John W. Howard (SBN 80200)
Michelle D. Volk (SBN 217151)
Alyssa P. Malchiodi (SBN 282774)
JW HOWARD/ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101
Tel: 619-234-2842 Fax: 619-234-1716
Johnh@jwhowardattorneys.com

George Wentz, Jr. (*Pro hac vice* application forthcoming)
DAVILLIER LAW GROUP, LLC
414 Church St., Suite 308
Sandpoint, ID 83864
208-920-6140
gwentz@davillierlawgroup.com

Scott J. Street (SBN 258962)
JW HOWARD/ATTORNEYS, LTD.
777 S. Figueroa Street, Suite 3800
Los Angeles, CA 90017
Tel. (213) 205-2800
sstreet@jwhowardattorneys.com

JW HOWARD/ ATTORNEYS LTD
701 B STREET, SUITE 1725
SAN DIEGO, CALIFORNIA 92101

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

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

Case Mgmt. Conf.: June 8, 2022

Complaint filed: January 4, 2022

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

Defendants.

///

///

///

///

///

///

///

///

///

///

///

///

///

///

JW HOWARD/ ATTORNEYS, LTD.
701 B STREET, SUITE 1725
SAN DIEGO, CALIFORNIA 92101

Plaintiffs UNITED SF FREEDOM ALLIANCE, BHANU VIKRAM, CARSON R. SCHILLING, CHRISTA L. FESTA, CHRISTIANNE T. CROTTY, DENNIS M. CALLAHAN, JR., FAIMING CHEUNG, JESSICA KWOK-BO LINDSEY, by and through their undersigned counsel, allege as follows:

INTRODUCTION

1. In early 2020, the world discovered a novel coronavirus, COVID-19. Governments responded with unprecedented restrictions on freedom. They closed schools and shut down industries. They banned travel and prosecuted churches. They decided which activities were essential and which weren't.

2. Many of these orders started in the Bay Area, including in the City and County of San Francisco.

3. Most people went along with these initial efforts. They did so out of an abundance of caution, to save lives and slow the spread of the novel virus.

4. During 2020, several experimental vaccines were developed to help limit the effects of COVID-19. But they are not miracle cures. They were developed quickly to protect those who are at highest risk of getting seriously ill from COVID, especially the elderly and those with multiple co-morbidities. Government officials now admit that the COVID shots do not prevent infection. Thus, vaccinated people can contract and transmit COVID-19. Many fully vaccinated and fully boosted people fell ill with the Omicron variant last winter. Nonetheless, some government officials continue to demand universal vaccination, saying that the COVID pandemic cannot end until every person who is eligible has gotten the shots.

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

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

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

required that certain City employees receive a COVID-19 booster shot by February 1, 2022. City officials said they would fire anybody who does not get the COVID shots, including the booster shots. The City has already started firing some city employees, including police officers and firefighters. This will have a devastating effect on public safety.

7. That is not proper. The City does not have the power to order public employees to get a shot they do not want, especially one that does not do what the government says it does. The vaccine mandate also violates city employees' right to privacy under the California Constitution, among other laws.

8. Furthermore, the City must honor any individuals' sincerely held objection to taking the COVID shots. The City has not done that. To the contrary, it violated state and federal law by questioning everybody's objection to the COVID shots and by denying all but a handful of requests for religious exemptions. Moreover, the City improperly refused to accommodate the individuals whose exemption requests were granted on the grounds that the "unvaccinated" cannot work for the City.

9. Plaintiffs bring this action invalidate the vaccine mandate under state law and to prevent the City from terminating employees for not complying with its arbitrary COVID orders.

10. Time is of the essence. The jobs of hundreds of city employees hang in the balance. Meanwhile, the City just announced that it is rescinding the booster portion of its mandate—but only for certain employees (most notably the police department) whose bosses got them the relief they demanded. That is not proper. The City should rescind its entire Vaccination Policy, period, and if it will not do so then the Court should enjoin further enforcement of it.

PARTIES

11. 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

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

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.

12. 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").

13. 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").

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

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

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

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

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

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

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

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

official and individual capacities.

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

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

23. PHILLIP A. GINSBURG ("Ginsburg") is, and at all times relevant hereto was, the General Manager for the SFRP, responsible for General Manager Directive 21-0 dated July 15, 2021. Ginsburg further required compliance with the Mandate and sought enforcement of the deadlines set forth therein in specific relation to employees of the SFRP whom he oversees and manages.

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

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

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

27. Defendants Isen, Philip, Nicholson, Ginsburg, Ackerman, Perez, and Scott have

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

personally undertaken actions under color of law that deprive or imminently threaten to deprive Plaintiffs of certain rights, privileges, and immunities under the laws and Constitution of the State of California.

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

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

30. 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

31. 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."

32. 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.

33. 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.

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

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

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

36. 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."[1]

37. 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.

38. 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.

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

40. 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.

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

42. 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);

---

[1] 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/.

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

iv. Regulatory review and approval;

v. Manufacturing; and

Quality control.[2]

43. 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.

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

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

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

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

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

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

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

50. In early 2021, Janssen Biotech, Inc. submitted Phase III trial results for its adenovirus

---

[2] https://www.cdc.gov/vaccines/basics/test-approve.html (Last visited January 4, 2022)

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

vector vaccine (the "Janssen Vaccine").

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

52. Rather, the COVID Vaccines have been authorized for emergency use under § 564 of the FDCA (encoded at 21 U.S.C. § 360bbb-3), which Congress enacted to vest the Secretary of Health and Human Services with permissive authority to "authorize the introduction into interstate commerce, during the effective period of a declaration [of emergency], of a drug, device, or biological product intended for use in an actual or potential emergency. . . ." 21 U.S.C. § 360bbb-3(a)(1).

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

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

> . . . [T]he Secretary, to the extent practicable given the applicable circumstances described in subsection (b)(1), ***shall***, for a person who carries out any activity for which the authorization is issued, establish such conditions on an authorization under this section as the Secretary finds necessary or appropriate to protect the public health, including the following:
>
> **. . . (ii)** Appropriate conditions ***designed to ensure*** that ***individuals to whom the product is administered are informed***—
>
> **. . . (III)** ***of the option to accept or refuse administration of the product***.
>
> . . .

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

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

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

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

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

58. More recently, the FDA has licensed the Pfizer-Biontech vaccine under the brand name, "Comirnaty." However, on information and belief, the licensed "Comirnaty" vaccine is not yet available in the United States, and all currently-available COVID Vaccine doses were manufactured and distributed under an EUA. In other words, on information and belief, Plaintiffs are being mandated to receive administration of a vaccine that remains experimental.

COVID-19 Is Not Smallpox

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

i. The PCR Test Is Flawed

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

i. Every statistic regarding COVID is based upon the PCR test, which is a limited test that cannot, on its own, determine whether a test subject is infected with COVID absent an examination by a medical doctor;

ii. The PCR test is highly sensitive, with the result of the test being dependent upon the cycle threshold ("CT") at which the test is conducted;

iii. National Institute of Allergy and Infectious Diseases, Dr. Anthony Fauci, has stated that a test conducted at a CT of over 35 is useless;[3]

[3] 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), https://www.nytimes.com/2020/08/29/health/coronavirus-testing.html.

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

iv. Studies have confirmed Dr. Fauci's conclusion, showing that tests conducted using CT values over 35 have yielded up to eighty percent (80%) false positives;[4]

v. Despite this known sensitivity, the PCR tests were mass distributed in the United States without training, were used by technicians who were not made aware of the underlying flaw in the test,[5] and were operated at a CT value in excess of 35 routinely, therefore, delivering results that were, according to Dr. Fauci and a broad consensus of experts in the area, useless;[6] and

vi. The PCR test is incapable of distinguishing a live particle of a virus from a dead one, and as a result, even a positive test result does not mean that the test subject is infected or contagious with COVID, analogous to a test that could identify car parts (such as an axle, wheels, engine) but not determine if those car parts were in fact, a working car.

ii. The Asymptomatic Spreader is a Myth

60. Due to the numerous flaws in the fundamental test upon which all statistics underlying the COVID Emergency are based, and the high level of resulting false positives, many have incorrectly

---

[4] 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 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 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; DOI: https://doi.org/10.1016/S0140-6736(21)00425-6;
see also 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 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 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 higher rate than with RT-rtPCR."), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8026170/. DOI: 10.1016/S2666-5247(21)00056-2.

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

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

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

concluded that asymptomatic people, who in the past would simply have been referred to as "healthy people," are somehow contagious and are spreading the disease.

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

62. However, the assumption that people with no symptoms can spread the disease is false. As Dr. Fauci stated during a September 9, 2020: "[E]ven if there is some asymptomatic transmission, in all the history of respiratory borne viruses of any type, asymptomatic transmission has never been the driver of outbreaks. The driver of outbreaks is always a symptomatic person, even if there is a rare asymptomatic person that might transmit, an epidemic is not driven by asymptomatic carriers."

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

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

iii. The COVID Hospitalization Count Is Highly Inflated

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

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

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

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

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

iv. The COVID Death Count Is Highly Inflated

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

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

71. 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.

72. 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.

73. As a result, the COVID death data used to shape public health policy is significantly inflated.[7]

v. COVID Has an Extremely High Survivability Rate

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

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

74. 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.

75. 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

76. 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.

77. 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 classifies them as "CBER-Regulated Biologics" otherwise known as "therapeutics" which falls under the "Coronavirus Treatment Acceleration Program."[8]

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

79. The CDC Director has stated that the vaccines do not stop the transmission of the Delta strain that appeared last summer or the Omicront variant that circulated during the winter. Studies

[8] 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).

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

showed that the Delta strain passed easily amongst vaccinated persons.[9] That is why the CDC website stated: "… preliminary evidence suggests that fully vaccinated people who do become infected with the Delta variant can spread the virus to others."[10] Similarly, in February 2022, the CDC conceded that "anyone with Omicron infection can spread the virus to others, even if they are vaccinated or don't have symptoms."

80. The effectiveness of the COVID vaccines has been determined to wane rapidly. Israel, the most vaccinated and studied nation, now expires the vaccine's effectiveness at six months.[11] The requirement for booster shots due to this waning of effectiveness has been recognized by the CDC, which initially recommended no booster shots, then recommended them annually, then at eight months and then at six months.

81. It has been well known to scientists for decades that vaccines that don't stop transmission but merely lessen symptoms ("leaky vaccines") are harmful to the public health. "Our data show that anti-disease vaccines that do not prevent transmission can create conditions that promote the emergence of pathogen strains that cause more severe disease in unvaccinated hosts." [12]

82. Whether the variant is delta, omicron, or the next variant, scientists have been concerned about the possibility of vaccine-resistant strains of SARS-CoV-2 since the leaky vaccines were released one year ago. This has been published innumerable times in peer reviewed scientific journals with scientific titles such as: Risk of rapid evolutional escape from biomedical interventions targeting SARS-CoV-2 spike protein. "The deployment of vaccines against SARS-CoV-2 brings the question of mutational escape from antibody prophylaxis to the forefront. Rapid evolutionary evasion of neutralizing antibodies (nAbs) poses a number of threats to biomedical interventions aimed at bringing the virus under control, namely the risk of reduced vaccinal efficacy over time as resistant variants continue to emerge (which may or may not be rectifiable with annual vaccine updates), the

---

[9] The Lancet, Transmission of SARS-CoV-2 Delta Variant Among Vaccinated Healthcare Workers, Vietnam (August 10, 2021) https://ssrn.com/abstract=3897733

[10] https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html

[11] https://www.businessinsider.com/israel-vaccine-pass-to-expire-after-6-months-booster-shots-2021-9

[12] https://www.ncbi.nlm.nih.gov/labs/pmc/articles/PMC4516275/

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

risk of waning effectiveness of natural immunity as a result of evasion of common nAbs, and the risk of antibody-dependent enhancement (ADE). [13]

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

84. These were not isolated comments. Although the shots have been declared a miracle by many, the Department of Health and Human Services' Centers for Medicare and Medicaid Services ("CMS") stated last fall in the *Federal Register* that "the duration of vaccine effectiveness in preventing COVID-19, reducing disease severity, reducing the risk of death, and the effectiveness of the vaccine to prevent disease transmission by those vaccinated are not currently known." The CMS has also said that "major uncertainties remain as to the future course of the pandemic, including but not limited to vaccine effectiveness in preventing 'breakthrough' disease transmission from those vaccinated, [and] the long-term effectiveness of vaccination …."

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

a. **NIAID Director Dr. Anthony Fauci** to NPR: "We know now as a fact that [vaccinated people with Covid-19] are capable of transmitting the infection to someone else."[15]

---

[13] https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0250780

[14] https://www.nature.com/articles/s41423-021-00779-5

[15] 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.

