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16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA

18 HEALTH FREEDOM DEFENSE FUND,
19 INC., a Wyoming Not-for-Profit Corporation;
20 CALIFORNIA EDUCATORS FOR
21 MEDICAL FREEDOM, an unincorporated
22 association, MIGUEL SOTELO; MARIEL
23 HOWSEPIAN RODRIGUEZ; JEFFREY
24 FUENTES; SANDRA GARCIA; and
25 HOVHANNES SAPONGHIAN; NORMA
26 BRAMBILA;

27 Plaintiffs,

28 v.

ALBERT CARVALHO, in his official
capacity as Superintendent of the Los Angeles
Unified School District; ILEANA DAVOLOS,
in her official capacity as Chief Human
Resources Officer for the Los
Angeles Unified School District; GEORGE
MCKENNA, MONICA GARCIA, SCOTT
SCHMERELSON, NICK MELVOIN, JACKIE
GOLDBERG, KELLY GONEZ, and TANYA
ORTIZ FRANKLIN, in their official capacities
as members of the Los
Angeles Unified School District governing
board.

Defendants.

Case No. 2:21-cv-08688 DSF-
PVCx

Hon. Dale S. Fischer

**DEFENDANTS' REPLY
BRIEF IN SUPPORT OF
THEIR MOTION FOR
JUDGMENT ON THE
PLEADINGS**

Date: September 12, 2022
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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Facing an unprecedented and deadly COVID-19 pandemic, Los Angeles Unified School District (“LAUSD”) has worked diligently to protect the health and safety of its vulnerable community whilst continuing to pursue its mission of providing educational needs to its students. Against this backdrop, Plaintiffs seek to have this Court approve a notion that an employer’s vaccine mandate, issued during a global pandemic, violates either the liberty interests secured by the due process clause of the 14th Amendment, or the equal protection guarantees. However, the law has historically recognized limits to an individual’s right to determine what to do with his or her own body when faced with society’s interest in protecting public health and safety. At no time in modern history has such interests been more compelling than over the last two-and-a half years.

Since the beginning of 2020, COVID-19 has been regarded as a highly transmissible disease that can cause serious illness and death.¹ On 8/26/22 alone, there were 3,694 new COVID-19 reported cases in Los Angeles County, 3,386,161 cases reported over the course of the pandemic, and over 33,000 reported deaths.² The overwhelming consensus amongst the nation’s leading health experts is that COVID-19 vaccines are safe and effective in preventing serious illness and death from this highly contagious virus.³

With these statistics in mind, and the nationwide push to get students back in the classroom and teachers back to work, LAUSD determined employee vaccination requirements were necessary to meet its constitutionally mandated obligations to protect

¹ See <https://covid19who.int> (WHO Coronavirus Dashboard) (as of August 26, 2022, there have been 596,873,121 confirmed cases of COVID-19 globally, including 6,459,684 deaths, and 12,449,443,718 vaccines does administered. Webpage attached as Ex. A to Request for Judicial Notice (“RFN”), filed concurrently herewith. See also <https://covid19.who.int/region/amro/country/us> (In the United States, as of August 2022, there have been 92,739,935 confirmed cases with 1,031,832 deaths, and 599,453,415 vaccines doses administered). See Ex. A RFN.

² <https://publichealth.lacounty.gov/media/coronavirus/data/#>. See Ex. B to RFN.

³ https://www.cdc.gov/coronavirus/2019-ncov/vaccines/safety/safety-of-vaccines.html?s_cid=10507:covid%20vaccine%20safety:sem.ga:p:RG:GM:gen:PTN:FY21. Updated August 22, 2022. See Ex. C to RFN.

1 students and staff. Consistent with the recommendations of the U.S. Centers for Disease
 2 Control and Prevention (“CDC”) that all persons over the age of 6 months be vaccinated
 3 (even those previously infected with the virus),⁴ and following consultation with experts
 4 in the field, the LAUSD mandated vaccinations for its employees (“Mandate”) with
 5 exemptions for health and religious reasons.

