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CITY AND COUNTY OF SAN FRANCISCO, ET AL.

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF SAN FRANCISCO

14 UNLIMITED JURISDICTION

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

19 Plaintiffs,

20 vs.

21 CITY AND COUNTY OF SAN
22 FRANCISCO, a municipal corporation and
administrative division of the State of
23 California, et al., and Does 1 through 100,
inclusive,

24 Defendants.
25
26
27
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Case No. CGC-22-597428

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF DEFENDANTS CITY AND
COUNTY OF SAN FRANCISCO, ET AL.'S
DEMURRER TO THE SECOND AMENDED
COMPLAINT FOR VIOLATION OF CIVIL
RIGHTS AND DECLARATORY AND
INJUNCTIVE RELIEF**

Hearing Date: June 21, 2022
Hearing Judge: Judge Richard B. Ulmer
Time: 9:30 a.m.
Place: Dept. 302

Date Action Filed: January 4, 2022
Trial Date: None set

Attachments: Exhibits A - M

1 Defendants CITY AND COUNTY OF SAN FRANCISCO, CAROL ISEN, in her individual
2 capacity and in her official capacity as the Human Resources Director of the City and County of San
3 Francisco, SUSAN PHILIP in her individual capacity and in her official capacity as the Health Officer
4 of the City and County of San Francisco, JEANINE R. NICHOLSON in her individual capacity and in
5 her official capacity as the Chief of Department of the San Francisco Fire Department, PHILLIP A.
6 GINSBURG. in his individual capacity and his official capacity as the General Manager for the San
7 Francisco Recreation and Parks, KIMBERLY ACKERMAN, in her individual capacity and her
8 official capacity as the Chief People Officer for the San Francisco Municipal Transportation Agency,
9 FABIAN PEREZ, in his individual capacity and his official capacity as an administrator for the San
10 Francisco Sheriff’s Office and WILLIAM SCOTT, in his individual capacity and his official capacity
11 as Chief of the Police for the San Francisco Police Department (collectively “San Francisco” or
12 “Defendants”), hereby respectfully request that this Court take judicial notice of the following
13 documents pursuant to Sections 451 and 452 of the California Evidence Code:

14 1. Attached hereto as **Exhibit A** is a true and correct copy of the publicly available
15 webpage maintained by the Centers for Disease Control and Prevention and entitled “United States
16 COVID-19 Cases, Deaths, and Laboratory Testing (NAATs) by State, Territory, and Jurisdiction.” As
17 of May 4, 2022, this webpage is available at [https://covid.cdc.gov/covid-data-](https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days)
18 [tracker/#cases_casesper100klast7days](https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days).

19 2. Attached hereto as **Exhibit B** are true and correct copies of three publicly available
20 webpages maintained by the Centers for Disease Control and Prevention and entitled: 1) “Pfizer-
21 BioNTech COVID-19 Vaccine (also known as COMIRNATY) Overview and Safety.” As of May 4,
22 2022, this webpage is available at [https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Pfizer-BioNTech.html)
23 [vaccines/Pfizer-BioNTech.html](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Pfizer-BioNTech.html); 2) “Moderna COVID-19 Vaccine Overview and Safety.” As of May
24 4, 2022, this webpage is available at [https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Moderna.html)
25 [vaccines/Moderna.html](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/different-vaccines/Moderna.html); and, 3) “Johnson & Johnson’s Janssen COVID-19 Vaccine Overview and
26 Safety.” As of May 4, 2022, this webpage is available at [https://www.fda.gov/emergency-](https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/janssen-covid-19-vaccine)
27 [preparedness-and-response/coronavirus-disease-2019-covid-19/janssen-covid-19-vaccine](https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/janssen-covid-19-vaccine).

1 3. Attached hereto as **Exhibit C** are true and correct copies of four publicly available
2 webpages, as follows: 1) a webpage maintained by the Centers for Disease Control and Prevention,
3 entitled “Safety of COVID-19 Vaccines.” As of May 4, 2022, this webpage is available at
4 <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/safety-of-vaccines.html>; 2) a webpage
5 maintained by the U.S. Food and Drug Administration, entitled “Learn More About COVID-19
6 Vaccines from the FDA.” As of May 4, 2022, this webpage is available at
7 <https://www.fda.gov/consumers/consumer-updates/learn-more-about-covid-19-vaccines-fda>; 3) a
8 webpage maintained by the California Department of Public Health, entitled “Vaccines.” As of May
9 4, 2022, this webpage is available at <https://covid19.ca.gov/vaccines/>; and, 4) a webpage maintained
10 by the San Francisco Department of Public Health, entitled “Core Guidance for COVID-19.” As of
11 May 4, 2022, this webpage is available at <https://www.sfdph.org/dph/COVID-19/Core-Guidance.asp>.