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

b. **WHO Chief Scientist Dr. Soumya Swaminathan**: "At the moment I don't believe we have the evidence of any of the vaccines to be confident that it's going to prevent people from actually getting the infection and therefore being able to pass it on."[16]

c. **Chief Medical Officer of Moderna** Dr. Tal Zaks: "There's no hard evidence that it stops them from carrying the virus transiently and potentially infecting others who haven't been vaccinated."[17]

d. **The Prime Minister of the United Kingdom**, the Honorable Boris Johnson: "… but it doesn't protect you against catching the disease and it doesn't protect you against passing it on"[18]

e. **The Surgeon General of the State of Florida**, Dr. Joseph Ladapo, MD, PhD: "… the infections can still happen whether people are vaccinated or not. That's very obvious."[19]

f. **Professor Sir Andrew Pollard who led the Oxford vaccine team**: "We don't have anything that will stop transmission, so I think we are in a situation where herd immunity is not a possibility and I suspect the virus will throw up a new variant that is *even better* at infecting vaccinated individuals."[20]

g. "Based on this data it is all but a certainty that mass COVID-19 immunization is hurting the health of the population in general. Scientific principles dictate that the mass immunization with COVID-19 vaccines must be halted immediately because we face a looming vaccine induced public health catastrophe."[21]

---

[16] https://www.businessinsider.com/who-says-no-evidence-coronavirus-vaccine-prevent-transmissions-2020-12?op=1

[17] https://nypost.com/2020/11/24/moderna-boss-says-covid-shot-not-proven-to-stop-virus-spread/

[18] https://www.youtube.com/watch?v=h52zphGRDpg

[19] https://twitter.com/4patrick7/status/1452309002021388296?s=21

[20] https://rightsfreedoms.wordpress.com/2021/08/14/vaccines-dont-stop-transmission-and-wont-give-us-herd-immunity-so-lets-stop-mass-testing-experts-tell-mps/

[21] 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.

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

h. 2008 **Nobel Prize winner in Medicine** Dr. Luc Montagnier (and the French National Order of Merit and 20 other major international awards): "The vaccines don't stop the virus, they do the opposite – they "feed the virus," and facilitate its development into stronger and more transmissible variants…You see it in each country, it's the same: the curve of vaccination is followed by the curve of deaths … the vaccines Pfizer, Moderna, Astra Zeneca do not prevent the transmission of the virus person-to-person and the vaccinated are just as transmissive as the unvaccinated."[22]

i. Dr. Vanden Bossche, **international vaccinologist formerly with the Bill & Melinda** Gates Foundation: "As a dedicated virologist and vaccine expert I only make an exception [to vaccines] when health authorities allow vaccines to be administered in ways that threaten public health, most certainly when scientific evidence is being ignored. The present extremely critical situation forces me to spread this emergency call. As the unprecedented extent of human intervention in the COVID-19 pandemic is now at risk of resulting in a global catastrophe without equal, this call cannot sound loudly and strongly enough…. In this agonizing letter I put all of my reputation and credibility at stake …continued mass vaccination, together with the predominant circulation of more infectious variants (as facilitated by mass vaccination!), will inevitably lead to relatively higher morbidity and mortality rates in vaccinees than in the nonvaccinated."[23]

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

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

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

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

19 outbreaks."[24]

k. **Dr. Jay Bhattacharya, MD, PhD, Professor of Health Policy, Stanford University**: "There's no public health reason for a mandate. … bad for public health because it causes people not to trust health officials."[25]

l. **Dr. Martin Kulldorff, Professor of Medicine at Harvard Medical School**: "The bottom line is that these vaccines do not prevent transmission."[26]

m. **Dr. Sunetra Gupta, Infectious Disease Epidemiologist and Professor of Theoretical Epidemiology at the University of Oxford**: "…it is really not logical to use vaccines to protect other people … I don't think they should be forced to on the 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?"[27]

n. In the heavily vaccinated **State of Vermont**, 76% of deaths are among the vaccinated.[28]

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

---

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

[25] https://www.newsweek.com/stanford-doc-jay-bhattacharya-calls-vaccine-mandates-unethical-says-patients-can-choose-1611938

[26] https://www.theburningplatform.com/2021/10/23/who-are-these-covid-19-vaccine-skeptics-and-what-do-they-believe/

[27] https://richieallen.co.uk/oxford-scientist-its-illogical-unethical-to-force-jab-on-nhs-staff/

[28] 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.")

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

vaccines *increase* the odds of being infected with COVID-19).[29]

p. Scientists and clinicians monitoring patients in real time are achieving superior health outcomes than CDC recommendations, utilizing therapeutic protocols (such as ivermectin)[30], 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 thought I'd say this, but please ignore the CDC guidance."[31]

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."[32] And "New research [Oxford University] shows people who are vaccinated against COVID are more susceptible to the Delta variant."[33]

r. On August 1, 2021, the **director of Israel's Public Health Services** announced half

---

[29] 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.cnbc.com/2021/07/30/cdc-study-shows-74percent-of-people-infected-in-massachusetts-covid-outbreak-were-fully-vaccinated.html.

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

[31] 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.")

[32] https://childrenshealthdefense.org/defender/rfk-jr-podcast-dr-peter-mccullough-vaccines-are-failing/

[33] https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3897733

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

of all COVID-19 infections were among the fully vaccinated.[34]

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.[35]

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 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."[36]

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.[37]

v. Undercover video and emails from US health agencies and vaccine manufacturers

---

[34] 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/.

[35] 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/.

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

[37] 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/.

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

confirm[38] that (1) vaccine injuries are underreported because vested interests want to "shove it under the mat",[39] (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.

86. This growing body of evidence confirms what many public health officials have said all along. As former Yale professor Dr. David Gortler put it: "Vaccines are one of the most important inventions in human history, having saved millions of lives. That does not mean every person should get every vaccine. Also, like every drug out there, it is critically important to quickly detect and report safety problems." Dr. Gortler concluded that the COVID-19 shots are "clearly no longer effective, and [are] potentially causing additional illness and death."

87. Those who have touted the effectiveness of the COVID shots have often relied on the CDC's recommendation and statement that they work. But in a February 20 article, *New York Times* reporter Apoorva Mandavilli wrote that the CDC "has published only a tiny fraction of the data it has collected" regarding the shots' effectiveness in preventing hospitalizations, much less death. Ms. Mandavilli quoted a government official as saying the CDC was "reluctant" to make this information available because it "might be misinterpreted as the vaccines being ineffective." The CDC's credibility is eroding with reports like these and as the public learns about the results of studies (like the Swedish DNA study) that contradict the CDC's prior statements about the vaccines. So too with the FDA, which

---

[38] Project Veritas (2021). *COVID-19 Vaccine Exposed.* https://www.projectveritas.com/.

[39] 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).

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

has been criticized by its own expert advisors and accused of ignoring evidence that undermines the rationale for recommending the COVID vaccines and boosters.[40]

88. Similarly, ABC News recently reported that, "[w]hen the vaccines were first launched in December 2020, emphasis was placed on their ability to protect against COVID-19 infection. But now, with the passage of time and emergence of new variants, many vaccine experts argue this was always an impossibly high standard to maintain, and moving forward, the emphasis should be on their ability to protect against severe disease."[41]

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

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

90. 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.

91. 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.

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

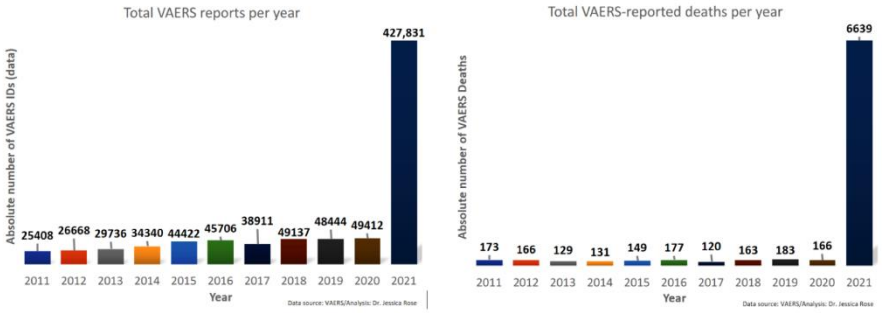
---

[40] https://www.wsj.com/articles/fda-shuts-out-its-own-experts-in-authorizing-another-booster-covid-vaccine-pandemic-science-11649016728?mod=opinion_lead_pos7 (published Apr. 3, 2022).

[41] https://abcnews.go.com/Health/4th-covid-19-vaccine-doses-looming-experts-fast/story?id=83578268 (published Mar. 24, 2022).

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

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

93. 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.

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

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

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

JW HOWARD/ ATTORNEYS, LTD.
701 B STREET, SUITE 1725
SAN DIEGO, CALIFORNIA 92101

97. In addition, the vaccinated may become more clinically ill than the unvaccinated. Scotland reported that the infection fatality rate in the vaccinated is 3.3 times the unvaccinated and the risk of death if hospitalized is 2.15 times the unvaccinated.[42]

E. Effective Treatments Are Available

i. Ivermectin Is Effective

98. Ivermectin--a cheap, safe, widely available generic medication, whose precursor won the Nobel Prize in Medicine in 2015--treats and cures SARS-CoV-2 infection, both while in the early infectious stage and later stages.43 The evidence is both directly observed in multiple randomized controlled trials and epidemiological evidence worldwide. There are now more than sixty (60) studies demonstrating its efficacy as well as noting that nations that use ivermectin see their death rates plummet to 1% of the death rates of nations that do not.

ii. Hydroxychloroquine Is Effective

99. 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.[44],[45] 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.[46]

iii. Budesonide Is Effective

[42] https://jeffreydachmd.com/wp-content/uploads/2021/08/Public-Health-Scotland-21-08-04-covid19-publication_report.pdf, https://jeffreydachmd.com/wp-content/uploads/2021/08/Public-Health-Scotland-21-09-01-covid19-publication_report.pdf
[43] https://ivmmeta.com/ivm-meta.pdf
[44] https://hcqmeta.com
[45] https://docs.google.com/document/d/1vDD8JkHe62hmpkalx1tejkd_zDnVwJ9XXRjgXAc1qUc/edit
[46] https://www.jstage.jst.go.jp/article/bst/14/1/14_2020.01047/_article

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

100. 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.[47] This was published in The Lancet in April 2021.[48] The trial at ClinicalTrials.gov was stopped early because steroids were shown to be so effective.[49]

iv. Monoclonal Antibodies Are Effective

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

F. The San Francisco Mandate

102. Despite this evidence, much of which was available last summer and fall, many government officials and other leaders have mandated that people get the COVID shots to participate in daily life or keep their jobs.

103. The City of San Francisco was on the leading edge of this charge. It issued its vaccine mandate last June, then amended it on August 6, 2021, September 8, 2021, and October 27, 2021. As amended, the City's vaccine mandate requires that City employees have the original shots, plus at least one booster shot, by February 1, 2022. A copy of the City's COVID-19 Vaccination Policy as amended and including its booster shot requirement, is attached as **Exhibit "A."**

104. When issuing these mandates, the City has stated that taking the COVID shots is "the most effective way to prevent transmission and limit COVID-19 hospitalizations and deaths." But that finding is unsupported by evidence and is irrational, as the evidence shows that vaccinated people can contract and transmit the COVID-19 virus just like the unvaccinated. The CDC concedes this, too. That evidence was widely available by June 2021 and has been available since, but City officials

[47] https://c19protocols.com/wp-content/uploads/2021/03/COVID_Budesonide_Oxford-Based_Dosing_Guidance.pdf
[48] 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
[49] 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.

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

intentionally ignored it because it undermined their predetermined decision to mandate the vaccines, no matter what the evidence showed about their effectiveness.

105. Moreover, to the extent the COVID shots help people avoid serious illness, hospitalization and death—a claim that has not been proven scientifically but is only supported by anecdotal evidence—that is a private health issue, not a public one. The City has no power over individuals' private health decisions.

106. The vaccine mandate is unlawful. The City does not have the legal authority to require that its employees get a vaccine or booster shot against their will. Even if it did have such power, the mandate is arbitrary and irrational as there is no evidence that the vaccines prevent people from contracting or spreading COVID-19. The evidence obtained during the spread of the Delta and Omicron variants show otherwise. That is why some governments, including the United Kingdom, recently started lifting their COVID-19 restrictions. They recognize, correctly, that COVID-19 cannot be eradicated and that there are simple, non-invasive ways to keep people healthy. Compulsory vaccination and nineteenth century police state tactics do not work in the modern world.

107. If the Defendants had engaged in a meaningful and open-minded review of this issue, they would have realized this. Instead, they decided that they want universal vaccination and they looked only for evidence to support the decision, a quintessentially arbitrary and capricious action and an arbitrary decision-making process that deserves no deference in this action.

108. This is not a trivial issue. Although the Defendants will describe compulsory vaccination as commonplace, it is not—certainly not for competent adults. Moreover, Defendants have never required that their employees get a shot to keep their jobs before now. This is even true for individuals who work in the most disease-ridden areas of the County. Nobody has ever been disciplined, much less fired, for declining a shot.

109. Similarly, in 2018, America suffered one of its worst flu seasons in recent memory. The *Los Angeles Times* described hospitals as "war zones." Patients were treated in hallways and outdoor tents. Nobody in San Francisco was fired for declining the flu shot.

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

110. Compulsory vaccination constitutes a serious invasion of the Plaintiffs' right to bodily integrity. But, in issuing and enforcing the vaccine/booster mandate, Defendants did not consider alternative measures that have a lesser impact on individuals' privacy rights, as they were required to do under Article I, section 1 of the California Constitution (the state constitutional right to privacy) and the California Supreme Court's decision in *Mathews v. Becerra*. Many such measures exist.