6 Stopping the spread of COVID-19 amongst some of the most vulnerable
 7 segments of the population within LAUSD public schools is a legitimate government
 8 interest. The Mandate is rationally related to that interest as requiring vaccines for all
 9 LAUSD employees has and remains to be the gold standard for ensuring that schools
 10 and classrooms are not shut down. Vaccinations lower the risk of outbreaks and serious
 11 illness, thereby allowing children to continue to receive in person instruction while
 12 simultaneously protecting the health of vulnerable children and staff and those close to
 13 them.

14 Plaintiffs incorrectly argue that the Mandate should be strictly scrutinized,
 15 arguing that it violates their fundamental rights to refuse government coerced medical
 16 treatment and that the Mandate treats individuals differently based on vaccination
 17 status. Plaintiffs are incorrect. The *overwhelming consensus* amongst both federal and
 18 state courts has been to reject these identical arguments and hold that vaccine mandates
 19 are *not* entitled to a heightened standard of review. Consistent with this growing
 20 precedent, Plaintiffs’ arguments in Opposition to the Motion are unavailing.

21 **II. LEGAL ARGUMENT**

22 **A. As The Mandate Does Not Implicate A Fundamental Right Or Suspect** 23 **Classification, It Must Be Examined Under Rational Basis Review**

24 Plaintiffs argue the Mandate violates their right to refuse unwanted medical
 25 treatment. *See* Dkt. No. 79, at 17:13-15. According to Plaintiffs, this right falls within a
 26 select handful of *fundamental* rights under the 14th Amendment, relying on a line of
 27

28 ⁴ *See Id.* (Ex. C to RFN).

1 inapposite decisions. Critically, Plaintiffs fail to identify even a *single* case holding that
 2 COVID-19 vaccine requirements implicate a fundamental right or applying strict
 3 scrutiny to a vaccine mandate.

4 Although Plaintiffs endeavor to downplay and distinguish *Jacobson v. Mass.*, 197
 5 U.S. 11 (1905),⁵ they concede that it is still *binding* precedent. *See* Dkt. No 79, 9:17-
 6 20. They fail to acknowledge, however, that federal courts across the country have
 7 consistently relied on *Jacobson* in concluding that *there is no fundamental right to*
 8 *refuse a COVID-19 vaccination*.

9 For instance, in rejecting a group of health care workers' request to enjoin the
 10 state from enforcing a vaccination mandate, one federal court noted: "[I]n the context
 11 of COVID-19, courts across the county have concluded that *Jacobson* established there
 12 is no fundamental right to refuse vaccination." *Williams v. Brown*, 567 F.Supp.3d 1213,
 13 1226 (D. Or. 2021) (citing *Klaassen v. Tr. of Ind. Univ.*, 7 F.4th 592, 593 (7th Cir. 2021)
 14 which held, "[G]iven *Jacobson v. Massachusetts*,...there can't be a constitutional
 15 problem with vaccination against SARS-CoV-2."). Relying on *Jacobson*, numerous
 16 other federal courts across the country have consistently reached the same conclusion.⁶
 17

18 ⁵ Plaintiffs premise their case on the unfounded theory that the COVID-19 vaccines are
 19 actually "treatments" as opposed to vaccines because they do not provide complete
 20 immunity from the virus. Not only is this argument contrary to the CDC's definition of
 21 vaccines (as Plaintiffs' highlight in the Opposition to somehow undermine the CDC)
 22 but is not supported by any admissible evidence. This argument also ignores the fact
 23 that no vaccine provides complete immunity (i.e., the flu vaccine) yet are still
 24 considered vaccines as opposed to treatments. In assessing a similar argument, i.e., that
 25 the COVID-19 vaccine does not reduce transmission, the Court in *Halgren v. City of*
 26 *Naperville* correctly noted that, even if the evidence does not establish that COVID-19
 27 vaccines do not reduce the degree of viral transmission, "the question of whether they
 28 *might reduce the rate of transmission* still constitutes an issue falling within the bounds
 of rational speculation...[T]hat is all that the rational basis test requires." 577 F.Supp.3d
 700, 743 (N.D. Ill. 2021).

