agency,
FABIAN PEREZ, in his individual capacity

Case No.: CGC-22-597428

Assigned for all purposes to the Hon. Samuel
Feng, Dept. 610

**AMENDED COMPLAINT FOR VIOLATION
OF CIVIL RIGHTS AND DECLARATORY
AND INJUNCTIVE RELIEF**

Case Mgmt. Conf.: June 8, 2022

Complaint filed: January 24, 2022

1 and his official capacity as an administrator
2 in the San Francisco Sheriff's Office,
3 WILLIAM SCOTT, in his individual
4 capacity and his official capacity as Chief of
the Police for the San Francisco Police
Department. and Does 1 through 100,
inclusive,

5 Defendants.

6
7 Plaintiffs, UNITED SF FREEDOM ALLIANCE, BHANU VIKRAM, CARSON R.
8 SCHILLING, CHRISTA L. FESTA, CHRISTIANNE T. CROTTY, DENNIS M. CALLAHAN, JR.,
9 FAIMING CHEUNG, JESSICA KWOK-BO LINDSEY, by and through their undersigned counsel,
10 sue Defendants, CITY AND COUNTY OF SAN FRANCISCO ("City"), a municipal corporation and
11 administrative division of the State of California, CAROL ISEN, in her individual capacity and in her
12 official capacity as the Human Resources Director of the City, SUSAN PHILIP in her individual
13 capacity and in her official capacity as the Health Officer of the City and County of San Francisco,
14 JEANINE R. NICHOLSON in her individual capacity and in her official capacity as the Chief of
15 Department of the San Francisco Fire Department, PHILLIP A GINSBURG, in his individual capacity
16 and his official capacity as the General Manager for the San Francisco Recreation and Parks,
17 KIMBERLY ACKERMAN, in her individual capacity and her official capacity as the Chief People
18 Officer for the San Francisco Municipal Transportation Agency, FABIAN PEREZ, in his individual
19 capacity and his official capacity as an administrator in the San Francisco Sheriff's Office, WILLIAM
20 SCOTT, in his individual capacity and his official capacity as Chief of the Police for the San Francisco
21 Police Department, and Does 1 through 100, inclusive, and allege as follows:

22 **INTRODUCTION**

23 1. On June 23, 2021, the City issued a "COVID-19 Vaccination Policy" requiring that all
24 employees be vaccinated against SARS-CoV-2, the virus that causes COVID-19 ("COVID").

25 2. The City's COVID-19 Vaccination Policy was amended on August 6, 2021, on
26 September 8, 2021, and again thereafter on October 27, 2021, as to only those "employees who are
27 required to be fully vaccinated against COVID-19 by November 1, 2021." In addition, the City
28

1 required that certain City employees receive a COVID-19 booster vaccine by February 1, 2022. The
2 City’s COVID-19 Vaccination Policy as amended, and its booster shot requirement is hereinafter
3 referred to as the “Mandate.” Attached hereto as **Exhibit “A”** is a true and correct copy of the Mandate.

4 3. The Mandate applies all “employees,” which it defines therein to include full-time,
5 part-time, and as-needed City employees regardless of appointment type.

6 4. The “Purpose Statement” portion of the Mandate provides that: “Vaccination is the
7 most effective way to prevent transmission and limit COVID-19 hospitalizations and deaths.”

8 5. The Director for the Centers for Disease Control (“CDC”), however, has stated that
9 vaccines do not prevent infection with, or transmission of, the Delta variant, advising: “[W]hat the
10 [vaccines] can’t do anymore is prevent transmission.”¹

11 6. Recent studies have also shown that vaccination, including the booster shots, may do
12 little to prevent serious illness or death. In England—a country that, unlike the CDC, publishes its
13 COVID data frequently and without political messaging—a recent government report showed that the
14 fully vaccinated accounted for nine out of every ten COVID-related deaths. The report also showed
15 that four out of every five COVID-related deaths occurred in the triple-vaccinated.

16 7. Despite this growing evidence of the COVID vaccines’ ineffectiveness—not to
17 mention potential side effects that have led several countries to pause the vaccination of certain
18 groups—Plaintiffs have been notified that if they fail to comply with the various deadlines specified
19 in the Mandate for reporting their vaccination status to the City, and becoming fully vaccinated, they
20 will be forbidden from returning to work, placed on administrative leave, and terminated.

21 8. The Mandate does not allow for COVID-19 testing as an alternative to vaccination.

22 9. Plaintiffs assert the Mandate cannot be supported when:

23 i. Over 99.8% of all those with COVID survive.

24 ii. Those who survive obtain robust and durable natural immunity.

25
26
27 ¹ <https://www.cnn.com/2021/08/05/health/us-coronavirus-thursday/index.html>, see also The New England Journal of
28 Medicine, Resurgence of SARS-CoV-2 Infection in a Highly Vaccinated Health System Workforce (Last visited January
4, 2022)

- iii. The natural immunity so obtained is superior to COVID vaccine-induced immunity.
- iv. The COVID vaccines are ineffective against the current and future strains of COVID-19, including the Delta and Omicron variants.
- v. The CDC acknowledged that the vaccinated and unvaccinated are equally likely to spread the virus.²
- vi. Similarly, the CDC acknowledges that the COVID vaccines also do not stop transmission of the omicron variant. (See paragraphs 82-84 for scientific explanation as to why the shots won't stop transmission of any variants.) Per the CDC: **"However, breakthrough infections in people who are fully vaccinated are likely to occur.** With other variants, like Delta, vaccines have remained effective at preventing severe illness, hospitalizations, and death. The recent emergence of Omicron further emphasizes the importance of vaccination and boosters."³ (Emphasis added)
- vii. To the extent the vaccines are effective at all, it is only to reduce symptoms of those who contract COVID, but not transmission of the virus. They are, therefore, treatments, and not vaccines as that term has always been defined in the law.
- viii. The CDC changed its definitions of "vaccine" in August 2021. The CDC formerly described vaccination as "the act of introduction a vaccine into the body to produce immunity to a specific disease."⁴ The definition has since been changed and now reads: "the act of introducing a vaccine into the body to produce protection to a specific disease."⁵
- ix. This is a critical factual and legal distinction. Legal authority to mandate medical treatment only derives under public health regulations. As the CDC holds that Delta

² https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm?s_cid=mm7031e2_w (Last visited January 4, 2022)

³ <https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html> (Last visited January 4, 2022)

⁴ <https://web.archive.org/web/20210826113846/https://www.cdc.gov/vaccines/vac-gen/imz-basics.htm> (January 4, 2022)

⁵ <https://www.cdc.gov/vaccines/vac-gen/imz-basics.htm> (Last visited January 4, 2022)

is the only strain; that the shots do not stop the transmission of Delta; and that vaccination is mere “protection” against a disease and not “immunity” against the disease; claiming there is a public health justification for the mandate is fallacious.

- x. The COVID vaccines cause a significantly higher incidence of injuries, adverse reactions, and deaths than any prior vaccines that have been allowed to remain on the market, and, therefore, pose a significant health risk to recipients, who are, by definition, healthy when they receive the COVID vaccines; and
- xi. Since, according to the CDC, the COVID vaccines do not prevent the infection or transmission of COVID, while at the same time, also according to the CDC, they result in a massively anomalous (1000% higher) number of adverse events and deaths, there is no justification in the law for mandating them, and the City’s mandate must therefore be struck down.

PARTIES

10. Plaintiff UNITED SF FREEDOM ALLIANCE (“USFA”) is, and at all times relevant hereto was, a voluntary, unincorporated association for City employees whose purpose is to advocate for medical choice and bodily autonomy on behalf of its members, vis-à-vis the Mandate. USFA members are directly affected by the Mandate, and therefore would have standing in their own right to bring this action. As well, the interests at stake in this case are germane to USFA’s purpose, and neither the claims asserted, nor the relief requested requires the individual participation of its members.

11. Plaintiff BHANU VIKRAM is, and at all times relevant hereto was, a citizen of San Francisco County and employed by the City as a Transit Operator for the San Francisco Municipal Transportation Agency (“SFMTA”).

12. Plaintiff CARSON R. SCHILLING is, and at all times relevant hereto was, a citizen of Marin County and employed by the City as a Police Officer for the San Francisco Police Department (“SFPD”).

13. Plaintiff CHRISTA L. FESTA is, and at all times relevant hereto was, a citizen of the County of Contra Costa and employed by the City as a Police Officer for the SFPD.

1 14. Plaintiff CHRISTIANNE T. CROTTY is, and at all times relevant hereto was, a citizen
2 of San Francisco County and employed by the City as a Sheriff Deputy for the San Francisco Sheriff's
3 Office ("SFSO").

4 15. Plaintiff DENNIS M. CALLAHAN, JR is, and at all times relevant hereto was, a citizen
5 of Contra Costa County and employed by the City as a Track Maintenance Worker Supervisor I for
6 the SFMTA.

7 16. Plaintiff FAIMING CHEUNG is, and at all times relevant hereto was, a citizen of San
8 Francisco County and employed by the City as an IT Operations Support Administrator III for the San
9 Francisco Department of Emergency Management ("SFDEM")

10 17. Plaintiff JESSICA KWOK-BO LINDSEY is, and at all times relevant hereto was, a
11 citizen of Mendocino County and employed by the City as a Fire Fighter for the San Francisco Fire
12 Department ("SFFD").

13 18. Defendant City is, and at all times relevant hereto was, the Plaintiffs' employer and
14 issuer of the Mandate via its Department of Human Resources.

15 19. Defendant CAROL ISEN ("Isen") is, and at all times relevant hereto was, the Human
16 Resources Director of the City. Isen is ultimately charged with among other things enforcing all
17 employment policies of the City, including without limitation the Mandate. Isen is being sued in her
18 official and individual capacities.

19 20. SUSAN PHILIP ("Philip") is, and at all times relevant hereto was, the Health Officer
20 of the City, responsible for the Safer-Return-Together Order, as amended, which is referenced in, and
21 informs, the Mandate and deadlines set forth therein.

22 21. JEANINE R. NICHOLSON ("Nicholson") is, and at all times relevant hereto was, the
23 Chief of Department for the SFFD, responsible for General Order 21 A-51 dated June 28, 2021.
24 Nicholson further required compliance with the Mandate and sought enforcement of the deadlines set
25 forth therein in specific relation to employees of the SFFD whom she oversees and manages.

26 22. PHILLIP A. GINSBURG ("Ginsburg") is, and at all times relevant hereto was, the
27 General Manager for the SFRP, responsible for General Manager Directive 21-0 dated July 15, 2021.
28

1 Ginsburg further required compliance with the Mandate and sought enforcement of the deadlines set
2 forth therein in specific relation to employees of the SFRP whom he oversees and manages.

3 23. KIMBERLY ACKERMAN (“Ackerman”) is, and at all times relevant hereto was, the
4 Chief People Officer for the SFMTA, responsible for circulating and/or posting a Memorandum to all
5 staff sometime in late June 2021 which required compliance with the Mandate. Ackerman sought
6 enforcement of the deadlines set forth therein in specific relation to employees of the SFMTA whom
7 she oversees and manages.