111. Public employees also have a property interest in their employment. They cannot be deprived of that interest without due process, including a pre-deprivation hearing as required by the California Supreme Court's decision in *Skelly v. State Board of Personnel*. However, the City plans to stop paying anybody who does not comply with the vaccine mandate, in clear violation of *Skelly*. Hundreds of city employees have already been placed on unpaid leave, for months, without receiving a hearing. And the hearings that have been conducted have not been fair as the hearing officers do not have the authority to deviate from the City's proposed discipline (termination, no matter what).

112. These actions will have a devastating effect on public services. They already are. Thus, the City announced that, as of April 1, 2022, its booster mandate would be rescinded—but only for certain employees, most notably the police department, whose chief demanded it. A true and correct copy of the amended mandate is attached as **Exhibit "B."**

113. The City's rescinding of the booster mandate for certain people was proper, given the evidence discussed above. But it also makes the City's Vaccination Policy even more irrational, as the original shots do virtually nothing good for people at this point. They do not prevent infection or transmission. They have not been proven to reduce an infected individual's symptoms during a COVID illness, especially with the most recent variants. Even if they did, most people who contract COVID have mild symptoms anyway, and they have access to treatments that do not have the potentially serious side effects of the COVID shots.

114. Furthermore, the City's amended mandate continues to require the booster shots (and, apparently, all future booster shots) in "high-risk" settings. That is arbitrary given the evidence discussed above. The City's definition of "high-risk" versus "lower risk" is also arbitrary and irrational. For example, firefighters and police officers both respond to emergency situations. But only

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

firefighters are deemed to work in "high-risk" settings and thus to be subject to the booster mandate. Moreover, any rational person would call San Francisco's homeless encampments to be high-risk, but they were exempted from the booster mandate.

115. Finally, the City must honor and accommodate, if possible, any individual's sincerely held religious objection to the COVID shots. It cannot adopt a blanket policy of questioning everybody's religious objections and cannot refuse to accommodate those with religious exemptions because it does not employ the "unvaccinated."

116. This is not appropriate. There is no need for everybody to get the COVID-19 shot, much less multiple booster shots, even if some people demand it. Furthermore, city employees have a right to privacy and a right to object to compulsory medical treatment based on their sincere religious and medical beliefs. Lawsuits decided a hundred years ago do not change that.

117. These are not fringe theories. In 2008, the ACLU published a report titled *Pandemic Preparedness: The Need for a Public Health—Not a Law Enforcement/National Security—Approach*. It was written by lawyers, public health experts and doctors. Among other things, the report concluded that "[a]ccess to vaccination or treatment should not be conditioned on a waiver of one's constitutional rights." Moreover, "[c]oercive measures should be imposed only when there is a sound scientific and constitutional basis for so doing and only when they are the least restrictive alternative and are imposed in the least restrictive manner." Of particular note, the report criticized the CDC for supporting a Model State Emergency Health Powers Act, which recommended compulsory vaccination laws, "something that has been soundly repudiated in the decades since at least 60,000 Americans were forcibly sterilized in the early 20th Century."[50]

118. Plaintiffs bring this action to enforce the law and to enjoin further enforcement of the City's Vaccination Policy.

\ \ \

\ \ \

[50] https://www.aclu.org/sites/default/files/pdfs/privacy/pemic_report.pdf

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

FIRST CAUSE OF ACTION

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

119. Plaintiffs incorporate paragraphs 1 through 118 of this Complaint as though set forth fully herein.

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

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

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

123. On information and belief, the City contends that it did have the power to issue the COVID-19 vaccine mandate and it contends that the mandate does not have to be narrowly tailored. The City also contends, in the alternative, that the vaccine mandate is narrowly tailored to fulfill a compelling government interest and that it did not act arbitrarily and capriciously in adopting the order.

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

Furthermore, the City contends that people who have taken the COVID shots cannot contract or transmit the COVID-19 virus, much less get sick and die from COVID.

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

125. 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.

126. The City's actions have harmed Plaintiffs and those they represent, as alleged above.

127. 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.

128. 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)

129. Plaintiffs incorporate paragraphs 1 through 118 of this Complaint as though set forth fully herein.

130. 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.

131. 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.

132. 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.*

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

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

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

135. The City's vaccine mandate constitutes a serious invasion of City employees' privacy rights, as alleged above.

136. As the California Supreme Court has explained, the "rational basis" test that courts employ when analyzing alleged violations of the United States Constitution does not apply in a state law privacy case. The California Supreme Court uses a fact-intensive balancing test to decide whether a mandate violates an individual's state constitutional right to privacy. Moreover, while the City may argue that the vaccine mandate serves a compelling interest in reducing the spread of COVID-19, there are feasible and effective alternatives to it that have a lesser impact on privacy interests.

137. Indeed, evidence now shows that the vaccines do not prevent people from contracting and transmitting COVID-19. That is why millions of vaccinated people, including many City and County employees, fell ill with the Omicron variant last winter. This trend will continue as other COVID variants emerge. Thus, the continued enforcement of the vaccine mandate does not serve the

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

City's stated purpose of preventing infection. The most the COVID shots can do is, potentially, reduce the severity of COVID-19 symptoms but even that has not been scientifically proven and there are other ways to reduce the severity of COVID-19 without compelling people to get a shot they do not want. In any event, taking a shot to potentially reduce the severity of illness is a private health issue, not a public one.

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

139. 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.

140. 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.

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

142. 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.

143. 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*)

144. Plaintiffs incorporate paragraphs 1 through 118 of this Complaint as though set forth fully herein.

145. 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,

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

including notice and an opportunity to challenge any proposed discipline, before it stops paying the employee. This process must be fair. It must include an opportunity to gather evidence. And the Skelly hearing must be conducted by an impartial hearing officer who has the power to deviate from the City's proposed discipline, including by issuing no discipline.

146. 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 full panoply of 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*.

147. 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 it stops paying employees who do not comply with the City's COVID vaccine mandate. 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.

148. Plaintiffs desire a judicial declaration that the City cannot stop paying a city employee who is accused of not complying with the COVID vaccine mandate without first giving that employee his or her full *Skelly* rights and, for sworn personnel, the full panoply of rights provided by the Firefighters and Police Officer Bill of Rights.

149. 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.

150. 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 which would be litigated in subsequent civil actions.

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

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

152. 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)

153. Plaintiffs incorporate paragraphs 1 through 118 of this Complaint as though set forth fully herein.

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

155. Plaintiffs are informed and believe, and on that basis allege, that several City departments (including the Fire Department and the Municipal Transit Authority) have publicly published the vaccination status of City employees without the employees' consent. Individuals' vaccination status is private information deemed confidential under state and federal law. The publication of an individual's vaccination status by his or her employer would be considered highly offensive by a reasonable person in the employee's shoes.

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

157. On information and belief, the City contends that it can publish City employees' COVID vaccination status without their consent because COVID is a global pandemic in which the law as normally written does not apply.

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

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

159. 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.

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

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

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

FIFTH CAUSE OF ACTION

(Declaratory and Injunctive Relief re Cal. FEHA/Religious Discrimination)

163. Plaintiffs incorporate paragraphs 1 through 118 of this Complaint as though set forth fully herein.

164. California's Fair Employment and Housing Act (FEHA) forbids an employer from firing someone "because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance . . . but is unable to reasonably accommodate the religious belief or observance without undue hardship."

165. This law is designed to enhance work opportunities for people with sincere religious beliefs, not to limit them. Thus, an employer must have an objective basis to question the sincerity of an individual's religious objection and must show an extreme hardship in trying to accommodate the individual's objection. Furthermore, California law construes the word "religion" broadly. It does not

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

require that individuals belong to an organized religious or be scrupulous in their practice. Indeed, religious objections are presumed to be sincere.

166. Plaintiffs and similarly situated individuals work for the City. They have sincerely held religious objections to the COVID vaccines and therefore sought religious objections to the City's COVID vaccine mandate by the thousands.

167. On information and belief, the City had a blanket policy to question the sincerity of every person's objection to the COVID vaccines. It also had a blanket policy to only recognize exemptions for people who belong to religions that reject all medicine (Christian Scientists, for example). And it had a blanket policy of rejecting all requests for reasonable accommodations by saying, effectively, that the City does not employ the unvaccinated.

168. Plaintiffs contend that the City's blanket policy of questioning the sincerity of all religious objections to the COVID vaccines violates the FEHA and the constitutional freedom of religion. Plaintiffs also contend that the City's blanket policy of rejecting all requests for reasonable accommodations violates the FEHA.

169. On information and belief, the City contends that its blanket policies of questioning the sincerity of all religious objections to the COVID vaccines and rejecting all requests for reasonable accommodations does not violate the FEHA.

170. Plaintiffs desire a judicial declaration that the City's blanket policies of questioning the sincerity of all religious objections to the COVID vaccines and rejecting all requests for reasonable accommodations violates the FEHA.

171. 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.

172. The City's actions have harmed Plaintiffs and those they represent, as alleged above.

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

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

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

SIXTH CAUSE OF ACTION

(Declaratory and Injunctive Relief under FEHA/Medical Condition Discrimination)

175. Plaintiffs incorporate paragraphs 1 through 118 of this Complaint as though set forth fully herein.

176. The FEHA makes it unlawful for an employer, "because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition ... of any person, ... to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment." Cal. Gov't Code § 12940(a).

177. Plaintiffs contend that the City views an individual's failure to be "fully vaccinated" against COVID-19 as a physical/medical condition that precludes that employee from employment with the City. Furthermore, Plaintiffs contend that, while the City says it will try to grant unvaccinated employees' requests for a reasonable accommodation, that is a ruse both on its face and as applied to them; in fact, on information and belief, the City has not granted a single accommodation request for an unvaccinated city employee.

178. Plaintiffs contend that the City violated the FEHA in making the blanket determination that not having the COVID vaccine in one's body is a disability that it cannot reasonably accommodate for city employees.

179. On information and belief, the City contends that its blanket policy of treating all unvaccinated city employees as disabled, and failing to accommodate them, does not violate the FEHA.

180. Plaintiffs desire a judicial declaration that the City's blanket policy of treating all unvaccinated city employees as disabled, and failing to accommodate them, violates the FEHA.

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

181. 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.

182. The City's actions have harmed the individual Plaintiffs and other individuals who work in the City, as alleged above.

183. Plaintiffs have no adequate remedy at law and will suffer irreparable harm if the Court does not enjoin the City from applying its blanket disability policy. Thus, they seek preliminary and permanent injunctive relief for such an order.

184. 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 stop paying city employees for not complying with the COVID-19 vaccine mandate 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 preliminary and permanent injunctive relief enjoining the City from continuing its blanket policies of questioning the sincerity of all religious objections to the COVID vaccines and rejecting all requests for reasonable accommodations;

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

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

and

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

Dated: April 6, 2022

JW HOWARD/ ATTORNEYS LTD.

By: */s/ John W. Howard*

JOHN W. HOWARD
Attorneys for Plaintiffs

JW HOWARD/ ATTORNEYS, LTD.
701 B Street, Suite 1725
San Diego, California 92101

JW HOWARD/ ATTORNEYS, LTD.
701 B STREET, SUITE 1725
SAN DIEGO, CALIFORNIA 92101

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.

☐ PERSONAL. The below described documents were personally served on date below via Knox Services.

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

SECOND 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
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4682
tara.steeley@sfcityatty.org
ronald.lee@sfcityatty.org
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 April 7, 2022, at San Diego, CA.

/s/ Dayna Dang
Dayna Dang, Paralegal
dayna@jwhowardattorneys.com

EXHIBIT “A”

City and County of San Francisco
Carol Isen
Human Resources Director

Department of Human Resources
Connecting People with Purpose
www.sfdhr.org

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	Must receive their final dose of a vaccine regimen *no later than* **September 30, 2021.** • **Moderna:** First shot *no later than* September 2,2021; Second shot *no later than* September 30, 2021. • **Pfizer:** First shot *no later than* September 9,2021; Second shot *no later than* September 30, 2021. • **Johnson & Johnson:** First shot *no later than* September 30, 2021
Employees intermittently or occasionally working in "High-Risk Settings"	Must be fully vaccinated *no later than* **October 13, 2021.** • **Moderna:** First Shot *no later than* September 1, 2021; Second Shot *no later than* September 29, 2021 • **Pfizer:** First Shot *no later than* September 8, 2021; Second Shot *no later than* September 29, 2021 • **Johnson & Johnson:** First Shot *no later than* September 29 2021
All other employees not working in "High-Risk" or other health care settings	Must be fully vaccinated *no later than* **November 1, 2021.** • **Moderna:** First shot *no later than* September 20, 2021; Second shot *no later than* October 18, 2021. • **Pfizer:** First shot *no later than* September 27,2021; Second shot *no later than* October 18, 2021. **Johnson & Johnson:** First shot *no later than* October 18, 2021. 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.** *Office environments:* 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 *Non-office environments:* 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.