⁶ *See also* *Norris v. Stanley*, 567 F. Supp. 3d 818, 821 (W.D. Mich. 2021) ("there is no
 fundamental right to decline a vaccination."); *Johnson v. Brown*, 567 F. Supp. 3d 1230,
 1250 (D. Or. 2021) ("the right to refuse vaccination is not deeply rooted in this nation's
 history. In fact, the opposite is true."); *Valdez v. Grisham*, 559 F.Supp.3d 1161, 1173
 (D.N.M. 2021)("federal courts have consistently held that [COVID-19] vaccine
 mandates do not implicate a fundamental right..."); *Harris v. Univ. of Mass., Lowell*,
 557 F. Supp. 3d 304, 312 (D. Mass. 2021) (concluding students lacked a fundamental
 right because "the Supreme Court has settled that it is within the police power of a state
 to provide for compulsory vaccination."); *Doe #1-#14 v. Austin*, 572 F.Supp.3d 1224,

1 As the court in *Halgren v. City of Naperville*, aptly concluded: “[W]hile the Court
2 agrees that Plaintiffs clearly possess a *significant* liberty interest in refusing coercive
3 medical treatment...they fail to identify a *fundamental* liberty interest to warrant strict
4 scrutiny under prevailing case law.” 577 F.Supp.3d 700, 728 (N.D. Ill. 2021) (emphasis
5 added).

6 Based on the absence of a fundamental right to refuse vaccination, these same
7 courts have consistently held that challenges to vaccination mandates are properly
8 scrutinized under rational basis review.⁷ As summarized by the *Johnson* court:

9 “[I]n sum, under *Jacobson* followed by over a century's worth of rulings
10 with the consistent use of rational basis review to assess mandatory
11 vaccination measure, rational basis review applies to Plaintiffs' claims in
12 this case.”

13 567 F.Supp.3d at 1287 (internal quotation marks and citations omitted).

14 Notably, in a case much like this one, the Central District of California rejected
15 a substantive due process claim where a plaintiff sought relief from his employer's
16 vaccination requirement. *Kheriaty v. Regents of the Univ. of Cal.*, WL 4714664 (C.D.
17 Cal. 2021). Relying on *Jacobson* and the authorities discussed above, and distinguishing
18 the same authorities Plaintiffs rely on here, the court confirmed that there is no
19

20 1239 (N.D. Fla. 2021) (finding *no fundamental right at stake* in challenge to the
21 military's vaccine mandate and, citing *Washington v. Glucksberg*, 521 U.S. 702, 720
22 (1997) (“[B]ecause substantive due process involves enumerated rights, courts must be
23 “reluctant to expand the concept.”); *Rodriguez-Velez v. Pierluisi-Urrutia*, WL 5072017,
at *6 (D.P.R. Nov. 1, 2021) (holding “the mandate does not involve a plain, palpable
invasion of rights secured by the constitution” and applying rational basis review to the
plaintiffs' substantive due process claims.)

24 ⁷ See, e.g., *Kheriaty*, WL 4714664, at *6 (“*Jacobson* ‘essentially applied rational basis
25 review.’” quoting *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 70
26 (2020) (Gorsuch, J. concurring)); *Norris*, 567 F. Supp. 3d at 821 (“Because this Court
27 finds no fundamental right is implicated in the present matter, the Court must apply a
28 rational basis standard.”); *Does v. Mills*, 566 F. Supp. 3d 34 (D. Me. 2021) (applying
rational basis review to constitutional challenge to COVID-19 vaccine requirements for
healthcare workers.); *Valdez*, 559 F. Supp.3d at 1173 (“federal courts have consistently
held that vaccine mandates do not implicate a fundamental right and that rational basis
review therefore applies in determining the constitutionality of such mandates.”).

1 fundamental right to refuse vaccination. Specifically, in distinguishing a
 2 constitutionally protected liberty interest from a *fundamental right*, the court concluded,
 3 the vaccination requirement at issue “clearly implicates different liberty interest from
 4 *Cruzan*.” *Kheriaty*, at *5. The same is true here.

5
 6 In specifically addressing the impact of *Cruzan*, *Glucksberg* and *Harper* (the
 7 three cases relied on by Plaintiffs), the court in *Halgren*, stressed, “controlling precedent
 8 *requires* that this Court discount the impact of *Cruzan*, *Glucksberg* and *Harper*, and
 9 apply rational basis review to Plaintiff’s constitutional challenges.” 577 F.Supp.3d at
 10 733 (emphasis added). Although these cases support a protected liberty interest in
 11 refusing government coerced medical treatment, these cases “do not establish that
 12 Plaintiff’s due process interests...trigger “fundamental” classification (and thus strict
 13 scrutiny) under the law.” *Id*.