8 24. Sargent FABIAN PEREZ (“Perez”) is, and at all times relevant hereto was, an
9 administrator in SFSO Administration who disseminated the inter-office correspondence dated July
10 23, 2021 which required compliance with the Mandate in regard to disclosing vaccine status. Perez
11 further required compliance with the Mandate and sought enforcement of the deadlines set forth
12 therein with regard to employees of the SFSO whom he oversees and manages.

13 25. WILLIAM SCOTT (“Scott”) is, and at all times relevant hereto was, the Chief of Police
14 in SFPD who disseminated Department Notice 21-141 dated September 3, 2021 which required
15 compliance with the Mandate. Scott sought enforcement of the deadlines set forth therein in specific
16 relation to employees of the SFPD whom he oversees and manages.

17 26. Defendants Isen, Philip, Nicholson, Ginsburg, Ackerman, Perez, and Scott have
18 personally undertaken actions under color of law that deprive or imminently threaten to deprive
19 Plaintiffs of certain rights, privileges, and immunities under the laws and Constitution of the State of
20 California.

21 27. This lawsuit seeks prospective relief against Defendants in their official capacities.
22 Defendants are state actors unprotected by sovereign immunity for purposes of this action.

23 28. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as
24 DOES 1-100, inclusive, and therefore sue these defendants by such fictitious names. Plaintiffs will
25 further amend this complaint to allege their true names and capacities when ascertained. Plaintiffs are
26 informed and believes that each of these defendants is an agent and/or employee of Defendant City,
27 and proximately caused Plaintiff’s harm as herein alleged while acting in such capacity.

29. On information and belief defendants were the agents, servants, employees, instrumentalities, representatives, co-venturers, co-conspirators and partners of one another, and in doing the things hereafter alleged, were acting within the scope of their authority as agents, servants, employees, instrumentalities, representatives, co-venturers, co-conspirators and partners, and with the permission and consent of one another, and as such share liability with each other in respect to the matters complained of herein.

GENERAL ALLEGATIONS

30. On January 30, 2020, the World Health Organization (“WHO”) declared a “public health emergency of international concern over the global outbreak” of COVID. Among the recommendations called for by the WHO was accelerated development of “vaccines, therapeutics and diagnostics.”

31. On January 31, 2020, President Trump first issued a public health state of emergency in the United States under the Public Health Service Act due to COVID.

32. Also on January 31, 2020, Secretary of Health and Human Services Alex M. Azar II, issued a Declaration of a Public Health Emergency effective as of January 27, 2020. This declaration has been renewed thereafter on April 21, 2020, July 23, 2020, October 2, 2020, January 7, 2021, April 15, 2021, and July 19, 2021.

33. President Trump issued a subsequent declaration of emergency under the Stafford Act and National Emergencies Act on March 13, 2020, due to COVID.

34. A third declaration of emergency was issued by President Trump on March 18, 2020, under the Defense Production Act due to COVID.

35. On February 24, 2021, President Biden extended President Trump’s March 13, 2020 declaration of emergency, stating as a reason for doing so that more “than 500,000 people in this Nation have perished from the disease.”⁶

⁶ President Joseph R. Biden, Jr., *Notice on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic* (February 24, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/02/24/notice-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic/>.

36. Thus, the United States has been in a constant state of emergency due to COVID (the “COVID Emergency”) since January 31, 2020, a period of over twenty three months.

37. The COVID Emergency has been used to justify lockdowns, banning of worship services, mandatory masks, vaccine passports, and now mandatory vaccinations such as the vaccination requirement the Defendants has placed on each of its employees upon penalty of termination.

38. Never in the history of this nation have all of its citizens been subjected to such broad invasions of their individual rights and liberties.

39. In April 2020, the national Administration announced Operation Warp Speed (“OWS”) – a public/private partnership to develop and distribute a vaccine for COVID-19 by the end of 2020 or early 2021.

40. The process for developing a vaccine normally takes place in several phases, over a period of years.

41. The general stages of the development cycle for a vaccine are:

- i. Exploratory stage;
 - ii. Pre-clinical stage (animal testing);
 - iii. Clinical development (human trials – see below);
 - iv. Regulatory review and approval;
 - v. Manufacturing; and
- Quality control.⁷

42. The third stage, clinical development, is itself a three-phase process:

- i. During Phase I, small groups of people receive the trial vaccine.
- ii. In Phase II, the clinical study is expanded and vaccine is given to people who have characteristics (such as age and physical health) similar to those for whom the new vaccine is intended.

⁷ <https://www.cdc.gov/vaccines/basics/test-approve.html> (Last visited January 4, 2022)

1 iii. In Phase III, the vaccine is given to thousands of people and tested for
2 efficacy and safety.

3 43. Phase III itself normally occurs over a course of years. That is because it can take years
4 for the side effects of a new vaccine to manifest themselves.

5 44. Phase III must be followed by a period of regulatory review and approval. During this
6 stage, data and outcomes are reviewed by peers and by the FDA.

7 45. Finally, the manufacturer must demonstrate that the vaccine can be manufactured under
8 conditions that assure adequate quality control.

9 46. The timeline set by OWS telescoped what would normally take years of research into
10 a matter of months.

11 47. Commercial vaccine manufacturers and other entities proceeded with development of
12 COVID-19 vaccine candidates using different technologies including RNA, DNA, protein, and viral
13 vectored vaccines.

14 48. Two potential vaccines emerged early on as likely candidates: one developed by
15 Moderna (the “Moderna Vaccine”), the other by Pfizer (the “Pfizer Vaccine”), with both announcing
16 Phase III trial results in November 2020.

17 49. In early 2021, Janssen Biotech, Inc. submitted Phase III trial results for its adenovirus
18 vector vaccine (the “Janssen Vaccine”).

19 50. In order for a new vaccine to be approved in the normal course, the manufacturer must
20 submit an application to the FDA pursuant to section 505(b) of the Food, Drug, and Cosmetics Act,
21 encoded at 21 U.S.C. § 355(b) (the “FDCA”). None of the currently-available COVID Vaccines,
22 including the Moderna and Pfizer vaccines that have been acquired and are being administered to San
23 Francisco public employees, has been approved by the FDA.

24 51. Rather, the COVID Vaccines have been authorized for emergency use under § 564 of
25 the FDCA (encoded at 21 U.S.C. § 360bbb-3), which Congress enacted to vest the Secretary of Health
26 and Human Services with permissive authority to “authorize the introduction into interstate commerce,
27 during the effective period of a declaration [of emergency], of a drug, device, or biological product
28

1 intended for use in an actual or potential emergency. . . .” 21 U.S.C. § 360bbb-3(a)(1).

2 52. The statute provides for the authorization of both unapproved products and unapproved
3 uses of an approved product. See 21 U.S.C. § 360bbb-3(a)(2). The Vaccines fall under the former
4 category, as they have not been previously approved for any use, nor have they been approved to date.

5 53. Section 360bbb-3 mandates the following conditions for authorization of an
6 unapproved product:

7 . . . [T]he Secretary, to the extent practicable given the applicable
8 circumstances described in subsection (b)(1), *shall*, for a person who
9 carries out any activity for which the authorization is issued, establish
10 such conditions on an authorization under this section as the Secretary
11 finds necessary or appropriate to protect the public health, including the
12 following:

13 . . . (ii) Appropriate conditions *designed to ensure* that *individuals to*
14 *whom the product is administered are informed—*

15 *. . . (III) of the option to accept or refuse administration of the product.*

16 . . .

17 21 U.S.C. § 360bbb-3(e)(1)(A)(ii) (emphasis added).

18 54. Pfizer and Moderna were granted EUAs for their vaccines under Section 360bbb-3 in
19 December 2020. The FDA granted Janssen an EUA for its vaccine in February 2021.

20 55. Consistent with its mandate under Section 360bbb-3, the FDA has continued to refer
21 to Vaccines for which EUAs have been granted as “unapproved” or “investigational” products.

22 56. In other words, as a legal matter and as a matter of FDA policy and guidance, the EUA
23 Vaccines remain experimental.

24 57. More recently, the FDA has licensed the Pfizer-Biontech vaccine under the brand
25 name, “Comirnaty.” However, on information and belief, the licensed “Comirnaty” vaccine is not yet
26 available in the United States, and all currently-available COVID Vaccine doses were manufactured
27
28

1 and distributed under an EUA. In other words, on information and belief, Plaintiffs are being mandated
2 to receive administration of a vaccine that remains experimental.

3 **COVID-19 Is Not Smallpox**

4 **A. The Statistics Underlying Defendants' Justification for the Mandate Are Flawed**

5 **i. The PCR Test Is Flawed**

6 58. The Covid Emergency is based upon statistics that are flawed for at least the following
7 reasons:

- 8 i. Every statistic regarding COVID is based upon the PCR test, which is a limited test
9 that cannot, on its own, determine whether a test subject is infected with COVID
10 absent an examination by a medical doctor;
- 11 ii. The PCR test is highly sensitive, with the result of the test being dependent upon
12 the cycle threshold ("CT") at which the test is conducted;
- 13 iii. National Institute of Allergy and Infectious Diseases, Dr. Anthony Fauci, has stated
14 that a test conducted at a CT of over 35 is useless;⁸
- 15 iv. Studies have confirmed Dr. Fauci's conclusion, showing that tests conducted using
16 CT values over 35 have yielded up to eighty percent (80%) false positives;⁹

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18
19
20 ⁸ YouTube.com, *Dr. Tony Fauci - PCR cycles* (October 30, 2020), <https://www.youtube.com/watch?v=A867t1JbIrs>; *see also* NYTimes.com, *Your Coronavirus Test Is Positive. Maybe It Shouldn't Be*. August 29, 2020),
21 <https://www.nytimes.com/2020/08/29/health/coronavirus-testing.html>.

