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10 Jennifer W. Kennedy, Attorney at Law
11 61 S. Baldwin Ave. #1626
12 Sierra Madre, CA 91025
13 Telephone: (626) 888-2263

14 *Counsel for Plaintiffs*

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **WESTERN DIVISION**

18 TRACEY SCHROEDER, MARK
19 AARON, OLGA AGUILAR, MONICA
20 ALVAREZ, CARISSA ANDERSON,
21 ANNETTE ANTILLA, AMY ARMAS,
22 JOSE RENE AVALOS, ZAIRA
23 AUGUSTO, MARINA AVETYAN,
24 ANA AZCARATE, SHEHAN
25 BANGAYAN, CHRISTY BARKER,
26 CHERON BARTEE, OLIVER
27 BARTEE II, ROSA BELTRAN, JULIE
28 BERSHIN, MARIANA BOLANOS,
NORMA BRAMBILA, JOYUA
BRATTON
JANET BREGMAN, ANOUSH
BURMAYAN, CHARMAINE
BUTLER ADRIANA CALDERA-
MARTIN, MARCO CARAVAGGIO

Case No.:

**COMPLAINT FOR CIVIL RIGHTS
VIOLATIONS; JURY TRIAL
DEMANDED**

1 CLAUDIA CARBONELL,
2 LISA CERVANTES-SANDOVAL,
3 TRACY CALDWELL, JOHANA
4 CERVANTES, JOSEPH CESAREO
5 ANGELA CHAVEZ, DARIUS
6 CHEATOM, NATALIE CONTRERAS,
7 CASEY CORCORAN, PAOLA CORIA
8 YOLANDA CORONA, GLORIA
9 CORTEZ, TAIMI CROWELL, RIAN
10 DAVIS, ZIA DEJAN, JAMES
11 DESCHENES, YASMIN DIAZ,
12 STACY DICKINSON, JENNIFER
13 DILORENZO, ANGELA DOREL,
14 DEBORA DORYON, LYNELLE
15 EIMER, IGNACIO EMERICK,
16 ROBERTO EMERICK, NICOLE
17 FAIN, ELISA FARIAS, THOMAS
18 FARLEY, MAUREEN FLAHERTY,
19 GREGORY SCOTT FORTES, DAISY
20 GAITAN-VALLE, DEBORAH
21 GARCIA, SANDRA GARCIA
22 ANTHONY GAY, VICTORIA
23 GERTES, GILBERT GIL, MARIA
24 CARMEN GILLMAN, DORALI
25 GOMEZ, LOURDES GOMEZ, AKIL
26 GRANT, FATIMA GRAYSON, CHERI
27 GURGANUS, JENNIFER GUSDORF
28 HENRY GUTTIEREZ, CORA
HAYASHI, OLGA HERNANDEZ,
VANESSA HERNANDEZ, CARMEN
HERNANDEZ-DEGOMEZ, ISABEL
HERNANDEZ-REYES YOLANDA
HERNANDEZ-LOPEZ, MIURELL
IRAHETA, JESSICA GALE
HOESCHEN, JEREMY HULES
NICOLE JOON, YVONNE JUAREZ,
INGRID ANN KEASBERRY, SCOTT
KENNEDY, TALAR KEOSEYAN,
KYE KIM, JODI KIRKPATRICK,
STEPHEN KOTLEBA, HERIPSIMA

1 KOUZIAN, AUN LAFORTUNE,
 2 CATHERINE LAMPLE,
 3 EDDIE LAMPLE, JOSE LANDAZURI
 4 LARRY LAREZ, MIA LAWSON,
 5 BLANCA LICEA, MARK LINLEY,
 6 SONI LLOYD, GLORIA LOPEZ,
 7 KWOK CHUN LOUIE, BEN LUCAS,
 8 SHAUN LUCIANO, HAROLD
 9 LUIZAGA, MONIQUE LUKENS,
 10 ANDREW MAGAÑA, STEVEN
 11 MANN, JACOB MARK, FRANCISCA
 12 MARTINEZ, DONNA MATTHEWS,
 13 LISA MCCARRELL, GABRIEL
 14 MEDINA, JACQUELINE MERCADO,
 15 ROBIN MERLINO, RACHELLE
 16 MINUTELLA, LILIANA MONTOYA,
 17 AILEEN MORA, JACKIE OCKENE-
 18 FOGELMAN, DULCE OLIVERA,
 19 JAVIER ORTEGA-MADRID,
 20 RAQUEL ORTEGA, KAREN
 21 PACKER, CAROL PANIAGUA,
 22 TYNELL PAYNE, INA PERRY,
 23 CARRIE PHU, KARLA PINEDO,
 24 ALDO PINTO, NICOLE PAVARAL
 25 DELINA PLEASANTS, HEATHER
 26 POUNDSTONE, YVETTE PRICE
 27 ERICA QUEZADA, ALMA
 28 QUINTANILLA-ROMERO,
 ANASTASIA RAMEAU, REYNA
 RAMIENTOS, CATHERINE
 REDDING, LUZ REGNIER, DAVID
 RIESS, MARIA RIVAS, MAYLEEN
 RIVAS, CHRISTOPHER
 ALEXANDER RODRIGUEZ,
 MARIEL RODRIGUEZ, EDWARD
 ROMERO,
 JUAN ROMO, KIMBERLY RUIZ,
 TRISHA RUSSELL, THOMAS RYAN,
 HAROLD SALAZAR, MARK
 SALAZAR, REYNALDO SALCEDO,

1 THERESA SANFORD, MARTHA
2 SARAVIA,
3 LINDA MARIE SMITH-
4 BALDRIDGE, LAURA SMOLINSKY,
5 SABRINA STEVENSON, ESTHER
6 TAL, ORLENA TECHO, BELLA TER-
7 MARGARYAN, ANTHONY
8 THYMES, NANCY TOPETE,
9 CHRISTIE UYEMATSU, VANESSA
10 VANCE, FABIOLA VILLAMAR,
11 ROSALBA VILLANUEVA, VILMA
12 VILLEGAS, WILLIAM VILLOTA,
13 GEMMA WENGER, DEVON
14 WOODS, SHAWN WORKMAN

15 Plaintiffs,

16 vs.