12 4. Attached hereto as **Exhibit D** is a true and correct copy of a publicly available webpage
13 maintained by the Centers for Disease Control and Prevention and entitled “COVID-19 Vaccines
14 Work.” As of May 4, 2022, this webpage is available at [https://www.cdc.gov/coronavirus/2019-](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/work.html)
15 [ncov/vaccines/effectiveness/work.html](https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/work.html).

16 5. Attached hereto as **Exhibit E** is a true and correct copy of the publicly available
17 webpage maintained by the California Department of Public Health and entitled “Unvaccinated and
18 vaccinated data.” As of May 4, 2022, this webpage is available at [https://covid19.ca.gov/state-](https://covid19.ca.gov/state-dashboard/#postvax-status)
19 [dashboard/#postvax-status](https://covid19.ca.gov/state-dashboard/#postvax-status).

20 6. Attached hereto as **Exhibit F** is a true and correct copy of the City and County of San
21 Francisco’s COVID-19 Vaccination Policy, last amended January 4, 2022.

22 7. Attached hereto as **Exhibit G** is a true and correct copy of the publicly available
23 webpage maintained by the City and County of San Francisco entitled Vaccination and Booster Policy
24 for City Employees. As of May 4, 2022, this webpage is available at [https://sfdhr.org/vaccination-](https://sfdhr.org/vaccination-and-booster-policy-city-employees)
25 [and-booster-policy-city-employees](https://sfdhr.org/vaccination-and-booster-policy-city-employees).

26 8. Attached hereto as **Exhibit H** is a true and correct copy of the San Francisco Mayor’s
27 October 29, 2021 press release entitled “San Francisco City Employee Vaccination Rate at Nearly
28

1 98%.” As of December 2, 2021, this webpage is available at [https://sfmayor.org/article/san-francisco-](https://sfmayor.org/article/san-francisco-city-employee-vaccination-rate-nearly-98)
2 [city-employee-vaccination-rate-nearly-98](https://sfmayor.org/article/san-francisco-city-employee-vaccination-rate-nearly-98).

3 9. Attached hereto as **Exhibit I** are true and correct copy of a website maintained by the
4 California Department of Fair Employment and Housing entitled *DFEH Employment Information on*
5 *COVID-19*. As of May 4, 2022, the webpage is available at [https://www.dfeh.ca.gov/wp-](https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/03/DFEH-Employment-Information-on-COVID-19-FAQ_ENG.pdf)
6 [content/uploads/sites/32/2020/03/DFEH-Employment-Information-on-COVID-19-FAQ_ENG.pdf](https://www.dfeh.ca.gov/wp-content/uploads/sites/32/2020/03/DFEH-Employment-Information-on-COVID-19-FAQ_ENG.pdf);

7 10. Attached hereto as **Exhibit J** is a true and correct copy of a website maintained by the
8 U.S. Equal Employment Opportunity Commission entitled *What You Should Know About COVID-19*
9 *and the ADA, the Rehabilitation Act, and Other EEO Laws*. As of May 4, 2022, the website is
10 available at [https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws)
11 [rehabilitation-act-and-other-eeo-laws](https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws).

12 11. Attached hereto as **Exhibit K** are true and correct copies of two publicly available
13 webpages and one publicly available document, maintained by the U.S. Food and Drug
14 Administration and entitled as follows: 1) “Why You Should Not Use Ivermectin to Treat or Prevent
15 COVID-19.” As of May 4, 2022, this webpage is available at
16 [https://www.fda.gov/consumers/consumer-updates/why-you-should-not-use-ivermectin-treat-or-](https://www.fda.gov/consumers/consumer-updates/why-you-should-not-use-ivermectin-treat-or-prevent-covid-19)
17 [prevent-covid-19](https://www.fda.gov/consumers/consumer-updates/why-you-should-not-use-ivermectin-treat-or-prevent-covid-19); 2) “FDA cautions against use of hydroxychloroquine or chloroquine for COVID-19
18 outside of the hospital setting or a clinical trial due to risk of heart rhythm problems.” As of May 4,
19 2022, this webpage is available at [https://www.fda.gov/drugs/drug-safety-and-availability/fda-](https://www.fda.gov/drugs/drug-safety-and-availability/fda-cautions-against-use-hydroxychloroquine-or-chloroquine-covid-19-outside-hospital-setting-or)
20 [cautions-against-use-hydroxychloroquine-or-chloroquine-covid-19-outside-hospital-setting-or](https://www.fda.gov/drugs/drug-safety-and-availability/fda-cautions-against-use-hydroxychloroquine-or-chloroquine-covid-19-outside-hospital-setting-or); and 3)
21 “Department of Health and Human Services, WARNING LETTER” (2000). As of May 4, 2022, this
22 document is available at <https://www.fda.gov/media/142585/download>.