14 As with substantive due process, courts have routinely rejected the argument that
 15 vaccine mandates will trigger heightened scrutiny under the Equal Protection Clause
 16 and have instead applied rational basis review. *Williams*, 567 F.Supp.3d at 1227 citing
 17 *Kheriaty*, WL 4714664, at *7 (rejecting heightened scrutiny based on classification of
 18 "individuals who have vaccine-induced immunity and individuals who have infection-
 19 induced immunity,"); *see also Norris*, 567 F. Supp. 3d at 820-823 (finding no suspect
 20 classification or fundamental right implicated by a generally applicable
 21 vaccine mandate).

22 Pursuant to this extensive authority blatantly overlooked in the Opposition,
 23 no fundamental right or suspect classification is implicated by the Mandate; therefore,
 24 rational basis is the appropriate constitutional standard of review.

25 **1. Plaintiffs’ Substantive Due Process Claim Fails Because the** 26 **Mandate Easily Survives Rational Basis Review**

27 Rational-basis review is a “highly deferential” review under which plaintiffs have
 28 the burden of “negat[ing] every conceivable basis that might support [the Mandate],

1 even if that basis has no foundation in the record.” *Heller v. Doe*, 509 U.S. 312, 320-21
 2 (1993). In other words, there must be no “reasonable conceivable state of facts that
 3 would provide rational basis for the [Mandate].” *FCC v. Beach Commc’ns, Inc.*, 508
 4 U.S. 307, 314 (1993). A “statute survives rational basis review even if it seems unwise
 5 or if the rationale for it seems tenuous.” *Roman v. Evans*, 517 U.S. 620, 632 (1996).

6 Plaintiffs fail to meet their extraordinary burden of showing the Mandate lacks
 7 any rationality. First, Plaintiffs do not dispute that the COVID-19 pandemic remains an
 8 important public health crisis. *See* Dkt. No. 65, at 9:21-22:14. Second, Plaintiffs
 9 acknowledge that the vaccines can mitigate the more dangerous symptoms of COVID-
 10 19. *See* Dkt. No. 65, at 15:3-14. Third, Plaintiffs’ attacks on the vaccines’ safety and
 11 efficacy are not only premised on unfounded theories and *inadmissible* “evidence,” but
 12 are directly at odds with the leading governmental authorities’ position on vaccines.⁸
 13 (*e.g.*, the CDC recommends that everyone over 6 months of age be vaccinated). Nor do
 14 Plaintiffs genuinely refute that “extensive data supports vaccination as an effective
 15 strategy for preventing severe illness, hospitalization, and death from COVID-19.”
 16 *Rodriguez-Velez*, WL 5072017, at *7 (internal citations omitted). Finally, even though
 17 all LAUSD employees are subject to mandatory vaccination, they may still obtain a
 18 religious or medical exemption, a fact also acknowledged by Plaintiffs. *See* Dkt. No.
 19 65, at 20:7-21:26.

20 Although Defendants *bear no evidentiary burden* to justify the Mandate,⁹ there
 21 can be no doubt that the Mandate is rationally related to a legitimate government
 22

23 ⁸ Plaintiffs do not dispute, with any credible or admissible evidence, the fact that the
 24 COVID-19 vaccines meet the FDA’s “rigorous scientific standards for safety,
 25 effectiveness, and manufacturing quality needed to support approval or authorization of
 26 the vaccine.”⁸ *See Rodriguez-Velez*, WL 5072017 at *7. Nor do Plaintiffs genuinely
 27 refute that, “[E]xtensive data supports vaccination as an effective strategy for
 28 preventing severe illness, hospitalization, and death from COVID-19.” *Id.* (internal
 citations omitted). The FDA is entitled to substantial deference because drug licensing
 decisions involve “scientific determination(s) within the FDA’s “area of expertise.”
Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc. 462 U.S. 87, 103 (1983).