22 ⁹ Corman-Drosten Review Report, *External peer review of the RTPCR test to detect SARS-CoV-2 reveals 10 major*
scientific flaws at the molecular and methodological level: consequences for false positive results, Section 3 (November
23 27, 2020), <https://cormandrostenreview.com/report/>; *see* The Lancet *Clarifying the evidence on SARS-CoV-2 antigen*
rapid tests in public health responses to COVID-19 (February 17, 2021), ("This suggests that 50–75% of the time an
24 individual is PCR positive, they are likely to be post-infectious."),
[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(21\)00425-6/fulltext#%20](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(21)00425-6/fulltext#%20); DOI:
[https://doi.org/10.1016/S0140-6736\(21\)00425-6](https://doi.org/10.1016/S0140-6736(21)00425-6);
25 *see also* [https://www.aerztezeitung.de/Wirtschaft/80-Prozent-der-positiven-Corona-Schnelltests-falsch-positiv-](https://www.aerztezeitung.de/Wirtschaft/80-Prozent-der-positiven-Corona-Schnelltests-falsch-positiv-421053.html)
[421053.html](https://www.aerztezeitung.de/Wirtschaft/80-Prozent-der-positiven-Corona-Schnelltests-falsch-positiv-421053.html) (July 4, 2020), (The fact that the high rate of false positive tests in large-scale testing in the population
26 occurs at a time of low viral incidence is demonstrated in the article from the German *Ärztezeitung*. At the end of the
regular cold season (May), about 50% of rapid tests were already reported as false positive, and this rate increased until it
27 reached 80% false positive tests in June.); *compare* *Comparison of seven commercial SARS-CoV-2 rapid point-of-care*
antigen tests: a single-centre laboratory evaluation study (July 2021), ("false-positives do occur with AgPOCTs at a
28 higher rate than with RT-rPCR."), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8026170/>. DOI: [10.1016/S2666-](https://doi.org/10.1016/S2666-5247(21)00056-2)
[5247\(21\)00056-2](https://doi.org/10.1016/S2666-5247(21)00056-2).

- 1 v. Despite this known sensitivity, the PCR tests were mass distributed in the United
2 States without training, were used by technicians who were not made aware of the
3 underlying flaw in the test,¹⁰ and were operated at a CT value in excess of 35
4 routinely, therefore, delivering results that were, according to Dr. Fauci and a broad
5 consensus of experts in the area, useless;¹¹ and
- 6 vi. The PCR test is incapable of distinguishing a live particle of a virus from a dead
7 one, and as a result, even a positive test result does not mean that the test subject is
8 infected or contagious with COVID, analogous to a test that could identify car parts
9 (such as an axle, wheels, engine) but not determine if those car parts were in fact, a
10 working car.

11 **ii. The Asymptomatic Spreader is a Myth**

12 59. Due to the numerous flaws in the fundamental test upon which all statistics underlying
13 the COVID Emergency are based, and the high level of resulting false positives, many have incorrectly
14 concluded that asymptomatic people, who in the past would simply have been referred to as “healthy
15 people,” are somehow contagious and are spreading the disease.

16 60. Policy decisions at the state and federal level rest upon this myth. For example,
17 mandatory masking of healthy people is based upon this myth. Social distancing is based upon this
18 myth as well. The policy that perfectly healthy, non-contagious people must be vaccinated to interact
19 with and participate in society is based in large degree upon this myth. With regard to flawed statistics,
20 mass PCR testing of the entire population has been based upon this myth. There is no reason to test
21 perfectly healthy asymptomatic people absent the belief that asymptomatic people can spread COVID.

22 61. However, the assumption that people with no symptoms can spread the disease is false.
23 As Dr. Fauci stated during a September 9, 2020: “[E]ven if there is some asymptomatic transmission,
24 in all the history of respiratory borne viruses of any type, asymptomatic transmission has never been
25 _____

26 ¹⁰ NPR *CDC Report: Officials Knew Coronavirus Test Was Flawed But Released It Anyway* (November 6, 2020),
27 [https://www.npr.org/2020/11/06/929078678/cdc-report-officials-knew-coronavirus-test-was-flawed-but-released-it-](https://www.npr.org/2020/11/06/929078678/cdc-report-officials-knew-coronavirus-test-was-flawed-but-released-it-anyway)
28 [anyway.](https://www.npr.org/2020/11/06/929078678/cdc-report-officials-knew-coronavirus-test-was-flawed-but-released-it-anyway)

¹¹ YouTube.com, *Dr. Tony Fauci - PCR cycles* (October 30, 2020), <https://www.youtube.com/watch?v=A867t1JbIrs>.

1 the driver of outbreaks. The driver of outbreaks is always a symptomatic person, even if there is a rare
2 asymptomatic person that might transmit, an epidemic is not driven by asymptomatic carriers.”

3 62. Due to the incorrect assumption that asymptomatic people could spread the disease,
4 mass testing has been instituted of the population at large. Due to the numerous flaws in the PCR test
5 stated above, this mass testing has resulted in dramatically inflated case numbers that do not reflect
6 reality and falsely overstate the number of COVID cases.

7 63. As a result, the data regarding COVID cases being used to shape public policy is highly
8 inflated.

9 **iii. The COVID Hospitalization Count Is Highly Inflated**

10 64. Every patient that is admitted to a hospital is subject to a PCR test due to the perceived
11 COVID Emergency.

12 65. The PCR test used upon admission is subject to the numerous flaws identified above,
13 and, therefore, results in the dramatic inflation of COVID patients who have been hospitalized.

14 66. Moreover, the CARES Act increases reimbursements to hospitals for all patients who
15 have been diagnosed with COVID, creating an economic incentive for hospitals to find a COVID
16 diagnosis.

17 67. As a result, the COVID hospitalization data being used to shape public policy is highly
18 inflated.

19 **iv. The COVID Death Count Is Highly Inflated**

20 68. On March 24, 2020, the CDC issued COVID Alert Number 2. This Alert substantially
21 changed how the cause of death was to be recorded exclusively for COVID. The modification ensured
22 that in any case where the deceased had a positive PCR test for COVID, then COVID was listed as
23 the cause of death.

24 69. Prior to this March 24, 2020, change in procedure, COVID would only have been listed
25 as the cause of death in those cases where COVID was the actual cause of death. If the deceased had
26 a positive PCR test for COVID, but had died of another cause, then COVID would have been listed
27 as a contributing factor to the death, but not the cause.

70. The 2003 CDC Medical Examiner’s and Coroner’s Handbook on Death Registration and Fetal Death Reporting states that in the presence of pre-existing conditions infectious disease is recorded as the contributing factor to death, not the cause. This was always the reporting system until the death certificate modification issued by the CDC on March 24, 2020.

71. This death certificate modification by the CDC was not made for any other disease; only COVID. Accordingly, a double standard was created for the recordation of deaths, skewing the data for all deaths after March 24, 2020, reducing the number of deaths from all other causes, and dramatically increasing the number of deaths attributed to COVID.

72. As a result, the COVID death data used to shape public health policy is significantly inflated.¹²

v. COVID Has an Extremely High Survivability Rate

73. According to the CDC the survivability of COVID-19 is extraordinarily high. Survival rates under age 20 is 99.997%, 20-50 is 99.98%, 50-70 is 99.5% and 70+ is 94.6%. These figures calculate the percentage of confirmed COVID infected patients who survive.

74. By comparison, the smallpox epidemic of the early 1900s is reported to have been fatal to over 30% of those who contracted it, according to the FDA.

vi. COVID Survivors Enjoy Robust Natural Immunity

75. Those who recover from infection from COVID, over 99% of those who are infected, enjoy robust and durable natural immunity. Natural immunity is superior to vaccine-induced immunity resulting from the COVID vaccines, which do not prevent re-infection or transmission of COVID, and do not prevent infection, re-infection or transmission of the current Delta strain.

B. Mandating COVID Vaccination Is Contrary to Public Policy.

76. As the CDC tacitly concedes by changing its own definitions of “Vaccine” and “Vaccination,” the COVID vaccines are not vaccines in the traditional sense. For example, the FDA

¹² CDC, *COVID-19 Forecasts: Deaths* <https://www.cdc.gov/coronavirus/2019-ncov/science/forecasting/forecasting-us.html> (Last visited January 4, 2022)

1 classifies them as “CBER-Regulated Biologics” otherwise known as “therapeutics” which falls under
2 the “Coronavirus Treatment Acceleration Program.”¹³

3 77. The Vaccines are misnamed since they do not prevent either re-infection or
4 transmission of the disease, the key elements of a vaccine. The CDC has publicly stated that the
5 Vaccines are effective in reducing the severity of the disease but not infection, re-infection, or
6 transmission. Indeed, as noted above, the CDC has stricken the very word “immunity” from its
7 definitions of “Vaccine” and “Vaccination.” The injection is therefore a medical treatment, not a
8 vaccine.

9 78. The CDC Director has stated that the vaccines do not stop the transmission of the Delta
10 strain that appeared last summer or the Omicron variant that circulated during the winter. Studies
11 showed that the Delta strain passed easily amongst vaccinated persons.¹⁴ That is why the CDC website
12 stated: “... preliminary evidence suggests that fully vaccinated people who do become infected with
13 the Delta variant can spread the virus to others.”¹⁵ Similarly, in February 2022, the CDC conceded
14 that “anyone with Omicron infection can spread the virus to others, even if they are vaccinated or don’t
15 have symptoms.”

16 79. The effectiveness of the COVID vaccines has been determined to wane rapidly. Israel,
17 the most vaccinated and studied nation, now expires the vaccine’s effectiveness at six months.¹⁶ The
18 requirement for booster shots due to this waning of effectiveness has been recognized by the CDC,
19 which initially recommended no booster shots, then annually, then at 8 months and then 6 months.

20 80. It has been well known to scientists for decades that vaccines that don’t stop
21 transmission but merely lessen symptoms (“leaky vaccines”) are harmful to the public health. “Our
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25 ¹³ FDA, *Coronavirus (COVID-19) / CBER-Regulated Biologics*, <https://www.fda.gov/vaccines-blood-biologics/industry-biologics/coronavirus-covid-19-cber-regulated-biologics> (Last visited January 4, 2022); FDA, *Coronavirus Treatment Acceleration Program (CTAP)*, <https://www.fda.gov/drugs/coronavirus-covid-19-drugs/coronavirus-treatment-acceleration-program-ctap> (last visited January 4, 2022).