17 LOS ANGELES UNIFIED SCHOOL
18 DISTRICT; ALBERTO CARVALHO,
19 as an individual and in his official
20 capacity as Superintendent; MEGAN
21 REILLY, as an individual and in her
22 official capacity as Interim
23 Superintendent; and DOES 1-100,
24 inclusive,

25 Defendants.

26 NOW INTO COURT, through undersigned counsel, come Plaintiffs,
27 Tracey Schroeder, *et al.*, (hereinafter “Plaintiffs”), who file this Complaint against
28 Defendants, the Los Angeles Unified School District, Alberto Carvalho, and
Megan Reilly (hereinafter “Defendants”), presenting allegations and causes of
action as follows:

DESCRIPTION OF ACTION

This is a §1983 case seeking redress from Defendants for the deprivation of Plaintiffs’ Constitutional and federal statutory right to refuse an EUA investigational drug without incurring a penalty or loss of benefits to which Plaintiffs were otherwise entitled.

This lawsuit is brought under 42 U.S.C. §1983 seeking redress for deprivation of rights granted to Plaintiffs by the United States Constitution, 21 U.S.C. §360bbb-3 *et seq* (the EUA statute), 42 USC §247d-6d *et seq* (the PREP Act), 45 CFR Part 46, 18 U.S.C. §242, ICCPR Treaty, and the common laws of the State of California to hold accountable Defendants, State Actors at all times pertinent herein, for damages caused by their deprivation of Plaintiffs’ rights arising out of Defendants’ unconstitutional, unlawful, malicious, unequal and contractually violative COVID-19 investigational drug mandate. Special laws apply to the drugs designated for compliance with Defendants’ “vaccine” mandates, because the FDA defines the available drugs as “investigational with no license for any indication.” And even though Defendants’ mandates were instituted during and in response to a pandemic emergency, as the U.S. Supreme Court noted since the beginning of the pandemic: **“even in a pandemic, the Constitution cannot be put away and forgotten.”** *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S.Ct. 63, 208 L.Ed.2d 206 (2020).

1 **I. INTRODUCTION**

2 1. The Plaintiffs herein are current and former employees of the Los
3 Angeles Unified School District serving in various departments across the city.

4 2. From the beginning of the COVID-19 pandemic through the filing of
5 this complaint, the Los Angeles Unified School District and its Superintendents,
6 Alberto Carvalho, and Megan Reilly, have continually used the pandemic to
7 deprive Plaintiffs of their Constitutional protections and statutory authorities.
8

9 3. In August of 2021, Defendants enacted a Policy requiring Plaintiffs to
10 inject certain drugs, biologics, and devices into their bodies as a condition to
11 continue employment with the Los Angeles Unified School District (the Policy).
12

13 4. The mandated drugs were under Emergency Use Authorization
14 (EUA), Emergency Use Instructions (EUI), or the PREP Act authority, none of
15 which can ever come under mandatory conditions.
16

17 5. The Policy, as applied through the use of EUA/EUI/PREP Act,
18 unlawfully usurped the authority of Congress to determine the conditions by which
19 its laws would function and, specifically, the conditions by which individuals could
20 not be subjected to the use of EUA/EUI/PREP Act products.
21

22 6. Plaintiffs sue Defendants for deprivation of Fourteenth Amendment
23 and federal statutory rights, which led to severe financial, emotional, and other
24 damages.
25
26
27
28

1 **II. JURISDICTION AND VENUE**

2 7. This Court has federal-question jurisdiction under 42 U.S.C. §1983
3 for violations of civil rights under the Fourteenth Amendment to the United States
4 Constitution.
5

6 8. The case presents a federal question within the Court's jurisdiction
7 under Article III, § 2 of the United States Constitution and 28 U.S.C. §§ 1131 and
8 1343.
9

10 9. Venue is proper in this Court under 28 U.S.C. § 1391 because at all
11 times pertinent, the parties resided in this District, and a substantial part of the
12 events giving rise to this claim occurred in this District.
13

14 10. This Court has the authority and jurisdiction to award costs and
15 reasonable attorney's fees under 42 U.S.C. § 1988.
16

17 11. This court has supplemental jurisdiction over Plaintiffs' state law
18 claims pursuant to 28 U.S.C. 1367.
19

20 12. This Court has personal jurisdiction over Defendants as they are
21 domiciled within this Court's jurisdictional boundaries.
22

23 13. This Court has subject matter jurisdiction over the parties because all
24 acts complained of herein were committed by Defendants in the State of California
25 and caused damage and/or deprivation to the Plaintiffs listed herein.
26

27 **III. PLAINTIFFS**
28

1 14. The following individuals are plaintiffs herein:

2 14.1. Plaintiff, Tracey Schroeder, is an adult individual who all times
3
4 pertinent was employed by the Los Angeles Unified School District.

5 14.2. Plaintiff, Mark Aaron, is an adult individual who all times pertinent was
6
7 employed by the Los Angeles Unified School District.

8 14.3. Plaintiff, Olga Aguilar, is an adult individual who all times pertinent
9
10 was employed by the Los Angeles Unified School District.

11 14.4. Plaintiff, Monica Alvarez, is an adult individual who all times pertinent
12
13 was employed by the Los Angeles Unified School District.

14 14.5. Plaintiff, Carissa Anderson, is an adult individual who all times
15
16 pertinent was employed by the Los Angeles Unified School District.

17 14.6. Plaintiff, Annette Antilla, is an adult individual who all times pertinent
18
19 was employed by the Los Angeles Unified School District.

20 14.7. Plaintiff, Amy Armas, is an adult individual who all times pertinent was
21
22 employed by the Los Angeles Unified School District.