⁹ *See Doe #1-#14*, 572 F.Supp.3d at 1240 (defendants can base their mandate “on
 rational speculation unsupported by evidence or empirical data.” (citing *Beach
 Commc’ns*, 508 U.S. at 315)).

1 interest, namely, reducing the spread of COVID-19 in Los Angeles County public
 2 schools to protect children and staff. The Mandate is rationally related to that interest
 3 as requiring vaccines for all LAUSD employees will and has lowered the risks of
 4 outbreaks at school sites, decreased the severity of the symptoms of those infected and
 5 minimized employee absenteeism, thereby allowing children to continue to learn in
 6 person. *See, e.g. Johnson*, 567 F.Supp.3d at 1252 (holding vaccine requirements “are
 7 rationally related to Defendants' interests in slowing the spread of COVID-19,
 8 protecting Oregon's citizens, protecting children and teachers in schools, and preserving
 9 healthcare resources and protecting patients.”).

10
 11 Plaintiffs challenge the vaccines’ ability to decrease the spread of COVID-19, a
 12 claim that is simply unsupported by any admissible scientific or medical evidence and
 13 is a regurgitation of oft-repeated anti-vax rhetoric.¹⁰ At most, Plaintiffs’ arguments
 14 against the efficacy and safety of the COVID-19 vaccines (including the argument that
 15 the COVID-19 vaccines are actually treatments, and not vaccines), as well as their
 16 challenge to the logic or scientific basis for the Mandate, shows that some experts may
 17 disagree. This does not, however, create a basis to invalidate the Mandate on
 18 constitutional grounds. *See, e.g., Does #1-#14*, 572 F.Supp.3d at 1236, citing *Marsh v.*
 19 *Or. Nat. Res. Council*, 409 U.S. 360, 378 (“When specialists express conflicting views,
 20 an agency must have discretion to rely on the reasonable opinions of its own qualified
 21 experts even if, as an original matter, a court might find contrary views more
 22 persuasive.”). Ultimately, Plaintiffs’ disjointed arguments are insufficient to overcome

23 ¹⁰ Plaintiffs arguments also ignore critical other factors supporting the adoption of the
 24 Mandate such as: waning immunity experienced by both those with natural immunity
 25 and the vaccinated; the potential additional protection afforded to those with both
 26 natural immunity and who are vaccinated; that the amount of viral load can affect
 27 transmissibility with vaccines known to lower that load in the infected; or the fact that
 28 the so-called “peer reviewed” treatments identified in the Opposition, unlike the
 vaccines, would have low to no impact on transmissibility (amongst a number of other
 factors too numerous to list herein). As to potential hybrid immunity, the *Halgren* court
 noted, “Plaintiffs fail to show that the benefits of vaccination on top of natural immunity
 (and thus combining both forms of protection via hybrid immunity) exceeds the bounds
 of rational speculation as a “conceivable basis” for the mandates under the rational
 review test.” 577 F.Supp.3d at 745.

1 rational basis review and judgment should be entered in Defendants' favor as to the first
2 cause of action.

3 **2. Plaintiff's Equal Protection Claim Fails Because the Mandate**
4 **Easily Survives Rational Basis Review**

5 "A statutory classification fails rational-basis review only when it `rests on
6 grounds wholly irrelevant to the achievement of the State's objective.'" *Heller*, 509 U.S.
7 at 324 (quoting *Holt Civic Club v. City of Tuscaloosa*, 439 U.S. 60, 71, 99 (1978).) "In
8 the absence of deprivation of a fundamental right or the existence of a suspect class, the
9 proper standard of review is the rational basis test." *Halgren*, 577 F.Supp.3d at 752
10 (internal quotations and citations omitted). Thus, if there is no suspect class or
11 fundamental right at issue, differential treatment is presumed to be valid, so long as it
12 is "rationally related to a legitimate state interest." *City of Cleburne v. Cleburne Living*
13 *Center, Inc.*, 473 U.S. 432, 439–440. Based on this authority, the Mandate need only
14 survive rational basis review.