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

EXHIBIT “B”

ORDER OF THE HEALTH OFFICER No. C19-07y (updated)

ORDER OF THE HEALTH OFFICER OF THE CITY AND COUNTY OF SAN FRANCISCO

ENCOURAGING COVID-19 VACCINE COVERAGE AND REDUCING DISEASE RISKS (Safer Return Together)

DATE OF ORDER: June 11, 2021, updated July 8, 2021, July 20, 2021, August 2, 2021, August 12, 2021, August 24, 2021, September 10, 2021, October 13, 2021, December 14, 2021, December 29, 2021, January 10, 2022, January 26, 2022, February 14, 2022, March 2, 2022, March 10, 2022, and March 31, 2022

Please read this Order carefully. Violation of or failure to comply with this Order is a misdemeanor punishable by fine, imprisonment, or both. (California Health and Safety Code § 120295, *et seq.*; California Penal Code §§ 69, 148(a)(1); and San Francisco Administrative Code § 7.17(b).)

Summary: As of April 1, 2022, this Order replaces the prior update of this health order, Health Officer Order No. C19-07y (issued March 10, 2022), in its entirety.

The Health Officer is updating the Order in light of the recent changes to State guidelines and the lower number of cases and hospitalizations in the community associated with the spread in San Francisco and the Bay Area region of SARS-CoV-2, the virus that causes COVID-19. There remains the ongoing threat that the virus, including other future variants or subvariants, pose particularly to the health of medically vulnerable residents. But, based on current scientific knowledge, San Francisco is well positioned to address future increases in cases due in large part to the high rate of vaccination in the community, greater availability of effective treatments for those who are vulnerable to severe disease, and effective use of mitigation strategies, such as masking in indoor public settings when there are high levels of community transmission. The best pathway for San Francisco to continue to move forward in the face of the virus is for as many people as possible to complete their initial series of vaccination and receive their boosters when eligible. Medical data to date show that individuals who have received a booster shot increase their immunity to a level that confers significantly more protection from all circulating SARS-CoV-2 variants, including the Omicron variant and BA.2 subvariant, compared to completing just the initial vaccine series, and generally prevents severe disease. The United States Centers for Disease Control and Prevention and the California Department of Public Health recommend that everyone who has been vaccinated receive a booster shot as soon as they are eligible because immunity wanes several months after completion of the initial vaccine series. In the future, the Health Officer may need to adjust health precautions depending on the specific characteristics of future variants, and if so, the Health Officer will continue to use the least restrictive health measures to prevent severe disease on a population level basis in the community.

ORDER OF THE HEALTH OFFICER No. C19-07y (updated)

Even though a high percentage of people are vaccinated in San Francisco and the Bay Area region and a significant percentage are boosted against the virus that causes COVID-19, there remains a risk that people may come into contact with others who have COVID-19 when outside their residence, particularly during periods of high community transmission. Many COVID-19 infections are caused by people who have no symptoms of illness. Also, there are people in San Francisco who have not completed their initial vaccine series or who are not yet boosted or eligible to receive a Booster, including children under five years old, and people who are immuno-compromised and may be particularly vulnerable to infection and disease.

Based on current health conditions and balancing those considerations with acknowledgement that there remains ongoing risk to vulnerable populations and the potential for future surges, this Order transitions face covering guidelines to an individual risk-focused approach. In this Order the Health Officer recommends that individuals wear a Well-Fitted Mask in indoor public settings based on three factors. First, you should consider your own risk tolerance. Second, you should consider the overall level of community transmission, such as when future variants occur (*e.g.*, the higher the rate of community transmission, the more seriously you should consider wearing a mask in indoor public settings). Third, you should consider whether you or someone with whom you work or live is at risk of severe disease.

At the same time, wearing a Well-Fitted Mask is still required under federal and state health rules in certain settings, including: on public transportation and in indoor public transportation facilities (at least through April 18); in emergency shelters and cooling centers; in healthcare settings; in state and local correctional facilities and detention centers; in homeless shelters; and in long term care settings and adult and senior care facilities. A copy of the current CDPH masking order is available online at www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/guidance-for-face-coverings.aspx.

This Order maintains the requirement, layered on top of the recently revised CDPH health orders, for (1) Personnel working in designated High-Risk Settings—meaning general acute care hospitals, skilled nursing facilities, intermediate care facilities, residential care facilities for the elderly, homeless shelters, and jails, all as further defined below—as well as (2) Personnel working in other higher-risk settings—including adult care facilities, adult day programs, dental offices, home health care workers, and pharmacists, and (3) Personnel who routinely visit hospitals as part of their work and are part of the City's first responder medical care system, such as firefighters, paramedics and emergency medical technicians—to both receive the full initial course of vaccination and, once they are eligible, to receive a Booster. But, based on changed health conditions including the ebbing of the previous Omicron surge, the lower number of cases and hospitalizations in the community, high levels of vaccination, availability of effective treatments, and reduced outbreak risk as determined by federal, state, and local public health officials, Personnel who are not permanently stationed or regularly assigned to High-Risk Settings but who in the course of their duties may enter or work in High-Risk Settings on an intermittent or occasional basis or for short periods of time (such as police

and lawyers who visit people in the jails) are no longer required to receive a Booster, but are strongly encouraged to do so. And, firefighters, paramedics, and EMTs now have until June 30, 2022 to receive a Booster. Additionally, Personnel at homeless shelters (other than congregate living health facilities) are no longer required to receive a Booster, but are strongly encouraged to do so.

On March 17, 2022, the State of California announced that beginning on April 1, 2022, it will no longer require that people attending Indoor Mega-Events (*i.e.*, events with 1,000 or more attendees) provide proof of vaccination or negative testing to gain entry. Instead, the State will strongly recommend that venues hosting Indoor Mega-Events continue to impose that requirement. This Order aligns with the change in State rules for Indoor Mega-Events.

And this Order maintains other minimum COVID-19 safety requirements on businesses and governmental entities, such as a general requirement to report outbreaks in the workplace.

UNDER THE AUTHORITY OF CALIFORNIA HEALTH AND SAFETY CODE SECTIONS 101040, 101085, AND 120175, THE HEALTH OFFICER OF THE CITY AND COUNTY OF SAN FRANCISCO ORDERS:

1. Definitions.

For purposes of this Order, the following initially capitalized terms have the meanings given below.

a. *Booster*. A "Booster" means an additional dose of a vaccine authorized to prevent COVID-19 by the FDA, including by way of an emergency use authorization, or by the World Health Organization (WHO), for which a person is Booster-Eligible. Consistent with CDC and CDPH guidance, either the Pfizer-BioNTech (Comirnaty) or Moderna (Spikevax) COVID-19 vaccine is preferred for the Booster.

b. *Booster-Eligible*. A person is "Booster-Eligible" once they meet criteria to receive a Booster under CDC guidance. For example, as of the date of issuance of this update to the Order, individuals who are 18 or older may receive a booster of the Pfizer-BioNTech (Comirnaty), Moderna (Spikevax), or Johnson & Johnson's Janssen COVID-19 vaccine at least five months after receiving a second dose of the Pfizer-BioNTech (Comirnaty) or Moderna (Spikevax) COVID-19 vaccine or two months after receiving the single dose Johnson & Johnson's Janssen COVID-19 vaccine, and adolescents who are 12 to 17 years old may receive a booster of the Pfizer-BioNTech vaccine at least five months after their second dose of that vaccine. Consistent with CDC guidance (available online at www.cdc.gov/coronavirus/2019-ncov/vaccines/booster-shot.html), anyone who received a WHO-authorized vaccine or a combination of vaccines should receive the Pfizer-BioNTech (Comirnaty) vaccine as their booster pursuant to the timing listing in that guidance. Those

preferences apply to all initial vaccination series, regardless of which vaccine an individual received. The CDC has been frequently updating booster eligibility. More up-to-date information on booster eligibility may be found online at www.sfcdcp.org/boosters, and individuals, Businesses, and governmental entities are urged to stay informed about changes.

c. *Business*. A "Business" includes any for-profit, non-profit, or educational entity, whether a corporate entity, organization, partnership or sole proprietorship, and regardless of the nature of the service, the function it performs, or its corporate or entity structure.

d. *Cal/OSHA*. "Cal/OSHA" means the California Department of Industrial Relations, Division of Occupational Safety and Health, better known as Cal/OSHA.

e. *CDC*. "CDC" means the United States Centers for Disease Control and Prevention.

f. *CDPH*. "CDPH" means the California Department of Public Health.

g. *Close Contact*. "Close Contact" means being within six feet of a Person With COVID-19 for a total of 15 minutes or more in a 24-hour period while the person is contagious. In turn, a "Person With COVID-19" means a person who tests positive for the virus that causes COVID-19 (SARS-CoV-2) or has been clinically diagnosed with COVID-19 by a healthcare provider. A person is no longer considered a Person With COVID-19 once all of the following occur: (a) at least one day (*i.e.*, 24 hours) has passed since their last fever (without use of fever-reducing medications), and (b) there has been improvement of other symptoms, and (c) at least five days have passed since symptoms first appeared. A person who tested positive for COVID-19 but never had symptoms is no longer considered a Person With COVID-19 five days after the date of their first positive test. The person is considered contagious if they *either* (i) had symptoms, from 48 hours before their symptoms began until at least five days after the start of symptoms, *or* (ii) did not have symptoms but learned they were COVID-19 positive from a test, from 48 hours before their COVID-19 test was collected until five days after they were tested.

h. *County*. The "County" means the City and County of San Francisco.

i. *COVID-19*. "COVID-19" means coronavirus disease 2019, the disease caused by the SARS-CoV-2 virus and that resulted in a global pandemic.

j. *DPH*. "DPH" means the San Francisco Department of Public Health.

k. *DPH Core Guidance*. "DPH Core Guidance" means the webpage and related materials titled *Core Guidance for COVID-19* that DPH regularly updates and includes health and safety recommendations for individuals and Businesses as well as web links to additional resources, available online at sf.gov/information/core-guidance-covid-19.

l. *Face Covering Requirements*. "Face Covering Requirements" means the limited requirements to wear a Well-Fitted Mask (i) under federal or state law including, but not limited to, California Department of Public Health guidance and Cal/OSHA's regulations; (ii) in indoor common areas of homeless shelters, emergency shelters, and cooling centers, except while sleeping, showering, engaged in personal hygiene that requires removal of face coverings, or actively eating or drinking; (iii) in indoor common areas of jails except while sleeping, showering, engaged in personal hygiene that requires removal of face coverings, or actively eating or drinking; and (iv) under Section 3(b), below and Appendix A, attached to the Order. If a separate state, local, or federal order or directive imposes different face covering requirements, including requirements to wear respirators or surgical masks in certain settings, the more health protective requirement applies.

m. *FDA*. "FDA" means the United States Food and Drug Administration.

n. *Fully Vaccinated*. "Fully Vaccinated" has the same meaning as the newer term "Vaccinated with a Complete Initial Series," defined below. Because other pre-existing Health Officer orders and directives and other DPH or County guidance materials may still use the term Fully Vaccinated that term continues to be defined in this Order.

o. *Health Officer*. "Health Officer" means the Health Officer of the City and County of San Francisco.

p. *High-Risk Settings*. "High-Risk Settings" means certain care or living settings involving many people, including many congregate settings, where vulnerable populations reside out of necessity and where the risk of COVID-19 transmission is high, consisting of general acute care hospitals, skilled nursing facilities (including subacute facilities), intermediate care facilities, residential care facilities for the elderly, homeless shelters, and jails (including, but not limited to, the Juvenile Justice Center Juvenile Hall).

q. *Household*. "Household" means people living in a single Residence or shared living unit. Households do not refer to individuals who live together in an institutional group living situation such as in a dormitory, fraternity, sorority, monastery, convent, or residential care facility.

r. *Mega-Event*. "Mega-Event" means an event with either more than 1,000 people attending indoors or more than 10,000 people attending outdoors. As provided in the State's Post-Blueprint Guidance, a Mega-Event may have either assigned or unassigned seating, and may be either general admission or gated, ticketed and permitted events.

s. *Personnel*. "Personnel" means the following people who provide goods or services associated with a Business in the County: employees; contractors and sub-contractors (such as those who sell goods or perform services onsite or who deliver goods for the

Business); independent contractors; vendors who are permitted to sell goods onsite; volunteers; and other individuals who regularly provide services onsite at the request of the Business. "Personnel" includes "gig workers" who perform work via the Business's app or other online interface, if any.

t. *Qualifying Medical Reason*. "Qualifying Medical Reason" means a medical condition or disability recognized by the FDA or CDC as a contra-indication to COVID-19 vaccination.

u. *Religious Beliefs*. "Religious Beliefs" means a sincerely held religious belief, practice, or observance protected by state or federal law.

v. *Residence*. "Residence" means the location a person lives, even if temporarily, and includes single-family homes, apartment units, condominium units, hotels, motels, shared rental units, and similar facilities. Residences also include living structures and outdoor spaces associated with those living structures, such as patios, porches, backyards, and front yards that are only accessible to a single family or Household.

w. *Schools*. "Schools" mean public and private schools operating in the County, including independent, parochial, and charter schools.

x. *State's Post-Blueprint Guidance*. The "State's Post-Blueprint Guidance" means the guidance entitled "Beyond the Blueprint for Industry and Business Sectors" that the California Department of Public Health issued on May 21, 2021 and updated as of March 17, 2022, including as the State may further extend, update or supplement that guidance in the future. (See www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Beyond-Blueprint-Framework.aspx.)