23 14.8. Plaintiff, Zaira Augusto is an adult individual who all times pertinent
24
25 was employed by the Los Angeles Unified School District.

26 14.9. Plaintiff, Jose Rene Avalos, is an adult individual who all times
27
28 pertinent was employed by the Los Angeles Unified School District.

14.10. Plaintiff, Marina Avetyan, is an adult individual who all times pertinent

1 was employed by the Los Angeles Unified School District.

2 14.11.Plaintiff, Ana Azcarate, is an adult individual who all times pertinent
3 was employed by the Los Angeles Unified School District.
4

5 14.12.Plaintiff, Shehan Bangayan, is an adult individual who all times
6 pertinent was employed by the Los Angeles Unified School District.
7

8 14.13.Plaintiff, Christy Barker, is an adult individual who all times pertinent
9 was employed by the Los Angeles Unified School District.
10

11 14.14.Plaintiff, Cheron Bartee, is an adult individual who all times pertinent
12 was employed by the Los Angeles Unified School District.
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14 14.15.Plaintiff, Oliver Bartee II, is an adult individual who all times pertinent
15 was employed by the Los Angeles Unified School District.
16

17 14.16.Plaintiff, Rosa Beltran, is an adult individual who all times pertinent
18 was employed by the Los Angeles Unified School District.
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20 14.17.Plaintiff, Julie Bershin, is an adult individual who all times pertinent
21 was employed by the Los Angeles Unified School District.
22

23 14.18.Plaintiff, Mariana Bolanos, is an adult individual who all times pertinent
24 was employed by the Los Angeles Unified School District.
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26 14.19.Plaintiff, Norma Brambila, is an adult individual who all times pertinent
27 was employed by the Los Angeles Unified School District.
28

14.20.Plaintiff, Joyua Bratton, is an adult individual who all times pertinent

1 was employed by the Los Angeles Unified School District.

2 14.21. Plaintiff, Janet Bregman, is an adult individual who all times pertinent
3 was employed by the Los Angeles Unified School District.
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5 14.22. Plaintiff, Anoush Burmayan, is an adult individual who all times
6 pertinent was employed by the Los Angeles Unified School District.
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8 14.23. Plaintiff, Charmaine Butler, is an adult individual who all times
9 pertinent was employed by the Los Angeles Unified School District.
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11 14.24. Plaintiff, Adriana Caldera-Martin, is an adult individual who all times
12 pertinent was employed by the Los Angeles Unified School District.
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14 14.25. Plaintiff, Tracy Caldwell, is an adult individual who all times pertinent
15 was employed by the Los Angeles Unified School District.
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17 14.26. Plaintiff, Marco Caravaggio, is an adult individual who all times
18 pertinent was employed by the Los Angeles Unified School District.
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20 14.27. Plaintiff, Claudia Carbonell, is an adult individual who all times
21 pertinent was employed by the Los Angeles Unified School District.
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23 14.28. Plaintiff, Lisa Cervantes-Sandoval, is an adult individual who all times
24 pertinent was employed by the Los Angeles Unified School District.
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26 14.29. Plaintiff, Johana Cervantes, is an adult individual who all times
27 pertinent was employed by the Los Angeles Unified School District.
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14.30. Plaintiff, Joseph Cesareo, is an adult individual who all times pertinent

1 was employed by the Los Angeles Unified School District.

2 14.31. Plaintiff, Angela Chavez, is an adult individual who all times pertinent
3 was employed by the Los Angeles Unified School District.
4

5 14.32. Plaintiff, Darius Cheatom, is an adult individual who all times pertinent
6 was employed by the Los Angeles Unified School District.
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8 14.33. Plaintiff, Natalie Contreras, is an adult individual who all times
9 pertinent was employed by the Los Angeles Unified School District.
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11 14.34. Plaintiff, Casey Corcoran, is an adult individual who all times pertinent
12 was employed by the Los Angeles Unified School District.
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14 14.35. Plaintiff, Paola Coria, is an adult individual who all times pertinent was
15 employed by the Los Angeles Unified School District.
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17 14.36. Plaintiff, Yolanda Corona, is an adult individual who all times pertinent
18 was employed by the Los Angeles Unified School District.
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20 14.37. Plaintiff, Gloria Cortez, is an adult individual who all times pertinent
21 was employed by the Los Angeles Unified School District.
22

23 14.38. Plaintiff, Taimi Crowell, is an adult individual who all times pertinent
24 was employed by the Los Angeles Unified School District.
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26 14.39. Plaintiff, Rian Davis, is an adult individual who all times pertinent was
27 employed by the Los Angeles Unified School District.
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14.40. Plaintiff, Zia DeJan, is an adult individual who all times pertinent was

1 employed by the Los Angeles Unified School District.

2 14.41. Plaintiff, James Deschenes, is an adult individual who all times
3
4 pertinent was employed by the Los Angeles Unified School District.

5 14.42. Plaintiff, Yasmin Diaz, is an adult individual who all times pertinent was
6
7 employed by the Los Angeles Unified School District.

8 14.43. Plaintiff, Stacy Dickinson, is an adult individual who all times pertinent
9
10 was employed by the Los Angeles Unified School District.

11 14.44. Plaintiff, Jennifer DiLorenzo, is an adult individual who all times
12
13 pertinent was employed by the Los Angeles Unified School District.

14 14.45. Plaintiff, Angela Dorel, is an adult individual who all times pertinent
15
16 was employed by the Los Angeles Unified School District.

17 14.46. Plaintiff, Debora Doryon, is an adult individual who all times pertinent
18
19 was employed by the Los Angeles Unified School District.

20 14.47. Plaintiff, Lynelle Eimer, is an adult individual who all times pertinent
21
22 was employed by the Los Angeles Unified School District.

23 14.48. Plaintiff, Ignacio Emerick, is an adult individual who all times pertinent
24
25 was employed by the Los Angeles Unified School District.