26
27 ¹⁴ The Lancet, *Transmission of SARS-CoV-2 Delta Variant Among Vaccinated Healthcare Workers, Vietnam* (August 10, 2021) <https://ssrn.com/abstract=3897733>

28 ¹⁵ <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>

¹⁶ <https://www.businessinsider.com/israel-vaccine-pass-to-expire-after-6-months-booster-shots-2021-9>

1 data show that anti-disease vaccines that do not prevent transmission can create conditions that
2 promote the emergence of pathogen strains that cause more severe disease in unvaccinated hosts.”¹⁷

3 81. Whether the variant is delta, omicron, or the next variant, scientists have been
4 concerned about the possibility of vaccine-resistant strains of SARS-CoV-2 since the leaky vaccines
5 were released one year ago. This has been published innumerable times in peer reviewed scientific
6 journals with scientific titles such as: Risk of rapid evolutionary escape from biomedical interventions
7 targeting SARS-CoV-2 spike protein. “The deployment of vaccines against SARS-CoV-2 brings the
8 question of mutational escape from antibody prophylaxis to the forefront. Rapid evolutionary evasion
9 of neutralizing antibodies (nAbs) poses a number of threats to biomedical interventions aimed at
10 bringing the virus under control, namely the risk of reduced vaccinal efficacy over time as resistant
11 variants continue to emerge (which may or may not be rectifiable with annual vaccine updates), the
12 risk of waning effectiveness of natural immunity as a result of evasion of common nAbs, and the risk
13 of antibody-dependent enhancement (ADE).¹⁸

14 82. The Journal Nature published on October 25, 2021 an article titled: “The spike protein
15 of SARS-CoV-2 variant is heavily mutated and evades vaccine-induced antibodies with high
16 efficiency.” The introduction states: “the emergence of SARS-CoV-2 variants with S protein
17 mutations that confer resistance to neutralization might compromise vaccine efficacy.” And it
18 concludes: “Collectively, our results suggest that the SARS-CoV-2 variant A.30 can evade control by
19 vaccine-induced antibodies and might show an increased capacity to enter cells in a cathepsin L-
20 dependent manner, which might particularly aid in the extrapulmonary spread.”¹⁹

21 83. These were not isolated comments. Although the shots have been declared a miracle
22 by many, the Department of Health and Human Services’ Centers for Medicare and Medicaid Services
23 (“CMS”) stated last fall in the *Federal Register* that “the duration of vaccine effectiveness in
24 preventing COVID-19, reducing disease severity, reducing the risk of death, and the effectiveness of
25

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27 ¹⁷ <https://www.ncbi.nlm.nih.gov/labs/pmc/articles/PMC4516275/>

28 ¹⁸ <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0250780>

¹⁹ <https://www.nature.com/articles/s41423-021-00779-5>

1 the vaccine to prevent disease transmission by those vaccinated are not currently known.” The CMS
2 has also said that “major uncertainties remain as to the future course of the pandemic, including but
3 not limited to vaccine effectiveness in preventing ‘breakthrough’ disease transmission from those
4 vaccinated, [and] the long-term effectiveness of vaccination” And it has acknowledged the benefits
5 of natural immunity, saying that those who “have recovered from infection ... are no longer sources
6 of future infections.”

7 84. All ordinary persons including Plaintiffs can directly observe that Covid-19 vaccination
8 does not stop transmission and is harming some individuals. Thousands of scientists and physicians
9 and politicians from all political sides and all around the globe have repeatedly stated this publicly.
10 For example:

- 11 a. **NIAID Director Dr. Anthony Fauci** to NPR: “We know now as a fact that
12 [vaccinated people with Covid-19] are capable of transmitting the infection to
13 someone else.”²⁰
- 14 b. **WHO Chief Scientist Dr. Soumya Swaminathan**: “At the moment I don't believe
15 we have the evidence of any of the vaccines to be confident that it's going to prevent
16 people from actually getting the infection and therefore being able to pass it on.”²¹
- 17 c. **Chief Medical Officer of Moderna Dr. Tal Zaks**: “There’s no hard evidence that it
18 stops them from carrying the virus transiently and potentially infecting others who
19 haven’t been vaccinated.”²²
- 20 d. **The Prime Minister of the United Kingdom**, the Honorable Boris Johnson: “... but
21 it doesn’t protect you against catching the disease and it doesn’t protect you against
22 passing it on”²³
- 23 e. **The Surgeon General of the State of Florida**, Dr. Joseph Ladapo, MD, PhD: “...

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26 ²⁰ Stieg, C (July 28, 2021). *Dr. Fauci on CDC mask guidelines: ‘We are dealing with a different virus now.*
<https://www.cnbc.com/2021/07/28/dr-fauci-on-why-cdc-changed-guidelines- delta-is-a-different-virus.html>.

27 ²¹ <https://www.businessinsider.com/who-says-no-evidence-coronavirus-vaccine-prevent-transmissions-2020-12?op=1>

28 ²² <https://nypost.com/2020/11/24/moderna-boss-says-covid-shot-not-proven-to-stop-virus-spread/>

²³ <https://www.youtube.com/watch?v=h52zphGRDpg>

1 the infections can still happen whether people are vaccinated or not. That's very
2 obvious.”²⁴

- 3 f. **Professor Sir Andrew Pollard who led the Oxford vaccine team:** “We don’t have
4 anything that will stop transmission, so I think we are in a situation where herd
5 immunity is not a possibility and I suspect the virus will throw up a new variant that
6 is *even better* at infecting vaccinated individuals.”²⁵
- 7 g. “Based on this data it is all but a certainty that mass COVID-19 immunization is
8 hurting the health of the population in general. Scientific principles dictate that the
9 mass immunization with COVID-19 vaccines must be halted immediately because we
10 face a looming vaccine induced public health catastrophe.”²⁶
- 11 h. **2008 Nobel Prize winner in Medicine Dr. Luc Montagnier** (and the French National
12 Order of Merit and 20 other major international awards): “The vaccines don’t stop the
13 virus, they do the opposite – they “feed the virus,” and facilitate its development into
14 stronger and more transmissible variants... You see it in each country, it’s the same:
15 the curve of vaccination is followed by the curve of deaths ... the vaccines Pfizer,
16 Moderna, Astra Zeneca do not prevent the transmission of the virus person-to-person
17 and the vaccinated are just as transmissible as the unvaccinated.”²⁷
- 18 i. **Dr. Vanden Bossche, international vaccinologist formerly with the Bill & Melinda**
19 **Gates Foundation:** “As a dedicated virologist and vaccine expert I only make an
20 exception [to vaccines] when health authorities allow vaccines to be administered in
21 ways that threaten public health, most certainly when scientific evidence is being
22

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24 ²⁴ <https://twitter.com/4patrick7/status/1452309002021388296?s=21>

25 ²⁵ <https://rightsfreedom.wordpress.com/2021/08/14/vaccines-dont-stop-transmission-and-wont-give-us-herd-immunity-so-lets-stop-mass-testing-experts-tell-mps/>

26 ²⁶ Classen B (August 25, 2021). *US COVID-19 Vaccines Proven to Cause More Harm than Good Based on Pivotal Clinical Trial Data Analyzed Using the Proper Scientific Endpoint, “All Cause Severe Morbidity”*. Trends Int Med. 2021; 1(1): 1-6. <https://www.scivisionpub.com/pdfs/us-covid19-vaccines-proven-to-cause-more-harm-than-good-based-on-pivotal-clinical-trial-data-analyzed-using-the-proper-scientific--1811.pdf>.

27 ²⁷ <https://www.google.com/search?client=safari&rls=en&q=rumble+and+luc+montagnier&ie=UTF-8&oe=UTF-8>

1 ignored. The present extremely critical situation forces me to spread this emergency
2 call. As the unprecedented extent of human intervention in the COVID-19 pandemic
3 is now at risk of resulting in a global catastrophe without equal, this call cannot sound
4 loudly and strongly enough.... In this agonizing letter I put all of my reputation and
5 credibility at stake ...continued mass vaccination, together with the predominant
6 circulation of more infectious variants (as facilitated by mass vaccination!), will
7 inevitably lead to relatively higher morbidity and mortality rates in vaccinees than in
8 the nonvaccinated.”²⁸

9 j. A study of a COVID-19 outbreak in July 2021 published in **Eurosurveillance**
10 observed that 100% of severe, critical, and fatal cases of COVID-19 occurred in
11 vaccinated individuals. The authors stated that the study "challenges the assumption
12 that high universal vaccination rates will lead to herd immunity and prevent COVID-
13 19 outbreaks.”²⁹

14 k. **Dr. Jay Bhattacharya, MD, PhD, Professor of Health Policy, Stanford**

15 **University:** “There’s no public health reason for a mandate. ... bad for public health
16 because it causes people not to trust health officials.”³⁰

17 l. **Dr. Martin Kulldorff, Professor of Medicine at Harvard Medical School:** “The
18 bottom line is that these vaccines do not prevent transmission.”³¹

19 m. **Dr. Sunetra Gupta, Infectious Disease Epidemiologist and Professor of**

20 **Theoretical Epidemiology at the University of Oxford:** “...it is really not logical to
21 use vaccines to protect other people ... I don’t think they should be forced to on the

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24 ²⁸ Vanden Bossche, G (2021). *Mass infection prevention and mass vaccination with leaky Covid-19*
25 *vaccines in the midst of the pandemic can only breed highly infectious variants*. Open Letter to
26 World Health Organization. <https://www.geertvandenbossche.org/>.

26 ²⁹ Pnina, S. et al (September 23, 2021). *Nosocomial outbreak caused by the SARS-CoV-2 Delta*
27 *variant in a highly vaccinated population, Israel, July 2021*. Euro
28 *Surveill.* 2021;26(39):pii=2100822. <https://doi.org/10.2807/1560-7917.ES.2021.26.39.2100822>.

27 ³⁰ <https://www.newsweek.com/stanford-doc-jay-bhattacharya-calls-vaccine-mandates-unethical-says-patients-can-choose-1611938>

28 ³¹ <https://www.theburningplatform.com/2021/10/23/who-are-these-covid-19-vaccine-skeptics-and-what-do-they-believe/>

understanding simply because this vaccine does not prevent transmission. So if you just think of the logic of it, what is the point of requiring a vaccine to protect others if that vaccine does not durably prevent onward transmission of a virus?”³²

- n. In the heavily vaccinated **State of Vermont**, 76% of deaths are among the vaccinated.³³
- o. **A CDC investigation** of an outbreak in Barnstable County, Massachusetts, between July 6 through July 25, 2021, found 74% of those who received a diagnosis of COVID-19, and 80% of hospitalizations, were among the fully vaccinated, as most (but not all), had the Delta variant of the virus (note: since the County did not have a population that was 74% fully COVID-19 vaccinated, this would mean the vaccines *increase* the odds of being infected with COVID-19).³⁴
- p. Scientists and clinicians monitoring patients in real time are achieving superior health outcomes than CDC recommendations, utilizing therapeutic protocols (such as ivermectin)³⁵, and emphasizing the robustness of natural immunity. An example of this came recently from **Dr. Marty Makary, a professor at the Johns Hopkins Bloomberg School of Public Health**, who stated publicly that because “half the country” likely already have natural lifelong immunity to COVID-19, “I never

³² <https://richieallen.co.uk/oxford-scientist-its-illogical-unethical-to-force-jab-on-nhs-staff/>

³³ Page, G. (September 30, 2021). *76% of September Covid-19 deaths are vax breakthroughs*. The Vermont Daily Chronicle. <https://vermontdailychronicle.com/2021/09/30/76-of-september-covid-19-deaths-are-vaxxed-breakthroughs/> ("Just eight of the 33 Vermonters who died of Covid-19 in September were unvaccinated, the Vermont Department of Heath said Wednesday.")

³⁴ Brown CM, et al. (July 2021). *Outbreak of SARS-CoV-2 Infections, Including COVID-19 Vaccine Breakthrough Infections, Associated with Large Public Gatherings — Barnstable County, Massachusetts, July 2021*. MMWR Morb Mortal Wkly Rep 2021;70:1059-1062. https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm?s_cid=mm7031e2_w.

Lovelace, B (July 30, 2021). *CDC study shows 74% of people infected in Massachusetts Covid outbreak were fully vaccinated*. CNBC News. <https://www.cnn.com/2021/07/30/cdc-study-shows-74percent-of-people-infected-in-massachusetts-covid-outbreak-were-fully-vaccinated.html>.