15 Under the rational basis test, Plaintiffs fail to show that the Mandate violates
16 equal protection. First, as described above, Plaintiffs cannot show that the rights
17 implicated by the Mandate constitute "fundamental rights" under the Constitution, as
18 courts have *uniformly rejected* the argument that vaccination requirements imposed to
19 protect public health require a heightened level of review. Second, even assuming the
20 Mandate treats groups differently based on their vaccination status, Plaintiffs identify
21 no legal support for the notion that vaccination status, alone, is a traditional suspect (or
22 quasi-suspect) class within the meaning of the Equal Protection Clause. *See, e.g.,*
23 *Halgren*, 577 F.Supp.3d at 753. Plaintiffs must show more than an unconstitutional
24 application as to some (*e.g.*, those with natural immunity), they "must demonstrate that
25 no possible application" of the Mandate is constitutional. *See Doe v. Austin*, 572
26 F.Supp.3d at 1240.

27 Plaintiffs offer no credible evidence demonstrating that *no possible application*
28 *of the Mandate is constitutional*. To the contrary, as the extensive authority cited herein

1 establishes, the Mandate survives constitutional muster and, in fact, is far less broad
 2 than the mandate in *Jacobson*, in that it affects only those employees of the LAUSD
 3 (not the general public). Importantly, policies survive this standard even when they are
 4 “significantly over-inclusive or under-inclusive,” so long as they bear some rational
 5 connection to the policy's goal. *Williams v. Pryor*, 240 F.3d 944, 948 (11th Cir. 2001)
 6 (quoting *Beach Commc’ns*, 508 U.S. at 314.) As a result, the Mandate easily survives
 7 rational basis review and judgment in favor of Defendants should be entered as to
 8 Plaintiffs’ second cause of action.
 9

10 **B. The Mandate Survives Strict Scrutiny Review**

11 Even if this Court rejects the prevailing precedent and finds strict scrutiny is the
 12 required standard of review, the Mandate still withstands Plaintiffs’ constitutional
 13 challenges. A challenged government action subject to strict scrutiny may be upheld if
 14 it is justified by a compelling interest and is narrowly tailored to advance that interest.
 15 *Reed v. Town of Gilbert, Ariz.* 576 U.S. 155, 171. “[F]ew interests are more compelling
 16 than protecting public health and the health against a deadly virus.” *Does 1-6 v. Mills*,
 17 16 F.4th 20, 32 (1st Cir. 2021). Curbing the spread of COVID-19 is “unquestionably a
 18 compelling interest.” *Roman Catholic Diocese of Brooklyn*, 141 S.Ct. 63, 67. The
 19 Mandate is narrowly tailored to advance that interest in that it conforms to prevailing
 20 public health recommendations and affects only employees of the LAUSD while
 21 allowing for exemptions. Narrowly tailored and as a tool to curb the spread of the virus,
 22 the Mandate bears a real and substantial relation to the public health objectives of
 23 LAUSD. As a result, even under a strict scrutiny analysis the Mandate nonetheless
 24 survives Plaintiffs’ constitutional challenges.
 25

26 **C. Plaintiffs’ 3rd - 7th Claims Must Be Dismissed With Prejudice**

27 Rather than addressing the substantive arguments raised in Defendants’ Motion,
 28

1 which address the obvious legal and factual deficiencies of Plaintiffs' 3rd through 7th
2 claims, Plaintiffs represent that they "have agreed to dismissal, *without prejudice*, of
3 those claims." See Dkt. 79, 9:3-6. In fact, as of the drafting of this Reply, *Plaintiffs have*
4 *yet to take any action to dismiss these baseless claims*. Further, as Plaintiffs failed to
5 substantively oppose the Motion, which seeks dismissal of the 3rd through 7th causes of
6 action *with prejudice*, Plaintiffs must be deemed to have consented to the granting of
7 the relief sought. See Local Rule 7-12; see, e.g., *Knickmeyer v. Nev. ex rel Eighth*
8 *Judicial Dist. Ct.*, 173 F.Supp.3d 1034 (D. Nev. 2016).

9
10 **III. CONCLUSION**

11 Based on the foregoing, Defendants respectfully request this Court dismiss each
12 of Plaintiffs' seven causes of action with prejudice.

13 Dated: August 29, 2022

LITTLER MENDELSON P.C.

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16 s/Connie L. Michaels

17 Connie L. Michaels
18 Carrie A. Stringham
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