26 14.49. Plaintiff, Roberto Emerick, is an adult individual who all times pertinent
27
28 was employed by the Los Angeles Unified School District.

14.50. Plaintiff, Nicole Fain, is an adult individual who all times pertinent was

1 employed by the Los Angeles Unified School District.

2 14.51. Plaintiff, Elisa Farias, is an adult individual who all times pertinent was
3 employed by the Los Angeles Unified School District.
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5 14.52. Plaintiff, Thomas Farley, is an adult individual who all times pertinent
6 was employed by the Los Angeles Unified School District.
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8 14.53. Plaintiff, Maureen Flaherty, is an adult individual who all times
9 pertinent was employed by the Los Angeles Unified School District.
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11 14.54. Plaintiff, Gregory Scott Fortes, is an adult individual who all times
12 pertinent was employed by the Los Angeles Unified School District.
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14 14.55. Plaintiff, Daisy Gaitan-Valle, is an adult individual who all times
15 pertinent was employed by the Los Angeles Unified School District.
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17 14.56. Plaintiff, Deborah Garcia, is an adult individual who all times pertinent
18 was employed by the Los Angeles Unified School District.
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20 14.57. Plaintiff, Sandra Garcia, is an adult individual who all times pertinent
21 was employed by the Los Angeles Unified School District.
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23 14.58. Plaintiff, Anthony Gay, is an adult individual who all times pertinent
24 was employed by the Los Angeles Unified School District.
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26 14.59. Plaintiff, Victoria Gertes, is an adult individual who all times pertinent
27 was employed by the Los Angeles Unified School District.
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14.60. Plaintiff, Gilbert Gil, is an adult individual who all times pertinent was

1 employed by the Los Angeles Unified School District.

2 14.61. Plaintiff, Maria Carmen Gillman, is an adult individual who all times
3 pertinent was employed by the Los Angeles Unified School District.
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5 14.62. Plaintiff, Doralí Gomez, is an adult individual who all times pertinent
6 was employed by the Los Angeles Unified School District.
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8 14.63. Plaintiff, Lourdes Gomez, is an adult individual who all times pertinent
9 was employed by the Los Angeles Unified School District.
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11 14.64. Plaintiff, Akil Grant, is an adult individual who all times pertinent was
12 employed by the Los Angeles Unified School District.
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14 14.65. Plaintiff, Fatima Grayson, is an adult individual who all times pertinent
15 was employed by the Los Angeles Unified School District.
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17 14.66. Plaintiff, Cheri Gurganus, is an adult individual who all times pertinent
18 was employed by the Los Angeles Unified School District.
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20 14.67. Plaintiff, Jennifer Gusdorf, is an adult individual who all times pertinent
21 was employed by the Los Angeles Unified School District.
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23 14.68. Plaintiff, Henry Gutierrez, is an adult individual who all times pertinent
24 was employed by the Los Angeles Unified School District.
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26 14.69. Plaintiff, Cora Hayashi, is an adult individual who all times pertinent
27 was employed by the Los Angeles Unified School District.
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14.70. Plaintiff, Carmen Hernandez-De Gomez, is an adult individual who all

1 times pertinent was employed by the Los Angeles Unified School District.

2 14.71. Plaintiff, Isabel Hernandez-Reyes, is an adult individual who all times
3 pertinent was employed by the Los Angeles Unified School District.
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5 14.72. Plaintiff, Olga Hernandez, is an adult individual who all times pertinent
6 was employed by the Los Angeles Unified School District.
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8 14.73. Plaintiff, Vanessa Hernandez, is an adult individual who all times
9 pertinent was employed by the Los Angeles Unified School District.
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11 14.74. Plaintiff, Yolanda Hernandez-Lopez, is an adult individual who all times
12 pertinent was employed by the Los Angeles Unified School District.
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14 14.75. Plaintiff, Jessica Gale Hoeschen, is an adult individual who all times
15 pertinent was employed by the Los Angeles Unified School District.
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17 14.76. Plaintiff, Jeremy Hules, is an adult individual who all times pertinent
18 was employed by the Los Angeles Unified School District.
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20 14.77. Plaintiff, Miurell Iraheta, is an adult individual who all times pertinent
21 was employed by the Los Angeles Unified School District.
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23 14.78. Plaintiff, Nicole Joon, is an adult individual who all times pertinent was
24 employed by the Los Angeles Unified School District.
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26 14.79. Plaintiff, Yvonne Juarez, is an adult individual who all times pertinent
27 was employed by the Los Angeles Unified School District.
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14.80. Plaintiff, Ingrid Ann Keasberry, is an adult individual who all times

1 pertinent was employed by the Los Angeles Unified School District.

2 14.81. Plaintiff, Scott Kennedy, is an adult individual who all times pertinent
3 was employed by the Los Angeles Unified School District.
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5 14.82. Plaintiff, Talar Keoseyan, is an adult individual who all times pertinent
6 was employed by the Los Angeles Unified School District.
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8 14.83. Plaintiff, Kye Kim, is an adult individual who all times pertinent was
9 employed by the Los Angeles Unified School District.
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11 14.84. Plaintiff, Jodi Kirkpatrick, is an adult individual who all times pertinent
12 was employed by the Los Angeles Unified School District.
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14 14.85. Plaintiff, Stephen Kotleba, is an adult individual who all times pertinent
15 was employed by the Los Angeles Unified School District.
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17 14.86. Plaintiff, Heripsima Kouzian, is an adult individual who all times
18 pertinent was employed by the Los Angeles Unified School District.
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20 14.87. Plaintiff, Aun LaFortune, is an adult individual who all times pertinent
21 was employed by the Los Angeles Unified School District.
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23 14.88. Plaintiff, Catherine Lample, is an adult individual who all times
24 pertinent was employed by the Los Angeles Unified School District.
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26 14.89. Plaintiff, Eddie Lample, is an adult individual who all times pertinent
27 was employed by the Los Angeles Unified School District.
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 14.90. Plaintiff, Jose Landazuri, is an adult individual who all times pertinent

1 was employed by the Los Angeles Unified School District.