³⁵ Covid Analysis (October 13, 2021). *COVID-19 early treatment: real-time analysis of 1,017 studies*. <https://c19early.com/>.

thought I'd say this, but please ignore the CDC guidance."³⁶

- q. **Dr. Peter McCullough, author of more than 1000 publications and 500 citations** in the National Library of Medicine, President Bill Clinton's advisory panel to health care, Chair of more than 24 data safety monitoring boards for the NIH and FDA: "Vaccines do not stop transmission. During an outbreak, healthcare workers were still getting Covid during the lockdown and passing it to one another."³⁷ And "New research [Oxford University] shows people who are vaccinated against COVID are more susceptible to the Delta variant."³⁸
- r. On August 1, 2021, the **director of Israel's Public Health Services** announced half of all COVID-19 infections were among the fully vaccinated.³⁹
- s. On August 5, 2021, the **director of the Herzog Hospital in Jerusalem** appeared on Channel 13 News, reporting that 95% of severely ill COVID-19 patients are fully vaccinated, and that they make up 85% to 90% of COVID-19 related hospitalizations overall.⁴⁰
- t. 21 Israeli physicians, scientists advise FDA of 'severe concerns' regarding reliability and legality of official Israeli COVID vaccine data: "We are aware that the state of Israel is perceived as 'the world laboratory' regarding the safety and efficacy of the Pfizer-BioNTech COVID-19 vaccine, as reflected by statements made by Dr. Albert

³⁶ Shiver, P. (May 2021). *John Hopkins professor says 'ignore the CDC' - 'natural immunity works'.* Blaze Media. <https://www.theblaze.com/news/johns-hopkins-professor-ignore-cdc-natural-immunity-works> ("Natural immunity works... We've got to start respecting individuals who choose not to get the vaccine, instead of demonizing them. There is more data on natural immunity than there is on vaccinated immunity, because natural immunity has been around longer.")

³⁷ <https://childrenshealthdefense.org/defender/rfk-jr-podcast-dr-peter-mccullough-vaccines-are-failing/>

³⁸ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3897733

³⁹ Bloomberg News (August 1, 2021). *Israel sees waning coronavirus vaccine effectiveness.* <https://www.bostonglobe.com/2021/08/01/nation/israel-sees-waning-coronavirus-vaccine-effectiveness/>.

⁴⁰ Fleetwood, J. (August 8, 2021). *Vaxxed Make Up '85-90% of the Hospitalizations' from Covid Infection in Israel: Dr. Kobi Haviv.* American Faith. <https://americanfaith.com/vaxxed-make-up-85-90-of-the-hospitalizations-from-covid-infection-in-israel-dr-kobi-haviv/>.

Bourla, Dr. Anthony Fauci. We thus see it of utmost importance to convey a message of warning and raise our major concerns regarding potential flaws in the reliability of the Israeli data with respect to the Pfizer-BioNTech COVID-19 vaccine, as well as many significant legal and ethical violations that accompany the data collection processes.”⁴¹

- u. In Scotland, official data on hospitalizations and deaths show 87% of those who have died from COVID-19 in the third wave that began in early July were vaccinated.⁴²
- v. Undercover video and emails from US health agencies and vaccine manufacturers confirm⁴³ that (1) vaccine injuries are underreported because vested interests want to “shove it under the mat”,⁴⁴ (b) vaccine tracking is implemented in a fascist manner, (c) vaccination is both unnecessary and harmful, (d) natural immunity is superior to vaccination, and (e) vaccine manufacturers actively conceal from the public the use of aborted fetuses to develop vaccines.

C. VAERS Reports Point to Significant Levels of Vaccine Injury.

85. As part of the 1990 Public Readiness and Emergency Preparedness Act, the FDA and CDC created the Vaccine Adverse Event Reporting System (“VAERS”) to receive reports about

⁴¹ <https://americasfrontlinedoctors.org/2/frontlinenews/breaking-israeli-physicians-scientists-advise-fda-of-severe-concerns-regarding-reliability-and-legality-of-official-israeli-covid-vaccine-data/>

⁴² Daily Expose (July 29, 2021). *Exclusive - Covid-19 are rising and official data shows 87% of the people who have died were vaccinated*. Daily Expose. <https://dailyexpose.co.uk/2021/07/29/87-percent-covid-deaths-are-vaccinated-people/>; see also Daily Expose (September 8, 2021). *80% of Covid-19 deaths in August were people who had been vaccinated according to Public Health data*. Daily Expose. <https://theexpose.uk/2021/09/08/exclusive-80-percent-of-covid-19-deaths-in-august-were-people-who-had-been-vaccinated/>.

⁴³ Project Veritas (2021). *COVID-19 Vaccine Exposed*. <https://www.projectveritas.com/>.

⁴⁴ This observation is also corroborated by (a) the Lazarus report from Harvard Pilgrim evidencing that less than 1% of vaccine adverse events are reported to VAERS (<https://digital.ahrq.gov/sites/default/files/docs/publication/r18hs017045-lazarus-final-report-2011.pdf>), and (b) in another case filed by Plaintiff AFLDS, see the declaration of a whistleblower who compared the high number of vaccine deaths in private CMS medical claims to the low number of vaccine deaths reported to VAERS. *America’s Frontline Doctors, et al. v. Becerra et al.* Case 2:21-cv-00702-CLM, United States District Court (Northern District of Alabama), Dkt. 15-4 (Declaration filed 07/19/21).

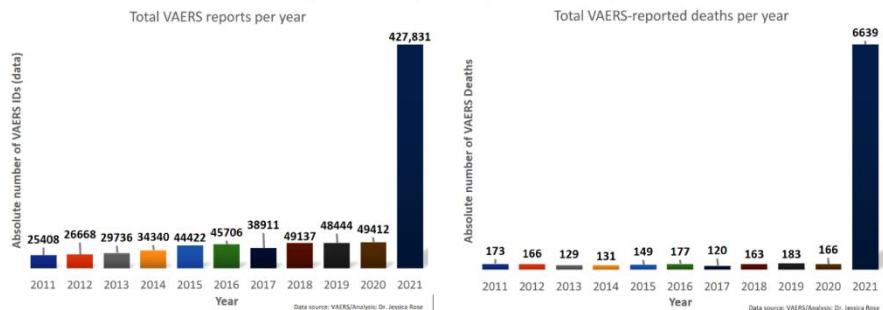
suspected adverse events that may be associated with vaccines. VAERS is intended to serve as an early warning system to safety issues.

86. It has been well established even prior to COVID that only 1-10% of adverse events are reported. This is known as the “Under-Reporting Factor” (“URFs”). While many reported adverse events are mild, about 15% of total adverse events are found to be serious adverse events.

87. The long-established CDC database VAERS demonstrates significantly higher reports of deaths and adverse events with the COVID vaccines than with prior vaccines. There are reports of neurological adverse events, including Guillain-Barre, Bell’s Palsy, Transverse Myelitis, Paralysis, Seizure, Stroke, Dysstasia, Aphasia, and Tinnitus, as well as cardiovascular events such as clot and cardiac arrest.

88. As one can see from this chart, VAERS reports regarding the COVID vaccines are extraordinarily high.

Figure 1: Bar plots showing the number of VAERS reports (left) and reported deaths (right) per year for the past decade. (2021 is partial data set.)



D. COVID Vaccines Create Immunological Cripples, Vaccine Addicts, Super-Spreaders, and a Higher Chance of Death and Severe Hospitalization

89. The COVID vaccines are not traditional vaccines. Instead most carry coded instructions that cause cells to reproduce one portion of the SARS-CoV-2 virus, the spike protein. The vaccines thus induce the body to create spike proteins. A person only creates antibodies against this one limited portion (the spike protein) of the virus. This has several downstream deleterious effects.

1 90. First, these vaccines “mis-train” the immune system to recognize only a small part of
2 the virus (the spike protein). Variants that differ, even slightly, in this protein, such as the Delta variant,
3 are able to escape the narrow spectrum of antibodies created by the vaccines.

4 91. Second, the vaccines create “vaccine addicts,” meaning persons become dependent
5 upon regular booster shots, because they have been “vaccinated” only against a tiny portion of a
6 mutating virus. The Australian Health Minister Dr. Kerry Chant has stated that COVID will be with
7 us forever and people will “have to get used to” taking endless vaccines. “This will be a regular cycle
8 of vaccination and revaccination.”

9 92. Third, the vaccines do not prevent infection in the nose and upper airways, and
10 vaccinated individuals have been shown to have much higher viral loads in these regions. This leads
11 to the vaccinated becoming “super-spreaders” as they are carrying extremely high viral loads.

12 93. In addition, the vaccinated may become more clinically ill than the unvaccinated.
13 Scotland reported that the infection fatality rate in the vaccinated is 3.3 times the unvaccinated and the
14 risk of death if hospitalized is 2.15 times the unvaccinated.⁴⁵

15 **E. Effective Treatments Are Available**

16 **i. Ivermectin Is Effective**

17 94. Ivermectin--a cheap, safe, widely available generic medication, whose precursor won
18 the Nobel Prize in Medicine in 2015--treats and cures SARS-CoV-2 infection, both while in the early
19 infectious stage and later stages.⁴⁶ The evidence is both directly observed in multiple randomized
20 controlled trials and epidemiological evidence worldwide. There are now more than sixty (60) studies
21 demonstrating its efficacy as well as noting that nations that use ivermectin see their death rates
22 plummet to 1% of the death rates of nations that do not.