y. *Test* and *Tested*. "Tested" means to have a negative test (a "Test") for the virus that causes COVID-19 within the applicable timeframe as listed in this Order. Both nucleic acid (including polymerase chain reaction (PCR)) and antigen tests are acceptable. The following are acceptable as proof of a negative COVID-19 test result: a printed document (from the test provider or laboratory) or an email, text message, webpage, or application (app) screen displayed on a phone or mobile device from the test provider or laboratory. The information should include person's name, type of test performed, negative test result, and date the test was administered. If any state or federal agency uses a more restrictive definition of what it means to be Tested for specified purposes (such as Cal/OSHA rules for employers in workplaces), then that more restrictive definition controls for those purposes. Some sections of this Order require antigen tests to be third-party verified (meaning administered or observed by the third-party) to meet requirements for showing proof of a negative Test.

z. *Unvaccinated*. "Unvaccinated" refers to a person age two or older who is eligible for COVID-19 vaccination and who is either (i) not at least Vaccinated with a Complete Initial Series or (ii) in an indoor setting where this Order requires proof of being

Vaccinated with a Complete Initial Series as a condition of entry but has not provided such proof.

aa. *Up-to-Date on Vaccination*. "Up-to-Date on Vaccination" means when a person both (i) is Vaccinated with a Complete Initial Series and (ii) has received a Booster once the person is Booster-Eligible. A person is Up-to-Date on Vaccination immediately on receipt of a Booster. Until a person is Booster-Eligible, they are considered Up-to-Date on Vaccination two weeks after completing their full initial series of vaccination.

bb. *Vaccinated with a Complete Initial Series*. "Vaccinated with a Complete Initial Series" means two weeks after completing the entire recommended initial series of vaccination (usually one or two doses) with a vaccine authorized to prevent COVID-19 by the FDA, including by way of an emergency use authorization, or by the World Health Organization (WHO). For example, as of the date of issuance of this Order, an individual has completed an initial vaccination series at least two weeks after receiving a second dose of the Pfizer-BioNTech (Comirnaty) or Moderna (Spikevax) COVID-19 vaccine or two weeks after receiving the single dose Johnson & Johnson's Janssen COVID-19 vaccine. A list of FDA-authorized vaccines is available at www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/covid-19-vaccines. A list of WHO-authorized vaccines is available at https://extranet.who.int/pqweb/vaccines/covid-19-vaccines. On August 23, 2021, the FDA granted full approval for the Pfizer-BioNTech (Comirnaty) vaccine for people age 16 and older, and on January 31, 2022, the FDA granted full approval for the Moderna (Spikevax) vaccine for people age 18 and older. And, on October 29, 2021, the FDA granted emergency use authorization for the Pfizer-BioNTech vaccine for children age five to 11.

Unless otherwise specified, the following are acceptable as proof of being Vaccinated with a Complete Initial Series or Up-to-Date on Vaccination: (i) the CDC vaccination card, which includes name of person vaccinated, type of vaccine provided, and date last dose administered, or similar documentation issued by another foreign governmental jurisdiction, (ii) a photo of a vaccination card as a separate document, (iii) a photo of the a vaccination card stored on a phone or electronic device, (iv) documentation of vaccination from a healthcare provider, (v) unless prohibited elsewhere in this Order in a specific context, written self-attestation of vaccination signed (including an electronic signature) under penalty of perjury and containing the name of the person vaccinated, type of vaccine taken, and date of last dose administered, or (vi) a personal digital COVID-19 vaccine record issued by the State of California and available by going to https://myvaccinerecord.cdph.ca.gov or similar documentation issued by another State, local, or foreign governmental jurisdiction, or by an approved private company (a list of approved companies offering digital vaccine verification is available at www.sfdph.org/dph/alerts/files/vaccine-verification-sites.asp). If any state or federal agency uses a more restrictive definition of what it means to be Vaccinated with a Complete Initial Series or to prove that status for specified purposes (such as

Cal/OSHA rules for employers in workplaces), then that more restrictive definition controls for those purposes. Also, to the extent Cal/OSHA approves an alternate means of documenting whether an employee has completed the full initial series or is "fully vaccinated," even if less restrictive than the definition contained here, employers may use the Cal/OSHA standard to document their employees' vaccination status.

cc. *Ventilation Guidelines*. "Ventilation Guidelines" means ventilation guidance from recognized authorities such as the CDC, the American Society of Heating, Refrigerating and Air-Conditioning Engineers, or the State of California (available online at www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Interim-Guidance-for-Ventilation-Filtration-and-Air-Quality-in-Indoor-Environments.aspx), including Cal/OSHA.

dd. *Well-Fitted Mask*. A "Well-Fitted Mask" means a face covering that is well-fitted to an individual and covers the nose and mouth especially while talking, consistent with the Face Covering Requirements. CDC guidance regarding Well-Fitted Masks may be found at www.cdc.gov/coronavirus/2019-ncov/your-health/effective-masks.html. A well-fitting non-vented N95, KN95, or KF94 respirator is strongly recommended as a Well-Fitted Mask, even if not fit-tested, to provide maximum protection. A well-fitting surgical/procedural mask with a cloth mask worn over it to increase fit is also recommended. Given higher transmissibility of the Omicron variant, cloth masks alone are no longer recommended. A Well-Fitted Mask does not include a scarf, ski mask, balaclava, bandana, turtleneck, collar, or single layer of fabric or any mask that has an unfiltered one-way exhaust valve.

2. Purpose and Intent.

a. Purpose. The public health threat of serious illness or death from COVID-19 is much lower in the County and the Bay Area than many parts of the State and country due to the high rate of vaccination of the community. But COVID-19 continues to pose a risk especially to individuals who are not eligible to be vaccinated or are not yet Up-to-Date on Vaccination, and certain safety measures continue to be necessary or strongly recommended to protect against COVID-19 cases and deaths. Being Up-to-Date on Vaccination, including receiving a Booster as soon as Booster-Eligible, is the most effective method to prevent transmission and ultimately COVID-19 hospitalizations and deaths. It is important to ensure that as many eligible people as possible are vaccinated against COVID-19. Further, it is critical to ensure there is continued reporting of cases to protect individuals and the larger community. Accordingly, this Order allows Businesses, schools, and other activities to resume fully while at the same time putting in place certain requirements or recommendations designed to (1) extend vaccine coverage to the greatest extent possible; (2) limit transmission risk of COVID-19; (3) contain any COVID-19 outbreaks; and (4) generally align with guidance issued by the CDC and the State relating to COVID-19 except in limited instances where local conditions require more restrictive measures. This Order is based on evidence of continued community transmission of SARS-

CoV-2 within the County as well as scientific evidence and best practices to prevent transmission of COVID-19. The Health Officer will continue to monitor data regarding the evolving scientific understanding of the risks posed by COVID-19, including the impact of vaccination, and may amend or rescind this Order based on analysis of that data and knowledge. It is possible that the Health Officer will determine in the future that prior health precautions that have been relaxed or removed need to be imposed again, based on changes in local health conditions and the course of the pandemic.

b. Intent. The primary intent of this Order is to continue to protect the community from COVID-19, including by providing health recommendations as requirements are lifted, and to also increase vaccination rates to reduce transmission of COVID-19 long-term, so that the whole community is safer and the COVID-19 health emergency can come to an end.

c. Interpretation. All provisions of this Order must be interpreted to effectuate the purposes and intent of this Order as described above. The note and summary at the beginning of this Order as well as the headings and subheadings of sections contained in this Order are for convenience only and may not be used to interpret this Order. In the event of any inconsistency between the summary, headings, or subheadings and the text of this Order, the text will control. Certain initially capitalized terms used in this Order have the meanings given them in Section 1 above. The interpretation of this Order in relation to the health orders or guidance of the State is described in Section 10 below.

d. Application. This Order applies to all individuals, Businesses, and other entities in the County. For clarity, the requirements of this Order apply to all individuals who do not currently reside in the County when they are in the County. Governmental entities must follow the requirements of this Order that apply to Businesses, unless otherwise specifically provided in this Order or directed by the Health Officer.

e. DPH Core Guidance. All individuals and Businesses are strongly urged to follow the DPH Core Guidance (available online at sf.gov/information/core-guidance-covid-19) containing health and safety recommendations for COVID-19.

f. Effect of Failure to Comply. Failure to comply with any of the provisions of this Order constitutes an imminent threat and menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both, as further provided in Section 12 below.

3. General Requirements for Individuals.

a. Vaccination. Individuals are strongly urged to be Up-to-Date on Vaccination, meaning, as further provided in Section 1, that they are Vaccinated with a Complete Initial Series and, as soon as they are Booster-Eligible, receive their Booster. In particular, people at risk for severe illness with COVID-19—such as unvaccinated

older adults and unvaccinated individuals with health risks—and members of their Household, are urged to be Up-to-Date on Vaccination, including receiving a Booster, as soon as they can. Information about who is at increased risk of severe illness and people who need to take extra precautions can be found at www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html. For those who are not yet Up-to-Date on Vaccination, making informed choices about the risk of different activities, wearing a Well-Fitted Mask indoors, testing before gathering indoors, or choosing outdoor activities as much as possible are also ways to prevent the risk of COVID-19 transmission. Individuals who are Up-to-Date on Vaccination have the best protection against COVID-19.

b. Face Coverings. Everyone, and especially those who remain Unvaccinated, is recommended to wear a Well-Fitted Mask in the following situations:

- When an individual wants added protection based on individual risk tolerance, for example, when indoors with people whose vaccination status is unknown. People should respect an individual's decision to wear face coverings even in settings where they are not required, and no Business or other person should take an adverse action against individuals who chose to wear a face covering to protect their health.

- When there is a higher risk of community spread and infection, such as during surges caused by future variants.

- When an individual, or someone with whom an individual lives or works, is at a higher risk of a negative health outcome, such as older and immuno-compromised individuals.

i. Masks Still Required in Certain Settings. Everyone is required to wear a Well-Fitted Mask, regardless of vaccination status, in the following indoor settings: public transportation and public transportation facilities; High-Risk Settings; health care and other long-term care facilities where masking is required by regulatory orders and rules; and anywhere else that federal or state health orders require doing so. Under current federal law, at least through April 18, 2022 per the United States Transportation Security Administration's recent announcement of an extension, and the current CDPH face mask guidance, when riding or waiting to ride on public transit people who are inside the vehicle or other mode of transportation or are indoors at a public transit stop or station, must wear Well-Fitted Masks. This requirement extends to all modes of transportation other than private vehicles, such as airplanes, trains, subways, buses, taxis, ride-shares, maritime transportation, street cars, and cable cars. But any passenger who is outdoors or in open-air areas of the mode of transportation, such as open-air areas of ferries, buses, and cable-cars, is not required by federal law to wear a face covering.

Appendix A lists exceptions and allowances in such settings when a Well-Fitted Mask is not required. Face covering requirements in Schools and Programs for Children and Youth are covered in Health Officer Directive Nos. 2020-33 and 2020-14, respectively, including as those directives are further updated in the future. And, wearing a Well-Fitted Mask is strongly recommended for those in isolation or quarantine.

ii. Fit and Filtration Guidance. When wearing a mask, everyone should consistently wear the best mask they can obtain, considering fit and filtration (and without using a one-way exhalation valve that is not filtered). As provided in the definition of a Well-Fitted Mask, a well-fitting non-vented N95, KN95, or KF94 respirator is strongly recommended. A well-fitting surgical/procedural mask with a cloth mask worn over it to increase fit is also recommended. More information about fit and filtration and the best mask options is available online at www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Get-the-Most-out-of-Masking.aspx.

c. Monitor for Symptoms. Individuals should monitor themselves for symptoms of COVID-19. A list of COVID-19 symptoms is available online at www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html. Anyone with any symptom that is new or not explained by another condition must comply with subsections 3(d) and 3(e) below regarding isolation and quarantine.

d. Isolation. Anyone who has or likely has COVID-19, meaning that person (i) has a positive COVID-19 test result, (ii) is diagnosed with COVID-19, or (iii) has a COVID-19 symptom that is new or not explained by another condition, must refer to the latest COVID-19 isolation health directive issued by the Health Officer (available online at www.sfdph.org/directives) and follow the requirements detailed there. There are special requirements for healthcare workers and emergency medical services personnel in healthcare settings.

e. Quarantine. Anyone who had Close Contact must refer to the latest COVID-19 quarantine health directive issued by the Health Officer (available online at www.sfdph.org/directives) and follow the requirements detailed there. There are special requirements for healthcare workers and emergency medical services personnel in healthcare settings.

f. Moving to, Traveling to, or Returning to the County. Everyone is strongly encouraged to comply with (1) any State travel advisories (available online at www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Travel-Advisory.aspx) and (2) CDC travel guidelines (available online at www.cdc.gov/coronavirus/2019-ncov/travelers/travel-during-covid19.html).

g. Minimum Requirements. Based on their risk preferences, individuals may decide for themselves to take greater safety precautions than required or even recommended under this Order. Also, nothing in this section limits any requirements that apply

under this Order to indoor public settings, indoor Mega-Events, or that Cal/OSHA or other State authority may impose on any indoor setting involving gatherings.