2 14.91. Plaintiff, Larry Larez, is an adult individual who all times pertinent was
3 employed by the Los Angeles Unified School District.
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5 14.92. Plaintiff, Mia Lawson, is an adult individual who all times pertinent was
6 employed by the Los Angeles Unified School District.
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8 14.93. Plaintiff, Blanca Licea, is an adult individual who all times pertinent
9 was employed by the Los Angeles Unified School District.
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11 14.94. Plaintiff, Mark Linley, is an adult individual who all times pertinent was
12 employed by the Los Angeles Unified School District.
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14 14.95. Plaintiff, Soni Lloyd, is an adult individual who all times pertinent was
15 employed by the Los Angeles Unified School District.
16

17 14.96. Plaintiff, Gloria Lopez, is an adult individual who all times pertinent
18 was employed by the Los Angeles Unified School District.
19

20 14.97. Plaintiff, Kwok Chun Louie, is an adult individual who all times
21 pertinent was employed by the Los Angeles Unified School District.
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23 14.98. Plaintiff, Ben Lucas, is an adult individual who all times pertinent was
24 employed by the Los Angeles Unified School District.
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26 14.99. Plaintiff, Shaun Luciano, is an adult individual who all times pertinent
27 was employed by the Los Angeles Unified School District.
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14.100. Plaintiff, Harold Luizaga, is an adult individual who all times

1 pertinent was employed by the Los Angeles Unified School District.

2 14.101. Plaintiff, Monique Lukens, is an adult individual who all times
3 pertinent was employed by the Los Angeles Unified School District.

4 14.102. Plaintiff, Andrea Magaña, is an adult individual who all times
5 pertinent was employed by the Los Angeles Unified School District.

6 14.103. Plaintiff, Steven Mann, is an adult individual who all times pertinent
7 was employed by the Los Angeles Unified School District.

8 14.104. Plaintiff, Jacob Mark, is an adult individual who all times pertinent
9 was employed by the Los Angeles Unified School District.

10 14.105. Plaintiff, Francisca Martinez, is an adult individual who all times
11 pertinent was employed by the Los Angeles Unified School District.

12 14.106. Plaintiff, Donna Matthews, is an adult individual who all times
13 pertinent was employed by the Los Angeles Unified School District.

14 14.107. Plaintiff, Lisa McCarrell, is an adult individual who all times
15 pertinent was employed by the Los Angeles Unified School District.

16 14.108. Plaintiff, Gabriel Medina, is an adult individual who all times
17 pertinent was employed by the Los Angeles Unified School District.

18 14.109. Plaintiff, Jacqueline Mercado, is an adult individual who all times
19 pertinent was employed by the Los Angeles Unified School District.

20 14.110. Plaintiff, Robin Merlino, is an adult individual who all times
21 pertinent was employed by the Los Angeles Unified School District.

1 pertinent was employed by the Los Angeles Unified School District.

2 14.111. Plaintiff, Rachelle Minutella, is an adult individual who all times
3 pertinent was employed by the Los Angeles Unified School District.

4 14.112. Plaintiff, Liliana Montoya, is an adult individual who all times
5 pertinent was employed by the Los Angeles Unified School District.

6 14.113. Plaintiff, Aileen Mora, is an adult individual who all times pertinent
7 was employed by the Los Angeles Unified School District.

8 14.114. Plaintiff, Jackie Ockene-Fogelman, is an adult individual who all
9 times pertinent was employed by the Los Angeles Unified School District.

10 14.115. Plaintiff, Dulce Olivera, is an adult individual who all times
11 pertinent was employed by the Los Angeles Unified School District.

12 14.116. Plaintiff, Javier Ortega-Madrid, is an adult individual who all times
13 pertinent was employed by the Los Angeles Unified School District.

14 14.117. Plaintiff, Raquel Ortega, is an adult individual who all times
15 pertinent was employed by the Los Angeles Unified School District.

16 14.118. Plaintiff, Karen Packer, is an adult individual who all times pertinent
17 was employed by the Los Angeles Unified School District.

18 14.119. Plaintiff, Carol Paniagua, is an adult individual who all times
19 pertinent was employed by the Los Angeles Unified School District.

20 14.120. Plaintiff, Tynell Payne, is an adult individual who all times pertinent
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1 was employed by the Los Angeles Unified School District.

2 14.121. Plaintiff, Ina Perry, is an adult individual who all times pertinent was
3 employed by the Los Angeles Unified School District.
4

5 14.122. Plaintiff, Carrie Phu, is an adult individual who all times pertinent
6 was employed by the Los Angeles Unified School District.
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8 14.123. Plaintiff, Karla Pinedo, is an adult individual who all times pertinent
9 was employed by the Los Angeles Unified School District.
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11 14.124. Plaintiff, Aldo Pinto, is an adult individual who all times pertinent
12 was employed by the Los Angeles Unified School District.
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14 14.125. Plaintiff, Nicole Pavaral, is an adult individual who all times
15 pertinent was employed by the Los Angeles Unified School District.
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17 14.126. Plaintiff, Delina Pleasants, is an adult individual who all times
18 pertinent was employed by the Los Angeles Unified School District.
19

20 14.127. Plaintiff, Heather Poundstone, is an adult individual who all times
21 pertinent was employed by the Los Angeles Unified School District.
22

23 14.128. Plaintiff, Yvette Price, is an adult individual who all times pertinent
24 was employed by the Los Angeles Unified School District.
25

26 14.129. Plaintiff, Erica Quezada, is an adult individual who all times
27 pertinent was employed by the Los Angeles Unified School District.
28

14.130. Plaintiff, Alma Quintanilla-Romero, is an adult individual who all

1 times pertinent was employed by the Los Angeles Unified School District.