23 **ii. Hydroxychloroquine Is Effective**

24
25 _____
26
27 ⁴⁵ [https://jeffreydachmd.com/wp-content/uploads/2021/08/Public-Health-Scotland-21-08-04-covid19-](https://jeffreydachmd.com/wp-content/uploads/2021/08/Public-Health-Scotland-21-08-04-covid19-publication_report.pdf)
[publication_report.pdf, https://jeffreydachmd.com/wp-content/uploads/2021/08/Public-Health-Scotland-21-09-01-](https://jeffreydachmd.com/wp-content/uploads/2021/08/Public-Health-Scotland-21-09-01-covid19-publication_report.pdf)
[covid19-publication_report.pdf](https://jeffreydachmd.com/wp-content/uploads/2021/08/Public-Health-Scotland-21-09-01-covid19-publication_report.pdf)

28 ⁴⁶ <https://ivmmeta.com/ivm-meta.pdf>

95. Hydroxychloroquine (HCQ) is a cheap, safe, widely available generic medication used billions of times annually in all countries around the world including the United States. It is typically prescribed for rheumatoid arthritis and lupus. HCQ treats and cures SARS-CoV-2 infection effectively in the early infectious stage. HCQ also provides substantial reduction in mortality in later stages.^{47, 48} There are now more than 300 studies demonstrating its efficacy and nations that use HCQ have 1-10% of the death rate of nations that do not. HCQ is on the WHO's List of Essential Medications that all nations should always have available. Chloroquine (an earlier version of HCQ) has been in continuous use for SARS-CoV-2 in China since February 2020.⁴⁹

iii. Budesonide Is Effective

96. Budesonide, a cheap, safe, widely available generic inhaler medication used commonly in the United States, typically for emphysema, effectively treats SARS-CoV-2 infection while in the early infectious stage.⁵⁰ This was published in The Lancet in April 2021.⁵¹ The trial at ClinicalTrials.gov was stopped early because steroids were shown to be so effective.⁵²

iv. Monoclonal Antibodies Are Effective

97. Monoclonal antibodies are approved for COVID early treatment and are highly effective and universally safe.

FIRST CAUSE OF ACTION

(Declaratory and Injunctive Relief re *Ultra Vires* Action)

98. Plaintiffs incorporate the preceding paragraphs of this Complaint as though set forth fully herein.

⁴⁷ <https://hcqmeta.com>

⁴⁸ https://docs.google.com/document/d/1vDD8JkHe62hmpkalx1tejkd_zDnVwJ9XXRjgXAc1qUc/edit

⁴⁹ https://www.jstage.jst.go.jp/article/bst/14/1/14_2020.01047/article

⁵⁰ https://c19protocols.com/wp-content/uploads/2021/03/COVID_Budesonide_Oxford-Based_Dosing_Guidance.pdf

⁵¹ The Lancet, *Inhaled Budesonide in the treatment of early COVID-19 (STOIC): a phase 2, open-label randomized controlled trial* (July 1, 2021), [https://www.thelancet.com/article/S2213-2600\(21\)00160-0/fulltext](https://www.thelancet.com/article/S2213-2600(21)00160-0/fulltext)

⁵² ClinicalTrials.gov, *STerOids in COVID-19 Study (STOIC)* (February 8, 2021),

<https://clinicaltrials.gov/ct2/show/NCT04416399>; The Lancet – Respiratory Medicine, *Inhaled budesonide in the treatment of early COVID-19 (STOIC): a phase 2, open-label, randomised controlled trial* (April 9, 2021)

[https://www.thelancet.com/article/S2213-2600\(21\)00160-0/fulltext](https://www.thelancet.com/article/S2213-2600(21)00160-0/fulltext).

1 99. On information and belief, the City issued the COVID-19 vaccine mandate pursuant to
2 its powers under the California Emergency Services Act. That act, which is codified in sections 8550
3 *et seq.* of the California Government Code, gives the Governor and local officials certain powers
4 during a state of emergency. But that does not mean that local officials have unlimited authority. They
5 “may promulgate orders and regulations necessary to provide for the protection of life and property,”
6 in the affected area. Cal. Gov’t Code § 8634.

7 100. Plaintiffs contend that the City’s COVID-19 vaccine mandate exceeds the City’s
8 authority under state law. Even if it had such power, the City has a duty under the Emergency Services
9 Act to narrowly tailor any government action to protect individual rights. That requires that any action
10 it takes be necessary to accomplish the government's interest and the least restrictive means of
11 accomplishing that interest. The City made no attempt to narrowly tailor the vaccine mandate and the
12 mandate is not the least restrictive means of response: in fact, it is the most restrictive. The mandate
13 also fails to accomplish the City’s purpose in adopting it, as people who receive the COVID-19 shot
14 can still contract and transmit the virus. They can still get seriously ill and die from COVID-19.

15 101. Plaintiffs also contend that the City’s adoption of the COVID-19 vaccine mandate was
16 arbitrary and capricious as the City failed to consider evidence of the shots’ effectiveness and
17 necessity. The City also refused to consider evidence that undermined its pre-determined judgment to
18 require the shots—and now the booster shots—a quintessentially arbitrary and capricious action.

19 102. On information and belief, the City contends that it did have the power to issue the
20 COVID-19 vaccine mandate and it contends that the mandate does not have to be narrowly tailored.
21 The City also contends, in the alternative, that the vaccine mandate is narrowly tailored to fulfill a
22 compelling government interest and that it did not act arbitrarily and capriciously in adopting the order.
23 Furthermore, the City contends that people who have taken the COVID shots cannot contract or
24 transmit the COVID-19 virus, much less get sick and die from COVID.

25 103. Plaintiffs desire a judicial declaration that the COVID-19 vaccine mandate exceeds the
26 City's powers under state law. Plaintiffs also seek an order that the City acted arbitrarily and
27 capriciously in adopting the mandate.
28

105. The City's actions have harmed Plaintiffs, as alleged above.

106. Plaintiffs have no adequate remedy at law and will suffer irreparable harm if the Court does not enjoin the City from enforcing the unlawful vaccine mandate. Thus, Plaintiffs seek preliminary and permanent injunctive relief for such an order.

107. This action serves the public interest, justifying an award of attorneys' fees under section 1021.5 of the California Code of Civil Procedure.

SECOND CAUSE OF ACTION

(Declaratory and Injunctive Relief under Article I, sec. 1 of Cal. Constitution)

108. Plaintiffs incorporate the preceding paragraphs of this Complaint as though set forth fully herein.

109. The Plaintiffs are employed by the City. They have not complied with the City's Mandate, including reporting of their vaccination status. They object to being compelled to turn over their private medical information to the City as a condition of their continued employment.

110. Individuals have a right to privacy under the California Constitution. This state law privacy right, which was added by voters in 1972, is far broader than the right to privacy under the federal Constitution. It is the broadest privacy right in America and has been interpreted by the California Supreme Court to protect both the right to informational privacy and to bodily integrity.

111. City employees, like all competent adults in California, have a legally protected privacy interest in their bodily integrity, as the California Supreme Court recognized in *Hill v. NCAA*.

112. City employees' expectation of privacy is reasonable under the circumstances, as the City has never had a vaccination requirement for public employment before now and the City has never disciplined, much less fired, a city employee for declining an injection. The only compulsory vaccination laws adopted in California during the past century concerned certain vaccines that children need to attend school. Those laws do not undermine the expectation of privacy that City employees,

1 as adults, have in their bodily integrity. Moreover, in 2005, the California Court of Appeal identified
2 compulsory vaccination as the type of “invasive and highly personalized medical treatments used in
3 cases where the state sought to override a person's freedom to choose and where the Supreme Court
4 has recognized a liberty interest in freedom from such unwanted medical treatment.” *Coshow v. City*
5 *of Escondido*, 132 Cal. App. 4th 687, 710 (2005).

6 113. The reasonableness of City employees’ expectation of privacy in their bodily integrity
7 and confidential medical information is buttressed by numerous state and federal statutes, including
8 sections 56.101(a) and 56.36(b) of the California Civil Code (the California Confidential of Medical
9 Information Act) and sections 1798.29 and 1798.82 of the Civil Code (laws governing the digital
10 storage and release of confidential information about individuals), among other laws.

11 114. The City’s vaccine mandate constitutes a serious invasion of City employees’ privacy
12 rights, as alleged above.

13 115. The federal “rational basis” test that the City often invokes to justify its vaccine
14 mandate does not apply in a state law privacy case. State law employs a fact-intensive balancing test
15 and while the City may argue that its vaccine mandate serves a compelling interest in reducing the
16 spread of COVID-19, there are feasible and effective alternatives to it that have a lesser impact on
17 privacy interests.

18 116. Furthermore, evidence now shows that the COVID-19 vaccines do not prevent people
19 from contracting and transmitting COVID-19. That is why millions of vaccinated people, including
20 City employees, fell ill with the Omicron variant last winter. This trend will continue as other Covid
21 variants emerge. Thus, the vaccine mandate does not serve its stated purpose of preventing infection.
22 The most the COVID shots can do now is, potentially, reduce the severity of illness but even that has
23 not been scientifically proven and, in any event, there are other ways to reduce the severity of COVID-
24 19 without compelling people to get a shot they do not want.

25 117. On information and belief, the City contends that its mandate does not violate the
26 privacy rights of City employees and that it satisfies scrutiny under Article I, section 1 of the California
27 Constitution.
28

118. Plaintiffs desire a judicial declaration that the City's COVID-19 vaccine mandate is unconstitutional because it violates City employees' right to privacy under Article I, section 1 of the California Constitution.

119. A judicial determination of these issues is necessary and appropriate because such a declaration will clarify the parties' rights and obligations, permit them to have certainty regarding those rights and potential liability, and avoid a multiplicity of actions.

120. The City's actions have harmed Plaintiffs and other City employees, as alleged above.

121. Plaintiffs have no adequate remedy at law and will suffer irreparable harm if the Court does not declare the vaccine mandate unconstitutional. Thus, they seek preliminary and permanent injunctive relief enjoining the City from enforcing the mandate.

122. This action serves the public interest, justifying an award of attorneys' fees under section 1021.5 of the California Code of Civil Procedure.

THIRD CAUSE OF ACTION

(Declaratory and Injunctive Relief Under Due Process Clause/*Skelly*)

123. Plaintiffs incorporate the preceding paragraphs of this Complaint as though set forth fully herein.

124. Plaintiffs contend that the City does not have the power to put city employees who do not follow the Covid vaccine mandate on unpaid leave pending termination proceedings. The City must provide any employee who does not comply with the mandate with his or her *Skelly* rights, including notice and an opportunity to challenge any adverse employment action. This process must be fair. It must include an opportunity to gather evidence. And the City's review of the any adverse employment action must be done by an impartial third party.

125. Plaintiffs also contend that the City cannot take any adverse employment action against sworn personnel, such as police/sheriffs and firefighters, without providing them with the rights they have under the state law Police Officer and Firefighter Bill of Rights. These rights go beyond the minimum due process rights that all public employees have under *Skelly*.

126. On information and belief, the City contends that it does not have to comply with *Skelly* or the Police Officer or Firefighter Bill of Rights before taking adverse employment action against City employees who choose not to get the COVID-19 shot or who object to turning their confidential medical information over to the City as a condition of employment. And it contends that *Skelly*, the Police Officer Bill of Rights and the Firefighter Bill of Rights do not apply during a state of emergency, even a state of emergency that has been in place for two years and which has no end in sight.

127. Plaintiffs desire a judicial declaration that the City cannot take any adverse employment action against an employee without providing that employee with due process under *Skelly*. Plaintiffs also seek a judicial declaration that the City cannot take any adverse employment action against a sworn City employee without providing that employee both with his or her *Skelly* rights and by following the procedures outline in the Police Officer and Firefighter Bill of Rights. And Plaintiffs desire a judicial declaration that the due process rights City employees enjoy under *Skelly*, the Police Officer Bill of Rights and the Firefighter Bill of Rights do apply during a state of emergency.

128. A judicial determination of these issues is necessary and appropriate because such a declaration will clarify the parties' rights and obligations, permit them to have certainty regarding those rights and potential liability, and avoid a multiplicity of actions.

129. The City's actions have harmed Plaintiffs and those they represent by putting thousands of jobs at risk. Furthermore, the public interest will be severely damaged if the City fires thousands of public employees *en masse*. That action could also expose the City to financial liability, including backpay and legal fees for any due process violations.