4. General Requirements for Businesses and Governmental Entities.

a. Vaccination. Businesses and governmental entities are generally encouraged to require Personnel and patrons to be Up-to-Date on Vaccination, meaning they are Vaccinated with a Complete Initial Series and have received a Booster when they are Booster-Eligible.

i. Vaccination or Testing Recommendation for Certain Indoor Businesses. The following Businesses are strongly encouraged (though not mandated) to require patrons and staff to provide either proof of being Up-to-Date on Vaccination (including receipt of a Booster once Booster-Eligible) or proof of a negative Test before entry or service:

- Operators or hosts of establishments or events where food or drink is served indoors—including, but not limited to, dining establishments, bars, clubs, theaters, and entertainment venues.

- Gyms, recreation facilities, yoga studios, dance studios, and other fitness establishments, where any patrons engage in cardiovascular, aerobic, strength training, or other exercise involving elevated breathing.

- Operators and hosts of indoor and outdoor Mega-Events, as set forth in Section 7 below.

b. Masking.

i. Mask Requirements and Allowances. Businesses and governmental entities must follow the requirements for masking listed in this Order and Appendix A to this Order and may, but are not required by this Order, to require masks be worn indoors.

ii. Providing a Well-Fitted Mask. Businesses and other entities subject to this Order are encouraged to provide a Well-Fitted Mask at no cost to people (patrons and Personnel) who do not have one upon entry inside the facility.

iii. Cal/OSHA Requirements. Businesses and other entities should also follow any additional Cal/OSHA regulations relating to COVID-19 health and safety measures in the workplace, including regarding masking, and more information can be found online at www.dir.ca.gov/dosh/coronavirus/covid19faqs.html. Nothing in this Order is intended to reduce any of those requirements or otherwise modify them in a way that is less protective of public health, or to limit an individual's own choices to take more health protective measures.

c. Personnel Health Screening. Businesses and governmental entities should develop and implement a process for screening Personnel for COVID-19 symptoms, but this requirement does not mean they must perform on-site screening of Personnel. Businesses and governmental entities should ask Personnel to evaluate their own symptoms before reporting to work. If Personnel have symptoms consistent with COVID-19, they should follow subsections 3(d) and 3(e) above. Businesses and governmental entities may be required to conduct such screenings for Personnel under Cal/OSHA's regulations. Businesses and other entities must adhere to applicable Cal/OSHA regulations relating to COVID-19 health and safety measures in the workplace and should frequently check for updates to those regulations such as by checking online at www.dir.ca.gov/dosh/coronavirus/covid19faqs.html.

d. Businesses Must Allow Personnel to Stay Home When Sick. Businesses are required to follow Cal/OSHA regulations allowing Personnel to stay home where they have symptoms associated with COVID-19 that are new or not explained by another condition or if they have been diagnosed with COVID-19 (by a test or a clinician) even if they have no symptoms, and to not to have those Personnel return to work until they have satisfied certain conditions, all as further set forth in the Cal/OSHA rules. Also, Businesses must comply with California Senate Bill 114 (Labor Code, sections 248.6 and 248.7), which provides that employers with more than 25 employees must give every employee up to 80 hours of COVID-related sick leave retroactive to January 1, 2022 and through September 30, 2022 (pro-rated for less than full time employees), including that employees may use this paid sick leave to get vaccinated or for post-vaccination illness. Each Business is prohibited from taking any adverse action against any Personnel for staying home in any of the circumstances described in this subsection.

e. Signage. All Businesses and governmental entities are encouraged to conspicuously post signage reminding individuals of the following COVID-19 prevention best practices to reduce transmission:

Get vaccinated and boosted;

Stay home if sick;

Wear a mask indoors if you are unvaccinated; and

Clean your hands.

Businesses and governmental entities are also encouraged to include in signage any custom requirements the business or entity requires of its patrons or Personnel regarding testing, vaccination, and masking. Sample signage is available online at https://sf.gov/outreach-toolkit-coronavirus-covid-19.

f. Ventilation Guidelines. All Businesses and governmental entities with indoor operations are urged to review the Ventilation Guidelines and implement ventilation strategies for indoor operations as feasible. Nothing in this subsection limits any ventilation requirements that apply to particular settings under federal, state, or local law.

g. Mandatory Reporting by Businesses and Governmental Entities. Consistent with Cal/OSHA regulations, Businesses and governmental entities must require that all Personnel immediately alert the Business or governmental entity if they test positive for COVID-19 and were present in the workplace either (1) within 48 hours before onset of symptoms or within 10 days after onset of symptoms if they were symptomatic; or (2) within 48 hours before the date on which they were tested or within 10 days after the date on which they were tested if they were asymptomatic. If a Business or governmental entity is concerned about a workplace outbreak among Personnel, it may get additional information www.sfcdcp.org/covid19-positive-workplace. Businesses and governmental entities must also comply with all case investigation and contact tracing measures directed by DPH including providing any information requested within the timeframe provided by DPH, instructing Personnel to follow isolation and quarantine protocols specified by CDPH and Cal/OSHA and any additional protocols specified by DPH, and excluding positive cases and unvaccinated close contacts from the workplace during these isolation and quarantine periods.

Schools and Programs for Children and Youth are subject to separate reporting requirements set forth in Health Officer Directive Nos. 2020-33 and 2020-14, respectively, including as those directives are further updated in the future.

h. Compliance with CDPH Vaccination Status Order's Mask Requirements. Businesses and governmental entities with Personnel in Acute Health Care Settings, Long-Term Care Settings, High-Risk Congregate Settings, and Other Health Care Settings—as those terms are defined in the CDPH Vaccination Status Order, available online at www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Unvaccinated-Workers-In-High-Risk-Settings.aspx—must provide appropriate face coverings as required by the CDPH Vaccination Status Order.

i. Minimum Requirements; Ability to Adopt More-Restrictive Measures. This Order establishes the minimum requirements related to COVID-19 protections. Nothing in this Order is intended to reduce any other federal, state, or local legal requirements or otherwise modify them in a way that is less protective of public health, or to limit an individual Business' or governmental entity's choices to take more health protective measures. Businesses or governmental entities may impose further restrictions that are more protective of public health than the minimum requirements or recommendations under this Order, including requiring patrons or Personnel to be Vaccinated with a Complete Initial Series or Up-to-Date on Vaccination, requiring them to wear a Well-Fitted Mask, requiring them to have a negative Test, or taking other more restrictive measures that are more protective of public health and meet their operational needs.

5. Schools and Programs for Children and Youth

a. Schools. Largely because many children are not yet Vaccinated with a Complete

Initial Series or eligible for a Booster, schools must follow the health and safety requirements set forth in Health Officer Directive No. 2020-33, including as it may be amended in the future, to ensure the safety of all students and Personnel at the school site. All children who are Booster-Eligible (including under an emergency use authorization) are strongly urged to receive a Booster as soon as possible. Also, adult Personnel in TK-12 schools, including educators, aides, administrators, and other staff, are strongly encouraged to be Up-to-Date on Vaccination.

b. Programs for Children and Youth. Largely because some children are not eligible to be vaccinated against COVID-19 at this time and many children are not yet Vaccinated with a Complete Initial Series or eligible for a Booster, the following Programs for Children and Youth must operate in compliance with the health and safety requirements set forth in Health Officer Directive No. 2020-14, including as it may be amended in the future: (1) group care facilities for children who are not yet in elementary school—including, for example, licensed childcare centers, daycares, family daycares, and preschools (including cooperative preschools); and (2) with the exception of schools, which are addressed in subsection (a) above, educational or recreational institutions or programs that provide care or supervision for school-aged children and youth—including for example, learning hubs, other programs that support and supplement distance learning in schools, school-aged childcare programs, youth sports programs, summer camps, and afterschool programs.

c. Mega-Events. Operators or hosts of events held at schools or under Programs for Children and Youth that meet the definition of a Mega-Event are strongly recommended to comply with the State's Post-Blueprint Guidance concerning Mega Events.

6. Vaccination Requirements for Personnel in High-Risk Settings and Other Health Care Personnel.

a. High-Risk Settings. Except for some Personnel as provided in subsections (a)(iii), (b), and (c) below, and for Personnel exempt under subsection (d) below, all of the following requirements apply in High-Risk Settings:

i. Businesses and governmental entities with Personnel in High-Risk Settings must:

1. As of September 30, 2021, ascertain vaccination status of all Personnel in High-Risk Settings who routinely work onsite;

2. As of September 30, 2021, ensure that before entering or working in any High-Risk Setting, all Personnel who routinely work onsite have received their first dose of a one-dose COVID-19 vaccine regimen or their second dose of a two-dose COVID-19 vaccine regimen authorized to prevent COVID-19 by the FDA, including by way of an emergency use authorization, or by the World Health Organization. Until such Personnel

are Vaccinated with a Complete Initial Series, they are subject to at least the minimum public health and safety requirements in subsection (a)(iv) below; and

3. As of March 1, 2022, ensure that all such Personnel who routinely work onsite, within 15 days of being Booster-Eligible, receive a Booster. And for the period between when such Personnel are Booster-Eligible but have not yet received one and when they become Up-to-Date on Vaccination (meaning one week after receipt of a Booster), the operator of the High-Risk Setting must ensure that each such person comply with the public health and safety requirements in subsection (a)(iv) below regarding testing even though they have already received their full initial course of vaccination. For clarity, those who are Booster-Eligible on or before February 14, 2022 must have received their Booster by March 1, 2022, and those who are Booster-Eligible after February 14, 2022 must receive it within 15 days after they become eligible.

   And consistent with updated CDPH "Health Care Worker Vaccine Requirement" guidance (linked below in Section 6(b)), such Personnel who provide proof of COVID-19 infection after being Vaccinated with a Complete Initial Series (a "Recent Pre-Booster Infection") may defer Booster administration under this subsection for up to 90 days from the date of their first positive COVID-19 test or clinical diagnosis, which in some situations may extend the deadline for receipt of a Booster beyond March 1, 2022. Such Personnel who are not eligible for a Booster by March 1, 2022 must be in compliance no later than 15 days after the timeframe specified in this paragraph for receiving the Booster. Personnel with a deferral due to a proven COVID-19 infection must be in compliance no later than 15 days after the expiration of their deferral.

ii. As of September 30, 2021, Personnel who routinely work onsite in High-Risk Settings must have received their first dose of a one-dose COVID-19 vaccine regimen or their second dose of a two-dose COVID-19 vaccine regimen authorized to prevent COVID-19 by the FDA, including by way of an emergency use authorization, or by the World Health Organization. Until such Personnel are Vaccinated with a Complete Initial Series, they are subject to at least the minimum public health and safety requirements in subsection (a)(iv) below. As of March 1, 2022, Personnel who routinely work onsite in High-Risk Settings must, within 15 days of being Booster-Eligible, receive a Booster. For clarity, those who are Booster-Eligible on or before February 14, 2022 must have received their Booster by March 1, 2022, and those who are Booster-Eligible after February 14, 2022 must receive it within 15 days after they become eligible. Personnel who are required by this subsection 6(a)(ii) to receive a Booster may use the Recent Pre-Booster Infection deferral described above in subsection 6(a)(i)(3) and must be in compliance no later than 15 days after the expiration of the deferral described in that subsection.

For clarity, Personnel who routinely work onsite in High-Risk Settings and subject to this subsection 6(a)(ii) includes firefighters, paramedics, emergency medical technicians (EMTs), and jail staff subject to CDPH's State and Local Correctional Facilities and Detention Centers Health Care Worker Vaccination Requirement (available at: https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Correctional-Facilities-and-Detention-Centers-Health-Care-Worker-Vaccination-Order.aspx). Notwithstanding the foregoing, Personnel who routinely work onsite at homeless shelters (other than congregate living health facilities) are strongly recommended (but not required) to be Up-to-Date on Vaccination when they are Booster-Eligible.

For purposes only of this subsection (ii), firefighters, paramedics, and EMTs, have until June 30, 2022 to receive a Booster, or if they are not yet eligible before that date, then within 15 days of being Booster-Eligible. Until such firefighters, paramedics, and EMTs receive a Booster, they must be Vaccinated with a Complete Initial Series, free of any COVID-19 symptom, wear a Well-Fitted Mask, and have a negative Test in the manner required by subsection (iv)(1) below, to continue to work in a High-Risk Setting.

iii. Businesses and governmental entities with Personnel who are not permanently stationed or regularly assigned to a High-Risk Setting but who in the course of their duties may enter or work in High-Risk Settings on an intermittent or occasional basis or for short periods of time—including police, other law enforcement, and attorneys who enter jail settings or other High-Risk Settings as part of their work—are required to (1) ascertain vaccination status of all such Personnel and (2) ensure that before entering or working in any High-Risk Setting, all such Personnel are Vaccinated with a Complete Initial Series with any vaccine authorized to prevent COVID-19 by the FDA, including by way of an emergency use authorization, or by the World Health Organization, unless exempt under subsection (d) below. Additionally, as of September 29, 2021, all such Personnel must have received their first dose of a one-dose COVID-19 vaccine regimen or their second dose of a two-dose COVID-19 vaccine regimen authorized to prevent COVID-19 by the FDA, including by way of an emergency use authorization, or by the World Health Organization. Until such Personnel are Vaccinated with a Complete Initial Series, they are subject to at least the minimum public health and safety requirements in subsection (a)(iv) below. Personnel who are not permanently stationed or regularly assigned to a High-Risk Setting but 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 are strongly recommended (but not required) to receive a Booster when they are Booster-Eligible. For clarity, Personnel subject to this subsection (a)(iii) who have not received their Booster but are Vaccinated with a Complete Initial series are not subject to the health and safety requirements in subsection (a)(iv) below, but must follow the Face

Covering Requirements and any other applicable federal, state, or local requirements.

iv. All Businesses and governmental entities subject to this Section 6 must require any Personnel who routinely work onsite at a High-Risk Setting and are exempt or who are otherwise not Up-to-Date on Vaccination (for clarity, the reference to these Personnel means any person who is Booster-Eligible for but not yet received a Booster) to comply with at least the following public health and safety measures:

1. get Tested for COVID-19 at least once a week—and at least twice a week for Personnel who are in general acute care hospitals, skilled nursing facilities, intermediate care facilities, and jails—using either a nucleic acid (including polymerase chain reaction (PCR)) or antigen test; and

2. at all times at the worksite in the High-Risk Setting wear a face covering in compliance with the State Public Health Officer Order of July 26, 2021 ("CDPH Vaccination Status Order"), available at https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Unvaccinated-Workers-In-High-Risk-Settings.aspx.