2 14.131. Plaintiff, Anastasia Rameau, is an adult individual who all times
3 pertinent was employed by the Los Angeles Unified School District.
4

5 14.132. Plaintiff, Reyna Ramientos, is an adult individual who all times
6 pertinent was employed by the Los Angeles Unified School District.
7

8 14.133. Plaintiff, Catherine Redding, is an adult individual who all times
9 pertinent was employed by the Los Angeles Unified School District.
10

11 14.134. Plaintiff, Luz Regnier, is an adult individual who all times pertinent
12 was employed by the Los Angeles Unified School District.
13

14 14.135. Plaintiff, David Riess, is an adult individual who all times pertinent
15 was employed by the Los Angeles Unified School District.
16

17 14.136. Plaintiff, Maria Rivas, is an adult individual who all times pertinent
18 was employed by the Los Angeles Unified School District.
19

20 14.137. Plaintiff, Mayleen Rivas, is an adult individual who all times
21 pertinent was employed by the Los Angeles Unified School District.
22

23 14.138. Plaintiff, Christopher Alexander Rodriguez, is an adult individual
24 who all times pertinent was employed by the Los Angeles Unified School
25 District.
26

27 14.139. Plaintiff, Mariel Rodriguez, is an adult individual who all times
28 pertinent was employed by the Los Angeles Unified School District.

1 14.140. Plaintiff, Edward Romero, is an adult individual who all times
2 pertinent was employed by the Los Angeles Unified School District.
3

4 14.141. Plaintiff, Juan Romo, is an adult individual who all times pertinent
5 was employed by the Los Angeles Unified School District.
6

7 14.142. Plaintiff, Kimberly Ruiz, is an adult individual who all times
8 pertinent was employed by the Los Angeles Unified School District.
9

10 14.143. Plaintiff, Trisha Russell, is an adult individual who all times
11 pertinent was employed by the Los Angeles Unified School District.
12

13 14.144.
14

15 14.145. Plaintiff, Thomas Ryan, is an adult individual who all times pertinent
16 was employed by the Los Angeles Unified School District.
17

18 14.146. Plaintiff, Harold Salazar, is an adult individual who all times
19 pertinent was employed by the Los Angeles Unified School District.
20

21 14.147. Plaintiff, Marc Salazar, is an adult individual who all times pertinent
22 was employed by the Los Angeles Unified School District.
23

24 14.148. Plaintiff, Reynaldo Salcedo, is an adult individual who all times
25 pertinent was employed by the Los Angeles Unified School District.
26

27 14.149. Plaintiff, Theresa Sanford, is an adult individual who all times
28 pertinent was employed by the Los Angeles Unified School District.

14.150. Plaintiff, Martha Saravia, is an adult individual who all times

1 pertinent was employed by the Los Angeles Unified School District.

2 14.151. Plaintiff, Linda Marie Smith-Baldrige, is an adult individual who
3
4 all times pertinent was employed by the Los Angeles Unified School
5 District.

6 14.152. Plaintiff, Laura Smolinsky, is an adult individual who all times
7
8 pertinent was employed by the Los Angeles Unified School District.

9 14.153. Plaintiff, Sabrina Stevenson, is an adult individual who all times
10
11 pertinent was employed by the Los Angeles Unified School District.

12 14.154. Plaintiff, Esther Tal, is an adult individual who all times pertinent
13
14 was employed by the Los Angeles Unified School District.

15 14.155. Plaintiff, Orlena Techo, is an adult individual who all times pertinent
16
17 was employed by the Los Angeles Unified School District.

18 14.156. Plaintiff, Bella Ter-Margaryan, is an adult individual who all times
19
20 pertinent was employed by the Los Angeles Unified School District.

21 14.157. Plaintiff, Anthony Thymes, is an adult individual who all times
22
23 pertinent was employed by the Los Angeles Unified School District.

24 14.158. Plaintiff, Nancy Topete, is an adult individual who all times pertinent
25
26 was employed by the Los Angeles Unified School District.

27 14.159. Plaintiff, Christie Uyematsu, is an adult individual who all times
28 pertinent was employed by the Los Angeles Unified School District.

1 14.160. Plaintiff, Vanessa Vance, is an adult individual who all times
2 pertinent was employed by the Los Angeles Unified School District.
3

4 14.161. Plaintiff, Fabiola Villamar, is an adult individual who all times
5 pertinent was employed by the Los Angeles Unified School District.
6

7 14.162. Plaintiff, Rosalba Villanueva, is an adult individual who all times
8 pertinent was employed by the Los Angeles Unified School District.
9

10 14.163. Plaintiff, Vilma Villegas, is an adult individual who all times
11 pertinent was employed by the Los Angeles Unified School District.
12

13 14.164. Plaintiff, William Villota, is an adult individual who all times
14 pertinent was employed by the Los Angeles Unified School District.
15

16 14.165. Plaintiff, Gemma Wenger, is an adult individual who all times
17 pertinent was employed by the Los Angeles Unified School District.
18

19 14.166. Plaintiff, Devon Woods, is an adult individual who all times
20 pertinent was employed by the Los Angeles Unified School District.
21

22 14.167. Plaintiff, Shawn Workman, is an adult individual who all times
23 pertinent was employed by the Los Angeles Unified School District.
24

25 **IV. DEFENDANTS**

26 15. The following are named as defendants herein:
27

28 15.1. Defendant, the Los Angeles Unified School District (hereinafter

1 “LAUSD” and “the District”) is a public school district located in the City of Los
2 Angeles, County of Los Angeles, State of California.