130. Plaintiffs have no adequate remedy at law and will suffer irreparable harm if the Court does not enjoin the City from enforcing the unlawful mandate. Thus, Plaintiffs seek preliminary and permanent injunctive relief for such an order.

131. This action serves the public interest, justifying an award of attorneys' fees under section 1021.5 of the California Code of Civil Procedure.

FOURTH CAUSE OF ACTION

(Declaratory and Injunctive Relief regarding Public Disclosure of Private Facts)

1 132. Plaintiffs incorporate the preceding paragraphs of this Complaint as though set forth
2 fully herein.

3 133. California law prohibits the public disclosure of private facts. This tort claim requires
4 proof that the defendant publicized private information about an individual that a reasonable person
5 in the individual's position would consider to be highly offensive.

6 134. Plaintiffs are informed and believe, and on that basis allege, that several City
7 departments have publicly published the COVID vaccination status of City employees without the
8 employees' consent. Individuals' vaccination status is private information deemed confidential under
9 state and federal law. The publication of an individual's vaccination status by his or her employer
10 would be considered highly offensive by a reasonable person in the employee's shoes.

11 135. Plaintiffs contend that the City cannot publish City employees' vaccination status
12 without their consent and that such publication of private facts violates the City employees' right to
13 privacy and could subject the City to significant liability under state tort law.

14 136. On information and belief, the City contends that it can publish City employees'
15 COVID vaccination status without their consent.

16 137. Plaintiffs desire a judicial declaration that the City cannot publish City employees'
17 COVID vaccination status without their consent.

18 138. A judicial determination of these issues is necessary and appropriate because such a
19 declaration will clarify the parties' rights and obligations, permit them to have certainty regarding
20 those rights and potential liability, and avoid a multiplicity of actions.

21 139. The City's actions have harmed Plaintiffs and those they represent by exposing the
22 confidential medical information of numerous City employees. The City's actions could also expose
23 the City to financial liability under state law if the City is not enjoined from publishing this private
24 information.

25 140. Plaintiffs have no adequate remedy at law and will suffer irreparable harm if the Court
26 does not enjoin the City from publishing this private information without City employees' consent.
27 Thus, Plaintiffs seek preliminary and permanent injunctive relief for such an order.
28

141. This action serves the public interest, justifying an award of attorneys' fees under section 1021.5 of the California Code of Civil Procedure.

PRAYER

Wherefore, Plaintiffs pray for relief as follows:

1. For an order declaring the City's COVID-19 vaccine mandate as invalid because it exceeds the City's power under state law;

2. For an order declaring the City's vaccine mandate unconstitutional because it violates the privacy rights that public employees have under the California Constitution;

3. For an order declaring that the City cannot terminate or take other adverse employment action against city employees without first providing them with their due process rights as set forth in *Skelly* and state law Bill of Rights for sworn employees;

4. For preliminary and permanent injunctive relief enjoining the City from enforcing the COVID-19 vaccine mandate;

5. For preliminary and permanent injunctive relief enjoining the City from publishing City employees' COVID vaccination status without their consent.

6. For costs and attorneys' fees under section 1021.5 of the Code of Civil Procedure;
and

7. For such other relief that the Court determines is just and proper.

Dated: March 9, 2022

JW HOWARD/ ATTORNEYS LTD.

By:

/s/ John W. Howard

JOHN W. HOWARD
Attorneys for Plaintiffs

PROOF OF SERVICE

I, the undersigned, do declare that I am employed in the county aforesaid, that I am over the age of [18] years and not a party to the within entitled action; and that I am executing this proof at the direction of the member of the bar of the above entitled Court. The business address is:

JW Howard Attorneys LTD
701 B Street, Ste. 1725
San Diego, California 92101

☐ MAIL. I am readily familiar with the business' practice for collection and processing of correspondence for mailing via the United States Postal Service and that the correspondence would be deposited with the United States Postal Service for collections that same day.

☒ ELECTRONIC. I am readily familiar with the business' practice for collection and processing of documents via electronic system and said documents were successfully transmitted via One Legal that same day.

On the date indicated below, I served via One Legal the within:

AMENDED COMPLAINT FOR VIOLATION OF CIVIL RIGHTS AND DECLARATORY AND INJUNCTIVE RELIEF

TO:

DAVID CHIU
City Attorney
WAYNE SNODGRASS
TARA M. STEELEY
RONALD H. LEE
KATE G. KIMBERLIN
Deputy City Attorneys
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kate.kimberlin@sfcityatty.org

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and was **EXECUTED** on March 10, 2022, at San Diego, CA.

/s/ Dayna Dang

Dayna Dang, Paralegal

dayna@jwhowardattorneys.com

EXHIBIT “A”



COVID-19 Vaccination Policy

Issued: 6/23/2021

Amended 8/6/2021

Amended 9/8/2021

Amended 10/27/2021

10/27/2021 Revision: *This revision updates the vaccination policy for city employees who are required to be fully vaccinated against COVID-19 by November 1, 2021. The revision does not apply to city employees who had an earlier deadline for vaccination (e.g., September 30 or October 13, 2021).*

This revision modifies the policy to allow departments discretion to allow, as necessary for continuity of critical City operations, employees who can demonstrate that they have received at least their first dose of a COVID-19 vaccine regimen to continue work after November 1 subject to certain requirements and restrictions. All partially vaccinated employees must document that they are fully vaccinated by no later than December 6, 2021.

PURPOSE STATEMENT

The City and County of San Francisco (City) must provide a safe and healthy workplace, consistent with COVID-19 public health guidance and legal requirements, to protect its employees and the public as it reopens services and returns more employees to workplaces.

According to the federal Centers for Disease Control (CDC), the California Department of Public Health (CDPH), and the San Francisco County Health Officer, COVID-19 continues to pose a risk, especially to individuals who are not fully vaccinated, and certain safety measures remain necessary to protect against COVID-19 cases and deaths. Vaccination is the most effective way to prevent transmission and limit COVID-19 hospitalizations and deaths. Unvaccinated employees, interns, fellows, and volunteers are at greater risk of contracting and spreading COVID-19 within the workplace and City facilities, and to the public that depends on City services.

To best protect its employees and others in City facilities, and fulfill its obligations to the public, all employees must, as a condition of employment: (1) report their vaccination status to the City; and (2) be fully vaccinated and report that vaccination status to the City no later than either the applicable deadline under the San Francisco Health Order, if it applies, or 10 weeks after the Federal Food & Drug Administration (FDA) giving final approval to at least one COVID-19 vaccine (November 1, 2021).

LEGAL REQUIREMENTS

On June 17, 2021, Governor Newsom issued Executive Order No. N-09-21, which implements new California Division of Occupational Safety and Health (Cal/OSHA) rules, effective June 17, 2021. These rules require employers to take specific measures to protect employees from COVID-19, including enforcing masking and quarantine requirements, and offering COVID-19 testing and time off, for employees who are unvaccinated or for whom the employer does not have documentation verifying

they are fully vaccinated. The Cal/OSHA rules require employers to verify and document that an employee is fully vaccinated before allowing that employee to discontinue masking indoors. For unvaccinated employees or employees for whom the City does not have documentation verifying fully vaccinated status, the City must enforce masking, provide COVID-19 testing following a close contact in the workplace or anytime they have COVID-19 symptoms, and exclude these employees from the workplace for 10 days after a close contact. Upon request, the City also must provide non-vaccinated employees with respirators (N95 masks) and provide education about using that type of mask.

On July 26, 2021 CDPH issued an Order (CDPH Vaccination Status Order) that workers in high-risk and other healthcare settings must report their vaccination status no later than August 23, 2021. The CDPH Vaccination Status Order also requires routine testing and more rigorous masking for unvaccinated or only partially vaccinated personnel working in these settings.

On August 24, 2021, the San Francisco Health Officer updated the SF Health Order requiring all employers to determine the vaccination status of employees who routinely work onsite in high-risk settings by no later than September 30, 2021 and precluding unvaccinated employees from entering those facilities after that date, and precluding unvaccinated employees who may occasionally or intermittently enter those settings from entering those facilities after October 13, 2021. This order further requires employees (among others) to remain masked in the workplace, effectively superseding the Cal/OSHA COVID-19 Temporary Emergency Standard which allows vaccinated employees who had documented that status to remove their masks.

On August 2, 2021 DHR issued a revised policy Face Coverings at Work Policy that can be found here: <https://sfdhr.org/sites/default/files/documents/COVID-19/Face-Covering-Requirements-at-Work.pdf>

On August 5, 2021, CDPH issued a new Order (Health Care Worker Vaccine Requirement) mandating all workers who provide services or work in identified health care facilities to receive their final dose of a vaccine regimen *no later than September 30, 2021*. The only exemptions to the Health Care Worker Vaccine Requirement are for workers who have a documented and approved exemption from vaccination on the basis of a sincerely-held religious belief or due to a qualifying medical condition or restriction.

STATEMENT OF POLICY

Definition of “Employees” Under This Policy

For purposes of this policy only, the term “employees” includes all full, part-time, and as-needed City employees regardless of appointment type, volunteers, interns, and City fellows (such as San Francisco Fellows, McCarthy Fellows, Fish Fellows, and Willie Brown Fellows).

Requirement to Report Vaccination Status

To protect the City’s workforce and the public that it serves, all City employees were required to report their vaccination status to the City by July 29, 2021 (with a subsequent extension to August 12, 2021), by providing the following information:

- Whether the employee is vaccinated (yes or no)
- For employees who are vaccinated or partly vaccinated:

- The type of vaccine obtained (Moderna, Pfizer, or Johnson & Johnson, or other vaccine received in approved clinical trials)
- Date of first dose vaccine;
- Date of second vaccine for a 2-dose vaccine;
- Declaration under penalty of perjury that they have been fully vaccinated, and
- Upload documentation verifying proof of vaccination status. Proof of vaccination can include a copy of the CDC COVID-19 Vaccination Record Card, documentation of vaccine from the employee's healthcare provider, or documentation issued by the State of California by going to: <https://myvaccinerecord.cdph.ca.gov/>

To be fully vaccinated, 14 days must have passed since an employee received the final dose of a two-shot vaccine or a dose of a one-shot vaccine. All unvaccinated employees must continue to comply with masking, testing, and other safety requirements until they are fully vaccinated and have reported and documented that status to the City consistent with this Policy. Employees who previously reported that they were unvaccinated must update their status once they are fully vaccinated.

Failure to comply with the reporting requirement may result in discipline, or non-disciplinary separation from employment with the City for failure to meet the minimum qualifications of the job.