   Because of the COVID-19 risks to any exempt Personnel who are not Up-to-Date on Vaccination, the High-Risk Setting must provide such Personnel, on request, with a well-fitting non-vented N95 respirator and strongly encourage such Personnel to wear that respirator at all times when working with patients, residents, clients, or incarcerated people.

   Regular testing and masking as required under this Section 6 are not as protective of public health as being Up-to-Date on Vaccination in helping prevent transmission of COVID-19; accordingly, those measures are a minimum safety requirement for exempt Personnel in High-Risk Settings. Businesses and governmental entities subject to this Section 6 may require additional safety measures for such Personnel. For example, factors a Business or governmental entity may consider in determining appropriate safety measures for exempt Personnel include, but are not limited to:

   a) Whether the Personnel will place other people at risk of transmission of COVID-19 because they are required to come into contact (including on an emergency basis) with other Personnel or with persons whose vaccination status is unknown, who are not yet eligible for the vaccine, or who are members of a vulnerable population (*e.g.*, the elderly, incarcerated people, and acute care patients);

   b) The type and frequency of testing available to the Personnel and whether the Business or governmental entity has the ability to provide

testing to Personnel, without relying on public health resources, and track the requisite testing;

c) Whether the Business or governmental entity can ensure compliance with the mask mandate whenever the Personnel are around other people in the workplace; and

d) Whether the proposed accommodation imposes an undue burden because it is costly, infringes on other Personnel's job rights or benefits, compromises workplace safety, decreases workplace efficiency, or requires other Personnel to do more than their share of potentially hazardous or burdensome work.

Nothing under the Order limits the ability of a Business or governmental entity under applicable law to determine whether they are unable to offer a reasonable accommodation to unvaccinated Personnel with an approved exemption and to exclude such exempt Personnel from a High-Risk Setting.

v. All Businesses and governmental entities subject to this Section 6 must, consistent with applicable privacy laws and regulations, maintain records of employee vaccination or exemption status.

vi. All Businesses and governmental entities subject to this Section 6 must provide these records to the Health Officer or other public health authorities promptly upon request, and in any event no later than the next business day after receiving the request.

vii. This mandated vaccination schedule allows Businesses, governmental entities, and affected Personnel adequate time to comply with this Order. In the interest of protecting residents of High-Risk Settings, Personnel, and their families, Businesses, governmental entities, and affected Personnel are strongly urged to meet these vaccination requirements as soon as possible.

For clarity, this requirement applies to Personnel in other buildings in a site containing a High-Risk Setting, such as a campus or other similar grouping of related buildings, where such Personnel do any of the following: (i) access the acute care or patient, resident, client, or incarcerated person areas of the High-Risk Setting; or (ii) work in-person with patients, residents, clients, or incarcerated people who visit those areas. All people in San Francisco who work in a clinical setting with a population that is more vulnerable to COVID-19 are strongly urged to be Up-to-Date on Vaccination, including receiving a Booster as soon as Booster-Eligible.

If a person covered by the requirements of this Section 6 to be Up-to-Date on Vaccination recently had COVID-19 when that person would otherwise have been Booster-Eligible based on the period since becoming Vaccinated with a Complete

Initial Series, then that person should try to obtain the Booster as soon as possible at least 10 days after recovering and ending isolation. But to continue working in the High-Risk Setting that person does not need to receive the Booster until 30 days after recovering from infection and discontinuing isolation, unless a healthcare provider recommends in a note that the Booster be delayed for a longer specified period.

b. CDPH Requirements For Adult Care Facilities, Direct Care Workers, Other Health Care Workers, and Pharmacists. Businesses and governmental entities with Personnel in certain types of facilities and contexts, including those that provide health care, certain other care services, services in congregate settings, and the Personnel who work in those settings must comply with the following CDPH Orders and All Facilities Letters, including as they are updated in the future, which require Personnel of such Businesses and governmental entities to be Up-to-Date on Vaccination, including receipt of a Booster when Booster-Eligible, unless exempt under those Orders and All Facilities Letters by the deadlines listed in each order or letter:

"Adult Care Facilities and Direct Care Worker Vaccine Requirement", updated February 22, 2022, available online at www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Adult-Care-Facilities-and-Direct-Care-Worker-Vaccine-Requirement.aspx

"Health Care Worker Vaccine Requirement", updated February 22, 2022, available online at www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Health-Care-Worker-Vaccine-Requirement.aspx

"Coronavirus Disease 2019 (COVID-19) Testing, Vaccination Verification and Personal Protective Equipment for Health Care Personnel (HCP) at Health Care Facilities" (AFL 21-29.3), updated February 22, 2022, available online at www.cdph.ca.gov/Programs/CHCQ/LCP/Pages/AFL-21-29.aspx

"Coronavirus Disease 2019 (COVID-19) Testing, Vaccination Verification and Personal Protective Equipment for Health Care Personnel (HCP) at the Various Types of Intermediate Care Facilities" (AFL 21-30.3), updated February 22, 2022, available online at www.cdph.ca.gov/Programs/CHCQ/LCP/Pages/AFL-21-30.aspx

"Coronavirus Disease 2019 (COVID-19) Vaccine Requirement for Healthcare Personnel (HCP)" (AFL 21-34.3), updated February 22, 2022, available online at www.cdph.ca.gov/Programs/CHCQ/LCP/Pages/AFL-21-34.aspx.

c. Dental Offices. Personnel who provide healthcare in dental offices are considered to provide care in "Clinics & Doctor Offices (including behavioral health, surgical)" under the following CDPH order and must comply with the requirements in that order: "Health Care Worker Vaccine Requirement", updated February 22, 2022, available online at www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-

of-the-State-Public-Health-Officer-Health-Care-Worker-Vaccine-Requirement.aspx.

d. Limited Exemptions. Personnel covered by this Section 6 may be exempt from the vaccination requirements under this section only upon providing the requesting Business or governmental entity a declination form stating either of the following: (1) the individual is declining vaccination based on Religious Beliefs or (2) the individual is excused from receiving any COVID-19 vaccine due to Qualifying Medical Reasons. A sample ascertainment and declination form is available online at www.sfdph.org/dph/covid-19/files/declination.pdf. As to declinations for Qualifying Medical Reasons, to be eligible for this exemption Personnel must also provide to their employer or the Business a written statement signed by a physician, nurse practitioner, or other licensed medical professional practicing under the license of a physician stating that the individual qualifies for the exemption (but the statement should not describe the underlying medical condition or disability) and indicating the probable duration of the individual's inability to receive the vaccine (or if the duration is unknown or permanent, so indicate). As to declinations based on Religious Beliefs, a Business or governmental entity may seek additional information as allowed or required by applicable law to determine whether Personnel have a qualifying Religious Belief. Personnel who qualify for and are granted by the employing Business or governmental entity an exemption due to Religious Beliefs or Qualifying Medical Reasons, as provided above, must still follow at least the minimum health and safety requirements in subsection (a)(iv), above. Nothing in this Order is intended to limit any Business's or governmental entity's ability under applicable law to determine whether they are able to offer a reasonable accommodation to Personnel with an approved exemption. Because testing and masking is not as effective as being Up-to-Date on Vaccination at preventing the spread of COVID-19, a Business may determine that the minimum requirements in subsection (a)(iv) above are not sufficient to protect the health and safety of people in High-Risk Settings.

e. Record Keeping Requirements. Businesses or governmental entities subject to this Section 6 must maintain records with following information:

   i. For Personnel who are Vaccinated with a Complete Initial Series, and also for Personnel where being Up-to-Date on Vaccination is required by this Order: (1) full name and date of birth; (2) vaccine manufacturer; and (3) date of vaccine administration (for first dose and, if applicable, all subsequent doses required by this Order). Nothing in this subsection is intended to prevent an employer from requesting additional information or documentation to verify vaccination status, to the extent permissible under the law.

   ii. For unvaccinated Personnel: signed declination forms with written health care provider's statement where applicable, as described in subsection (d) above.

f. Compliance with CDPH Orders. In addition to the requirements set forth above:

i. Until any more health protective requirements in this section take effect, Businesses and governmental entities with Personnel in High-Risk Settings must comply with the requirements of the CDPH Vaccination Status Order; and

ii. Businesses and governmental entities with Personnel in adult care facilities and Other Health Care Settings—as that term is defined in the CDPH Vaccination Status Order—must be in full compliance with the requirements of the CDPH Vaccination Status Order.

iii. Businesses and governmental entities with Personnel who provide services or work in facilities covered by the State Public Health Officer Order of August 5, 2021, updated most recently on February 22, 2022 (titled "Health Care Worker Vaccine Requirement"), must comply with the requirements of that order, including as that order may be amended in the future. See www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Health-Care-Worker-Vaccine-Requirement.aspx.

g. Cooperation with Public Health Authorities. Businesses or governmental entities with Personnel subject to this Section 6 must cooperate with Health Officer or DPH requests for records, documents, or other information regarding the Business or governmental entity's implementation of these vaccination requirements. This cooperation includes, but is not limited to, identifying all jobs or positions within the organization and describing: (1) whether a given job or position is subject to the vaccination requirements of this Section 6, (2) how the Business or governmental entity determined a job or position is subject to vaccination requirements of this Section 6, and (3) how the Business or governmental entity is ensuring full compliance with the vaccination requirements set forth in this Section 6. Complete responses to these requests must be provided to the Health Officer or DPH promptly upon request, and in any event within three business days after receiving the request.

h. Chart. For convenience of reference, a chart summarizing which settings and Personnel are subject to which state and local vaccination requirements is available at https://www.sfdph.org/dph/alerts/files/C19-07-State-and-Local-Mandates-Chart.pdf.

7. Mega-Events. All Businesses, governmental entities, and other organizations hosting Mega-Events, including when held at schools or under Programs for Children and Youth as provided in Section 5 above, are strongly urged (but no longer required) to continue to follow the recommendations in the State's Post-Blueprint Guidance for Mega-Events, available online at www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Beyond-Blueprint-Framework.aspx, including requiring patrons and staff to either show proof of being Vaccinated with a Complete Initial Series or having received a negative COVID-19 Test as a condition to entry for indoor Mega-Events.

8. COVID-19 Health Indicators. The City will, for the time being, continue to make publicly available on its website updated data on COVID-19 case rates, hospitalizations

and vaccination rates. That information can be found online at https://sf.gov/resource/2021/covid-19-data-and-reports. The Health Officer will monitor this data, along with other data and scientific evidence, in determining whether to modify or rescind this Order, as further described in Section 2(a) above.

9. Incorporation of State and Local Emergency Proclamations and Federal and State Health Orders. The Health Officer is issuing this Order in accordance with, and incorporates by reference, the emergency proclamations and other federal, state, and local orders and other pandemic-related orders described below in this Section. But this Order also functions independent of those emergency proclamations and other actions, and if any State, federal, or local emergency declaration, or any State or federal order or other guidance, is repealed, this Order remains in full effect in accordance with its terms (subject to Section 13 below).

   a. State and Local Emergency Proclamations. This Order is issued in accordance with, and incorporates by reference, the March 4, 2020 Proclamation of a State of Emergency issued by the Governor, the February 25, 2020 Proclamation by the Mayor Declaring the Existence of a Local Emergency, and the March 6, 2020 Declaration of Local Health Emergency Regarding Novel Coronavirus 2019 (COVID-19) issued by the Health Officer, as each of them have been and may be modified, extended, or supplemented.

   b. State Health Orders. This Order is also issued in light of the various orders, directives, rules, and regulations of the State, including, but not limited to, those of the State's Public Health Officer and Cal/OSHA. The State has expressly acknowledged that local health officers have authority to establish and implement public health measures within their respective jurisdictions that are more restrictive than those implemented by the State Public Health Officer.

   c. Federal Orders. This Order is further issued in light of federal emergency declarations and orders, including, but not limited to, the January 20, 2021 Executive Order on Protecting the Federal Workforce and Requiring Mask-Wearing, which requires all individuals in Federal buildings and on Federal land to wear masks, maintain physical distance, and adhere to other public health measures, and the February 2, 2021 Order of the CDC, which requires use of masks on public transportation, as each of them may have been and may be modified, extended or supplemented.