3
4 15.2. Defendant, Megan Reilly, was the superintendent of the Los Angeles
5 Unified School District from April 23, 2021, through February 2022. Ms. Reilly
6 is named as a defendant in her official and individual capacities.
7

8 15.3. Defendant, Alberto Carvalho, is the current superintendent of the Los
9 Angeles Unified School District, taking office in February 2022. Mr. Carvalho is
10 named as a defendant in his official and individual capacities.
11

12 **V. FACTUAL ALLEGATIONS**

13
14 16. Plaintiffs make no assertions regarding whether it is lawful for a
15 public or private entity to mandate the use of a licensed vaccine. Plaintiffs’
16 allegations herein relate only to Defendants demanding the compulsory use of
17 drugs, biologics, and devices under 21 U.S.C. §360bbb-3 (the EUA statute) and
18 The PREP Act for compliance with its COVID-19 Vaccination Policy (hereinafter
19 referred to as “Policy”).
20
21

22 17. At all times pertinent, the only COVID-19 drugs introduced into
23 commerce for use by Plaintiffs in the State of California were drugs wholly owned
24 by the federal government, only distributed through a federal program, and only
25 authorized under the EUA statute and provided immunity under the PREP Act.
26
27

28 18. Plaintiffs’ claims contest how Defendants applied their mandate, not

1 that they issued a mandate.

2
3 19. Therefore, no legal argument relating to vaccine mandates is
4 applicable to this action because, as a matter of law, no person has lawful authority
5 to require another person to inject an unlicensed drug into their body as a condition
6 of anything.
7

8
9 20. Plaintiffs adamantly assert that an individual has the absolute
10 Constitutional and federal statutory right to refuse the administration of an
11 Emergency Use Authorization (EUA) drug (e.g., Pfizer BioNTech COVID-19
12 Vaccine), biologic, or device (e.g., EUA testing articles and masks) without
13 incurring a penalty or losing a benefit to which they are otherwise entitled.
14 Moreover, such a right is not dependent upon a person seeking a religious or
15 medical exemption.
16

17
18
19 21. Plaintiffs assert that they have the Constitutional and federal statutory
20 right to refuse administration of a drug or biologic granted expanded access
21 protocols by the CDC under its assumed Emergency Use Instructions (EUI)
22 authority.
23

24 22. Plaintiffs assert that they have the Constitutional and federal statutory
25 right to refuse participation in any activity or product under the PREP Act.
26

27 23. Plaintiffs assert that Congress prohibits Defendants from establishing
28 21 U.S.C. §360bbb-3 and PREP Act conditions requiring Plaintiffs to surrender

1 their statutory rights and Constitutional protections as a condition to enjoy the
2 privileges and benefits offered by the Los Angeles Unified School District.
3

4 **A. THE POLICY**

5 24. On or about August 13, 2021, Defendants issued “COVID-19
6 Vaccination Requirements”¹ to “All Employees” of the Los Angeles Unified
7 School District (LAUSD) to “be fully vaccinated against COVID-19 no later than
8 October 15, 2021” as a condition to start or continue employment.
9

10
11 25. The Policy, as applied, required Plaintiffs to unlawfully inject
12 federally owned EUA, EUI, or PREP Act unlicensed drugs into their bodies in
13 violation of federal law and Plaintiffs’ Fourteenth Amendment guarantees (see
14 *infra*).
15

16 26. Defendants’ Policy required Plaintiffs “to participate in regular
17 COVID-19 testing” utilizing investigational testing articles only authorized for
18 emergency use protocols under the EUA statute and under PREP Act immunity.
19

20 27. This requirement was a violation of federal law (see *infra*) and
21 Plaintiffs’ Constitutional protections.
22
23
24
25
26
27

28 ¹ See Exhibit A, COVID-19 Vaccination Requirements

1 28. As a matter of law, no COVID-19 drug existed in the State of
2 California, or anywhere else in the United States, that was not under EUA or EUI
3 in 2021, 2022, and most of 2023.
4

5 29. As a matter of law, no COVID-19 drug that was licensed by the FDA
6 with a legal indication to prevent the SARS-CoV-2 (COVID-19) was introduced
7 into commerce for general commercial marketing for lawful compliance with
8 Defendants' Policy.
9
10

11 30. Moreover, no drug, testing article, or mask that was not under the
12 federal authority of the PREP Act has been made available to Plaintiffs from the
13 beginning of the COVID-19 Pandemic through the filing of this Complaint.
14

15 31. Therefore, at all times pertinent, it is an irrefutable fact that
16 Defendants relied exclusively on EUA, EUI, and PREP Act medical products for
17 Plaintiffs to comply with the Policy
18

19 32. Therefore, Defendants' Policy, as applied, was *ultra vires*, arbitrary
20 and capricious (see *infra*).
21

22 33. After being presented with Defendants' ultimatum, the following
23 Plaintiffs exercised their federally secured right to REFUSE an injection of an
24 EUA/EUI/PREP Act medical product, at which time Defendants penalized them by
25 disciplining Plaintiffs and ultimately terminating their employment, and/or by
26 causing Plaintiffs' involuntary resignations and involuntary acceptance of early
27
28

retirement as a direct result of Plaintiffs' exercise of their rights to REFUSE the Defendants' demand that they accept the EUA/EUI/Prep Act medical product, causing Plaintiffs to sustain economic and emotional damages:

1. Tracey Schroeder
2. Olga Aguilar
3. Monica Alvarez
4. Carissa Anderson
5. Annette Antilla
6. Amy Armas
7. Zaira Augusto
8. Jose Rene Avalos
9. Ana Azcarate
10. Shehan Bangayan
11. Christy Barker
12. Rosa Beltran
13. Julie Bershin
14. Norma Brambila
15. Joyua Bratton
16. Janet Bregman
17. Anoush Burmahan
18. Charmaine Butler
19. Adriana Caldera-Martin
20. Tracy Caldwell
21. Marco Caravaggio
22. Lisa Cervantes-Sandoval
23. Joseph Cesareo
24. Angela Chavez
25. Darius Cheatom
26. Paola Coria
27. Yolanda Corona
28. Gloria Cortez
29. Taimi Crowell
30. Rian Davis
31. Zia DeJan
32. James Deschenes
33. Yasmin Diaz
34. Stacy Dickinson