How to Report Vaccination Status

Volunteers, interns, and City fellows must verify that they are fully vaccinated to the Departmental Personnel Officer or Human Resources professional by showing a copy of their CDC COVID-19 Vaccination Record Card, documentation from the individual's healthcare provider, or documentation issued by the State of California as described above. The department must retain documentation that the individual's vaccination status has been verified **but must not retain copies of the individual's vaccination record.**

All other employees must report their vaccination information and upload documentation verifying that status into the City's People & Pay system using the Employee Portal or by hand using the COVID-19 Vaccination Status Form. Only City employees authorized to access employee personnel information will have access to the medical portion of the file. The City will share information about an employee's vaccination status only on a need-to-know basis, including to the employee's department, managers, and supervisors for the purpose of enforcing masking, quarantining in the event of a close contact, and other safety requirements.

Vaccination Requirements for Employees

1. To comply with the SF Health Order and ensure delivery of City services, City policy requires that all City employees routinely assigned to or working onsite in high-risk settings must receive their final dose of a vaccine regimen no later than September 30, 2021, unless they have been approved for an exemption from the vaccination requirement as a reasonable accommodation for a medical condition or restriction or sincerely held religious beliefs. Any employee who is requesting or has an approved exemption must still report their vaccination status to the City by the August 12, 2021 extended deadline. The vaccination and reporting requirements are conditions of City employment and a minimum qualification for employees who are routinely assigned to or working onsite in high-risk settings. Those employees who fail to meet the vaccination and reporting requirements under

this Policy will be unable to enter the facilities and unable to perform an essential function of their job, and therefore will not meet the minimum requirements to perform their job.

2. To comply with the CDPH Health Care Worker Requirement and ensure delivery of City services, City policy requires that all City employees who are not otherwise covered by the SF Health Order, but who provide services or work in the health care facilities identified in the state's order, must receive their final dose of a vaccine regimen no later than September 30, 2021, unless they have been approved for an exemption from the vaccination requirement as a reasonable accommodation for a medical condition or restriction or sincerely-held religious-beliefs. Any employee who is requesting or has an approved exemption must still report their vaccination status to the City by the August 12, 2021 extended deadline. The vaccination and reporting requirements are conditions of City employment and a minimum qualification for employees provide services or work in the health care facilities identified in the state's order. Those employees who fail to meet the vaccination and reporting requirements under this Policy will be unable to enter the facilities and unable to perform an essential function of their job, and therefore will not meet the minimum requirements to perform their job.

3. To comply with the SF Health Order and ensure delivery of City services, City policy requires that all City employees who in the course of their duties may enter or work in high-risk settings even on an intermittent or occasional basis or for short periods of time must be fully vaccinated — no later than October 13, 2021, unless they have been approved for an exemption from the vaccination requirement as a reasonable accommodation for a medical condition or restriction or sincerely-held religious beliefs. Any employee who is requesting or has an approved exemption must still report their vaccination status to the City by the August 12, 2021 extended deadline. The vaccination and reporting requirements are conditions of City employment and a minimum qualification for employees who in the course of their duties may enter or work in high-risk settings even on an intermittent or occasional basis or for short periods of time. Those employees who fail to meet the vaccination and reporting requirements under this Policy will be unable to enter the facilities and therefore unable to perform an essential function of their job and will not meet the minimum requirements to perform their job.

4. Volunteers, interns, and City fellows must be fully vaccinated – and must have reported that status and providing documentation verifying that status to the Departmental Human Resources personnel – as a condition of serving as a City volunteer, intern or fellow. Those already working and who do not fall under the SF Health Order must be fully vaccinated no later than October 13, 2021. Failure to comply with this policy will result in suspension of the internship, fellowship, or volunteer opportunity until such time as the individual provides verification that they are fully vaccinated.

5. All other City employees must be fully vaccinated as a condition of employment within ten weeks after the FDA provides final approval to at least one COVID-19 vaccine (November 1, 2021). Employees who are not fully vaccinated by November 1, 2021 may not enter the workplace after that date. To maintain continuity of City operations, limited exceptions may be allowed for employees who demonstrate that they are partially vaccinated.

Office Environments

Departments have discretion, but are not required, to allow employees who work in office environments to work remotely provided the employees have received at least one dose of a COVID-19 vaccine regimen by November 1, 2021 and reported and documented that status to the City consistent with this Policy *and* the Department receives approval from the City Human Resources Director.

This is allowable for a maximum of up to three days (or 24 hours) per week. The remaining two days (or 16 hours), which are intended to be spent in person in the workplace, employees may use their accrued vacation or other non-sick leave time to cover those work hours that unvaccinated or partially vaccinated employees are restricted from the workplace due to not being fully vaccinated as required by City Policy. Employees who are partially vaccinated and have received written approval to work remotely after November 1, 2021 must report and document that they are fully vaccinated no later than **December 6, 2021**.

Non-office Environments

Departments have discretion, but are not required, to allow employees to enter the workplace after November 1 provided the employees are required for continuity of operations within the departments, the employees have received at least one dose of a COVID-19 vaccine regimen by November 1, 2021, and the employees have reported and documented that status to the City consistent with this Policy. Employees who are permitted at the worksite after November 1, 2021 must report and document that they are fully vaccinated no later than **December 6, 2021**.

Employees who are not fully vaccinated against COVID-19 and who are permitted in the workplace after November 1, 2021 must continue to wear a well-fitted mask at all times while at the workplace. Departments are strongly encouraged to require employees who are not yet fully vaccinated after November 1, 2021 to test at least once weekly and provide proof of a negative COVID-19 test result until they are fully vaccinated and have reported and documented that status to the City consistent with this Policy.

Failure to comply with this Policy may result in a disciplinary action, or non-disciplinary separation from employment for failure to meet the minimum qualifications of the job.

Requesting an Exemption from the Vaccination Requirement

Employees with a medical condition or other medical restriction that affects their eligibility for a vaccine, as verified by their medical provider, or those with a sincerely held religious belief that prohibits them from receiving a vaccine, may request a reasonable accommodation to be excused from this vaccination requirement but must still report their status by the August 12, 2021 extended deadline. The City will review requests for accommodation on a case-by-case basis and engage in an interactive process with employees who submit such requests. For some positions where fully vaccinated status is required to enter the facility where the employee works, an accommodation may require transfer to an alternate vacant position, if available, in another classification for which the employee meets the minimum qualifications. Requests for Reasonable Accommodation forms and procedures can be found here: <https://sfdhr.org/new-vaccine-and-face-covering-policy-city-employees>

COVID-19 VACCINATION COMPLIANCE DEADLINES ADDENDUM TO VACCINATION POLICY AMENDED AUGUST 5, 2021

Below are the vaccination status reporting deadlines for City employees.

COVID-19 VACCINATION STATUS REPORTING DEADLINES	
July 29, 2021	Reporting Deadline
August 12, 2021	Grace Period - Final day to report vaccination status

Below are the vaccination deadlines for City employees. City employees working in high-risk settings are subject to non-disciplinary release if not vaccinated by the deadlines referenced below for failure to meet the minimum qualifications of their jobs.

COVID-19 VACCINATION DEADLINES BY EMPLOYEE TYPE	
Employees who are assigned to or routinely work onsite in High-Risk Settings or other Health Care Facilities	<p>Must receive their final dose of a vaccine regimen <i>no later than September 30, 2021.</i></p> <ul style="list-style-type: none"> • Moderna: First shot <i>no later than September 2, 2021</i>; Second shot <i>no later than September 30, 2021.</i> • Pfizer: First shot <i>no later than September 9, 2021</i>; Second shot <i>no later than September 30, 2021.</i> • Johnson & Johnson: First shot <i>no later than September 30, 2021</i>
Employees intermittently or occasionally working in "High-Risk Settings"	<p>Must be fully vaccinated <i>no later than October 13, 2021.</i></p> <ul style="list-style-type: none"> • Moderna: First Shot <i>no later than September 1, 2021</i>; Second Shot <i>no later than September 29, 2021</i> • Pfizer: First Shot <i>no later than September 8, 2021</i>; Second Shot <i>no later than September 29, 2021</i> • Johnson & Johnson: First Shot <i>no later than September 29, 2021</i>
All other employees not working in "High-Risk" or other health care settings	<p>Must be fully vaccinated <i>no later than November 1, 2021.</i></p> <ul style="list-style-type: none"> • Moderna: First shot <i>no later than September 20, 2021</i>; Second shot <i>no later than October 18, 2021.</i> • Pfizer: First shot <i>no later than September 27, 2021</i>; Second shot <i>no later than October 18, 2021.</i> <p>Johnson & Johnson: First shot <i>no later than October 18, 2021.</i></p> <p>For continuity of City operations limited exceptions may be made for partially vaccinated employees. Such employees must report and document they are fully vaccinated no later than December 6, 2021.</p> <p><i>Office environments:</i> Departments have discretion to allow employees to work remotely, if they are not fully vaccinated, but have received at least the first dose of a COVID-19 vaccine series. Written approval required</p> <p><i>Non-office environments:</i> Departments have discretion to allow employees at the worksite after November 1, 2021 if they are not fully vaccinated but have received at least the first dose of a COVID-19 vaccine series. Masking required.</p>



Booster Shots Required by February 1, 2022

Dear City employee:

In compliance with state and local orders, all City employees who are routinely assigned to or occasionally enter High-Risk Settings must receive a COVID-19 booster vaccine by February 1, 2022.

You are receiving this message because you may be required to comply with state and local health orders.

High-Risk Settings are defined as; general acute care hospitals, skilled nursing facilities, intermediate care facilities, residential care facilities for the elderly, homeless shelters, jails, dental offices, juvenile justice centers, and pharmacies.

Vaccination including a booster dose is a condition of City employment and a minimum qualification for employees who work onsite in High-Risk Settings.

1. Employees working in High-Risk Settings and eligible for a COVID-19 booster are required to receive a booster and report their booster vaccine status no later than February 1, 2022.
 - If you received your second dose of a two-dose COVID-19 vaccine before July 1, 2021 and work in a High-Risk Setting you are required to receive a booster by February 1, 2022.
 - If you received a single dose COVID-19 vaccine prior to November 1, 2021 and work in a High-Risk Setting you are required to receive a booster by February 1, 2022.
2. Employees working in high-risk settings who are not yet eligible for a COVID-19 booster are required to receive a booster within 15 days after becoming eligible. These employees must report their booster vaccine status within five (5) days of receiving a booster.
3. Beginning February 1, 2022, employees who are eligible for a booster but have not yet received one, must be tested once or twice a week (depending on their job) for COVID-19 and have a negative COVID-19 test

(depending on their job) for COVID-19 and have a negative COVID-19 test until one week after they received their booster.

4. Employees with an approved exemption from the vaccination requirement are not required to get a booster vaccine. Everyone is required to maintain stringent indoor masking requirements even with an approved exemption.

To schedule a booster vaccine appointment or find available walk-in centers, city employees can:

- Schedule an appointment with your primary care provider
- Visit: <https://sf.gov/get-vaccinated-against-covid-19>
- Visit: <https://www.vaccines.gov/>
- Text your ZIP code to 438829

Detailed instructions on how to upload booster vaccination status can be found at this link:

<https://sfemployeeportalsupport.sfgov.org/support/solutions/art>

Confirm Receipt