23 12. Attached hereto as **Exhibit L** is a true and correct copy of a publicly available
24 document entitled Occupational Health Service - San Francisco General Hospital and Trauma Center.
25 As of May 4, 2022, the document is available at
26 [https://www.sfdph.org/dph/hc/JCC/SFGH/Agendas/2015/Oct%202027/13d%20Creds_SFGH%20OHS%](https://www.sfdph.org/dph/hc/JCC/SFGH/Agendas/2015/Oct%202027/13d%20Creds_SFGH%20OHS%20Requirements%209-30-15.pdf)
27 [20Requirements%209-30-15.pdf](https://www.sfdph.org/dph/hc/JCC/SFGH/Agendas/2015/Oct%202027/13d%20Creds_SFGH%20OHS%20Requirements%209-30-15.pdf).

1 13. Attached hereto as **Exhibit M** is a true and correct copy of a publicly available
2 document maintained by the California Department of Public Health entitled State Public Health
3 Officer Order of August 5, 2021, CA.gov, (Aug. 5, 2021),
4 [https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Health-Care-Worker-Vaccine-Requirement.aspx)
5 [Officer-Health-Care-Worker-Vaccine-Requirement.aspx](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Health-Care-Worker-Vaccine-Requirement.aspx). The order mandates vaccination by health
6 care workers.

7 **Exhibit A– M** are judicially noticeable because government memoranda, bulletins, reports,
8 letters, and statements are matters of public record appropriate for judicial notice pursuant to Sections
9 451 and 452 of the California Evidence Code. When considering challenges to COVID-19 mitigation
10 measures, courts have held that reports, guidance, and data from the CDC, California Department of
11 Public Health (CDPH), and other government agencies are the proper subject of judicial notice. (See,
12 e.g., *Metroflex Oceanside LLC v. Newsom* (S.D. Cal. 2021) 532 F.Supp.3d 976, 980 [taking judicial
13 notice of documents containing information about the COVID-19 virus]; *Culinary Studios, Inc. v.*
14 *Newsom* (E.D. Cal. 2021) 517 F.Supp.3d 1042, 1057 (same); *Guilfoyle v. Beutner* (C.D. Cal., Sept. 14,
15 2021, No. 2:21-cv-05009-VAP) 2021 WL 4594780, at p. 24 (*Guilfoyle*) (“As these are available
16 publicly, they are authored by government agencies, their authenticity cannot be questioned
17 reasonably, and they are relevant to the issues raised in the Motion to Dismiss, the Court takes judicial
18 notice of these documents.”); *Images Luxury Nail Lounge, Inc. v. Newsom* (C.D. Cal., July 13, 2021,
19 No. SA CV 21-385-JFW) 2021 WL 3686759, at p. 4 (same); *Denis v. Ige* (D. Haw. 2021) 557
20 F.Supp.3d 1083, at p. 1094 [taking judicial notice of FDA guidance that hydroxychloroquine and
21 ivermectin should not be used to treat COVID-19 and holding that officials “could have rationally
22 concluded that many of the treatments that Denis points to are ineffective”].) Likewise, the California
23 Court of Appeal has taken judicial notice of the safety and effectiveness of vaccinations. (*Brown v.*
24 *Smith* (2018) 24 Cal.App.5th 1135, 1143 [“[W]e conclude judicial notice of the safety and
25 effectiveness of vaccinations is proper.”].)

26 Similarly, courts have found authentic copies of COVID-19 mitigation measures properly
27 incorporated by reference into such complaints. (See, e.g., *Guilfoyle*, 2021 WL 4594780, at p. 23-24
28 [finding school district’s COVID-19 measures incorporated by reference and noting that doctrine

1 “prevents plaintiffs from cherry-picking certain portions of documents that support their claims, while
2 omitting portions that weaken their claims”].)

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4 Dated: May 13, 2022

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