10. Obligation to Follow Stricter Requirements of Orders.

    Based on local health conditions, this Order includes a limited number of health and safety restrictions that are more stringent or more detailed than those contained under State orders. Where a conflict exists between this Order and any state or federal public health order related to the COVID-19 pandemic, the most restrictive provision (*i.e.*, the more protective of public health) controls. Consistent with California Health and Safety Code section 131080 and the Health Officer Practice Guide for Communicable Disease Control in California, except where the State Health Officer may issue an order expressly

directed at this Order and based on a finding that a provision of this Order constitutes a menace to public health, any more restrictive measures in this Order continue to apply and control in this County.

11. Obligation to Follow Health Officer Orders and Directives and Mandatory State Guidance.

In addition to complying with all provisions of this Order, all individuals and entities, including all Businesses and governmental entities, must also follow any applicable orders and directives issued by the Health Officer (available online at www.sfdph.org/healthorders and www.sfdph.org/directives) and any applicable mandatory guidance issued by the State Health Officer or California Department of Public Health. To the extent that provisions in the orders or directives of the Health Officer and the mandatory guidance of the State conflict, the more restrictive provisions (*i.e.*, the more protective of public health) apply. In the event of a conflict between provisions of any previously-issued Health Officer order or directive and this Order, this Order controls over the conflicting provisions of the other Health Officer order or directive.

12. Enforcement.

Under Government Code sections 26602 and 41601 and Health and Safety Code section 101029, the Health Officer requests that the Sheriff and the Chief of Police in the County ensure compliance with and enforce this Order. The violation of any provision of this Order (including, without limitation, any health directives) constitutes an imminent threat and immediate menace to public health, constitutes a public nuisance, and is punishable by fine, imprisonment, or both. DPH is authorized to respond to such public nuisances by issuing Notice(s) of Violation and ordering premises vacated and closed until the owner, tenant, or manager submits a written plan to eliminate all violations and DPH finds that plan satisfactory. Such Notice(s) of Violation and orders to vacate and close may be issued based on a written report made by any City employees writing the report within the scope of their duty. DPH must give notice of such orders to vacate and close to the Chief of Police or the Chief's designee to be executed and enforced by officers in the same manner as provided by San Francisco Health Code section 597. As a condition of allowing a Business to reopen, DPH may impose additional restrictions and requirements on the Business as DPH deems appropriate to reduce transmission risks, beyond those required by this Order and other applicable health orders and directives.

13. Effective Date.

This Order is effective at 12:01 a.m. on June 15, 2021 and will continue, as updated, to be in effect until the Health Officer rescinds, supersedes, or amends it in writing. The changes made in the March 31, 2022 update are effective at 12:01 a.m. on April 1, 2022.

ORDER OF THE HEALTH OFFICER No. C19-07y (updated)

14. Relation to Other Orders of the San Francisco Health Officer.

At 12:01 a.m. on April 1, 2022, this Order revises and entirely replaces the prior update to Health Officer Order No. C19-07y (issued March 10, 2022). Leading up to and in connection with the effective date of this Order, the Health Officer has rescinded a number of other orders and directives relating to COVID-19, including those listed in the Health Officer's Omnibus Rescission of Health Officer Orders and Directives, dated June 11, 2021. On and after the effective date of this Order, the following orders and directives of the Health Officer shall continue in full force and effect: Order Nos. C19-16 (hospital patient data sharing), C19-18 (vaccine data reporting), C19-19 (minor consent to vaccination), and C19-20 (test collection sites); and the directives that this Order references in Sections 3 and 5, as the Health Officer may separately amend or later terminate any of them. Health Officer Order No. C19-15 was also reinstated on August 19, 2021, and remains in effect as outlined in that order (including as it is amended in the future). Also, this Order also does not alter the end date of any other Health Officer order or directive having its own end date or that continues indefinitely.

15. Copies.

The County must promptly provide copies of this Order as follows: (1) by posting on the DPH website (www.sfdph.org/healthorders); (2) by posting at City Hall, located at 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102; and (3) by providing to any member of the public requesting a copy.

16. Severability.

If a court holds any provision of this Order or its application to any person or circumstance to be invalid, then the remainder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect. To this end, the provisions of this Order are severable.

IT IS SO ORDERED:

Susan Philip, MD, MPH,
Health Officer of the
City and County of San Francisco

Dated: March 31, 2022

Attachment:
- Appendix A – Face Covering Requirements (last updated March 31, 2022)

Order No. C19-07y – Appendix A: Face Covering Requirements

[March 31, 2022]

1. General Recommendation to Wear a Well-Fitted Mask; Requirement in Limited Indoor Settings.

The intent of this Order and the masking rules in this Appendix is to align with the masking rules and recommendations issued by the State of California and the federal government, with this Appendix providing additional information for specific situations to help Businesses, governmental entities, and individuals comply with those rules and recommendations and make informed choices to improve safety during the pandemic.

Everyone, including even people who are Vaccinated with a Complete Initial Series or are Up-to-Date on Vaccination (meaning they have completed their initial course of vaccination and have received a Booster once eligible for a Booster, as further defined in Section 1 of the body of the Order), is recommended to wear a Well-Fitted Mask in indoor public settings in the following situations:

- When an individual wants added protection based on individual risk tolerance, for example, when indoors with people whose vaccination status is unknown. People should respect an individual's decision to wear face coverings even in settings where they are not required, and no Business or other person should take an adverse action against individuals who chose to wear a face covering to protect their health.
- When there is a higher risk of community spread and infection, such as during surges caused by future variants.
- When an individual, or someone with whom an individual lives or works, is at a higher risk of a negative health outcome, such as older and immuno-compromised individuals.

Additional Face Covering Requirements may be imposed elsewhere in this Order or by state or federal rules or regulations.

Also, everyone is required to wear a Well-Fitted Mask, regardless of vaccination status, in the following indoor settings: public transportation and public transportation facilities; ; emergency shelters and cooling and heating centers; High-Risk Settings (as defined in Section 1 of the Order); health care and other long-term care and adult and senior care facilities where masking is required by regulatory orders and rules; and anywhere else that federal or state health orders require doing so, as described in Section 3(b)(i) of the Order and this Appendix. For public transportation and public transportation facilities, masks are required indoors under this Order as well as under federal law (with the United States Transportation Security Administration recently announcing its extension of an indoor mask mandate for public transit through at least April 18, 2022) and the CDPH Guidance for the Use of Face Masks.

Employees may be subject to additional restrictions or be required to provide additional documentation under state or federal laws and regulations, including Cal/OSHA's regulations. Businesses and other entities must adhere to applicable Cal/OSHA regulations relating to COVID-19 health and safety measures in the workplace and should frequently check for updates to those regulations such as by checking online at www.dir.ca.gov/dosh/coronavirus/covid19faqs.html.

And as provided in Section 6 below, individual Businesses, governmental entities, or venue operators or hosts may impose requirements regarding masking, in addition to those in this Order, that are more protective of public health.

2. Ventilation.

Businesses and operators of other public and private facilities where people may remove their Well-Fitted Masks indoors are encouraged to use at least one of the following ventilation strategies: (1) all available windows and doors accessible to fresh outdoor air are kept open as long as air quality and weather conditions permit; (2) fully operational HVAC system; or (3) appropriately sized portable air cleaners in each room. For clarity, if windows and doors are closed due to air quality or weather conditions, then a Business or operator of a public or private facility should whenever feasible follow at least one of remaining ventilation strategies before allowing people to remove their Well-Fitted Masks under this Order.

3. Proof of Vaccination.

Businesses, governmental entities, and other venue operators or hosts are encouraged to require people to provide proof that they are Vaccinated with a Complete Initial Series or are Up-to-Date on Vaccination (including receipt of a Booster once Booster-Eligible) before allowing people to remove their Well-Fitted Mask indoors. And as provided in the Order, each Business, governmental entity, and other entity that is required to confirm proof of being Vaccinated with the Complete Initial Series is strongly urged to implement measures as soon as possible to require its patrons and staff (as distinct from Personnel) to be Up-to-Date on Vaccination, including requiring them to show proof of receipt of a Booster once they are eligible.

Despite the easing of masking requirements under this update to the Order, Businesses, governmental entities, and other venue operators or hosts may still require all patrons to wear a Well-Fitted Mask in their facilities. And no person can be prevented from wearing a Well-Fitted Mask as a condition of participation in an activity or entry into a Business.

4. Status-Based Exemptions. The following exemptions apply in the limited situations where Well-Fitted Masks are still required under this Order.

a. Medical or Safety Exemption. A person does not need to wear a Well-Fitted Mask when they can show: (1) a medical professional has provided a written exemption to the Face Covering Requirement, based on the person's medical condition, other health concern, or disability; or (2) that they are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication; or (3) wearing a Well-Fitted Mask while working would create a risk to the person related to their work as determined by local, state, or federal regulators or workplace safety guidelines. In accordance with CDPH and CDC guidelines, if a person is required by this Order to wear a Well-Fitted Mask but is exempt from wearing one under this paragraph, they still must wear an alternative face covering, such as a face shield with a drape on the bottom edge, unless they can show either: (1) a medical professional has provided a written exemption to this alternative face covering requirement, based on the person's medical condition, other health concern, or disability; or (2) wearing an alternative face covering while working would create a risk to the person related to their work as determined by local, state, or federal regulators or workplace safety guidelines.

   A Well-Fitted Mask should also not be used by anyone who has trouble breathing or is unconscious, incapacitated, or otherwise unable to remove the Well-Fitted Mask without assistance.

b. Children. In accordance with CDPH and CDC guidelines, any child younger than two years old must not wear a Well-Fitted Mask because of the risk of suffocation. When required to do so by this Order, Children age two to nine years must wear Well-Fitted Masks to the greatest extent feasible. Children age two to nine years may wear an alternative face covering (as that term is described in Section 4(a), above) if their parent or caregiver determines it will improve the child's ability to comply with this Order. Children age two to nine and their accompanying parents or caregivers should not be refused any essential service based on a child's inability to wear a Well-Fitted Mask (for example, if a four-year old child refuses to keep a Well-Fitted Mask on in a grocery store), but the parent or caregiver should when possible take reasonable steps to have the child, when required to do so by this Order, wear a Well-Fitted Mask to protect others and minimize instances when children without Well-Fitted Masks are brought into settings with other people. Parents and caregivers of children age two to nine years must supervise the use of Well-Fitted Masks to ensure safety and avoid misuse. Children must wear face coverings in schools as required under State health rules.

c. Personal Protective Equipment. A person required by this Order to wear a Well-Fitted Mask does not need to do so when wearing personal protective equipment ("PPE") that is more protective than a Well-Fitted Mask, including when required by (i) any workplace policy or (ii) any local, state, or federal law, regulation, or other mandatory guidance. When a person is not required to wear such PPE and in an indoor public setting, they must wear a Well-Fitted Mask or PPE that is more protective unless otherwise exempted under this Order.

5. Activity- and Location-Based Exemptions.

The activity- and location-based exemptions in this Section apply to everyone in the designated settings where this Order requires everyone, regardless of vaccination status, to wear a Well-Fitted Mask. To the extent allowed under Face Covering Requirements and subject to any additional health restrictions a particular Business, governmental entity, or other venue operator or host may impose for a facility or other setting it owns, operates, or controls, people in settings where this Order requires wearing a Well-Fitted Mask are not required do so in any of the following situations:

a. Indoor Public Setting While Alone or With a Member of Household. A person does not need to wear a Well-Fitted Mask when they are alone or with a member of their Household in a public building or completely enclosed space such as an office, and people who are not part of their Household are not likely to be in the same space. If someone who is not part of a person's Household enters the enclosed space, both people must wear a Well-Fitted Mask for the duration of the interaction unless otherwise exempt under Sections 4 and 5 of this Appendix.

b. Active Eating and Drinking. People may remove their Well-Fitted Mask while actively eating or drinking.

c. Showering, Personal Hygiene, or Sleeping. People may remove their Well-Fitted Mask only while showering or actively engaging in personal hygiene that requires removal of the Well-Fitted Mask. People may remove their Well-Fitted Mask while sleeping in indoor public settings.

6. Minimum Requirements; Ability to Adopt More-Restrictive Measures.

This Order establishes the minimum requirements related to indoor masking. Nothing in this Order, including this Appendix A, is intended to reduce any other federal, state, or local legal requirements or otherwise modify them in a way that is less protective of public health, or to limit an individual Business' or governmental entity's choices to take more health protective measures. Businesses or governmental entities may impose further restrictions that are more protective of public health than the minimum requirements under this Order, including, without limitation, requiring patrons or Personnel to be Vaccinated with a Complete Initial Series or Up-to-Date on Vaccination, requiring them to wear a Well-Fitted Mask, or taking other measures that meet their operational needs (such as, by way of example only, mandating that people be Up-to-Date on Vaccination and only allowing a testing alterative if someone has an exemption to vaccination based on Religious Beliefs or a Qualifying Medical Reason.)