35. Angela Dorel
36. Debora Doryon
37. Lynelle Eimer
38. Ignacio Emerick
39. Roberto Emerick
40. Elisa Farias
41. Thomas Farley
42. Maureen Flaherty
43. Gregory Scott Fortes
44. Daisy Gaitan-Valle
45. Sandra Garcia
46. Anthony Gay
47. Victoria Gertes
48. Gilbert Gil
49. Maria Carmen Gillman
50. Doralí Gomez
51. Lourdes Gomez
52. Akil Grant
53. Jennifer Gusdorf
54. Cora Hayashi
55. Olga Hernandez
56. Vanessa Hernandez
57. Isabel Hernandez-Reyes
58. Yolanda Hernandez-Lopez
59. Jessica Gale Hoeschen
60. Jeremy Hules
61. Nicole Joon
62. Yvonne Juarez
63. Ingrid Ann Keasberry
64. Scott Kennedy
65. Kye Kim
66. Stephen Kotleba
67. Heripsima Kouzian
68. Aun LaFortune
69. Catherine Lample
70. Eddie Lample
71. Jose Landazuri
72. Larry Larez
73. Blanca Licea
74. Mark Linley

75. Soni Lloyd
76. Gloria Lopez
77. Kwok Chun Louie
78. Ben Lucas
79. Monique Lukens
80. Steven Mann
81. Jacob Mark
82. Francisca Martinez
83. Lisa McCarrell
84. Gabriel Medina
85. Jacqueline Mercado
86. Robin Merlino
87. Rachelle Minutella
88. Liliana Montoya
89. Aileen Mora
90. Dulce Olivera
91. Javier Ortega-Madrid
92. Raquel Ortega
93. Karen Packer
94. Carol Paniagua
95. Tynell Payne
96. Ina Perry
97. Carrie Phu
98. Karla Pinedo
99. Aldo Pinto
100. Nicole Pavaral
101. Yvette Price
102. Erica Quezada
103. Anastasia Rameau
104. Alma Quintanilla-Romero
105. Catherine Redding
106. Luz Regnier
107. David Riess
108. Edward Romero
109. Kimberly Ruiz
110. Thomas Ryan
111. Reynaldo Salcedo
112. Theresa Sanford
113. Martha Saravia
114. Linda Marie Smith-Baldrige

115. Laura Smolinsky
 116. Sabrina Stevenson
 117. Esther Tal
 118. Orlena Techo
 119. Bella Ter-Margaryan
 120. Anthony Thymes
 121. Nancy Topete
 122. Christie Uyematsu
 123. Vanessa Vance
 124. Fabiola Villamar
 125. Rosalba Villanueva
 126. Vilma Villegas
 127. William Villota
 128. Gemma Wenger

34. After being presented with Defendants' ultimatum, the following Plaintiffs ACCEPTED UNDER DURESS an injection of an EUA/EUI/PREP Act medical product, and they each sustained emotional and legal² damages directly related to the deprivation of their Constitutional and federal statutory rights to be free from "sanctions," "coercion," "undue influence," and "unjustifiable pressures"³:

1. Mark Aaron
 2. Marina Avetyan
 3. Cheron Bartee
 4. Oliver Bartee II

² Should these Plaintiffs develop an injury from the product's use, their due process rights to seek judicial relief have been deprived of them by an act of fraud by Defendants.

³ President Biden was bound to comply with 45 CFR Part 46 and the Belmont Report. 45 CFR § 46.116 and the Belmont Report define the "adequate standards" of informed consent when individuals are involved in investigational new drugs under federal authority or funding.

5. Mariana Bolanos
6. Claudia Carbonell
7. Johana Cervantes
8. Natalie Contreras
9. Casey Corcoran
10. Jennifer DiLorenzo
11. Nicole Fain
12. Deborah Garcia
13. Fatima Grayson
14. Cheri Gurganus
15. Henry Gutierrez
16. Carmen Hernandez de Gomez
17. Miurell Iraheta
18. Talar Keoseyan
19. Jodi Kirkpatrick
20. Mia Lawson
21. Shaun Luciano
22. Harold Luizaga
23. Andrew Magaña
24. Donna Matthews
25. Jackie Lynn Ockene-Fogelman
26. Delina Pleasants
27. Heather Poundstone
28. Reyna Ramientos
29. Maria Rivas
30. Mayleen Rivas
31. Mariel Rodriguez
32. Christopher Alexander Rodriguez
33. Juan Romo
34. Trisha Russell
35. Harold Salazar
36. Mark Salazar
37. Devon Woods
38. Shawn Workman

1 35. Plaintiffs sustained financial, emotional, and legal⁴ damages directly
 2 related to Defendants depriving Plaintiffs of their Constitutional and federal
 3 statutory rights to be free from “sanctions,” “coercion,” “undue influence,” and
 4 “unjustifiable pressures” when involved in a federally funded investigational drug,
 5 biologic, or device.
 6
 7

8 **B. EMERGENCY USE AUTHORIZATION (EUA)**

9 36. As a matter of law, Congress prohibits persons from introducing drugs
 10 and biologics into commerce before receiving an FDA marketing license.⁵
 11

12 37. However, for limited reasons of compassion, education, and
 13 emergency use, Congress provides a legal mechanism to allow persons to
 14 participate in the investigational⁶ and unlicensed use of drugs, biologics, and
 15
 16
 17
 18
 19
 20

21 ⁴ Should Plaintiffs using the investigational drugs under duress develop an injury
 22 from the product’s use, their due process rights to seek judicial relief have been
 23 deprived of them by an act of fraud by Defendants.

24 ⁵ “No person shall introduce or deliver for introduction into interstate commerce
 25 any new drug, unless an approval of an application filed pursuant to subsection (b)
 26 or (j) is effective with respect to such drug.” 21 U.S.C. § 355(a)

27 ⁶ Investigational drug “means a new drug or biological drug that is used in a
 28 clinical investigation.” (21 CFR 312.3 “Investigational new drug”) Clinical
 investigation “means any experiment in which a drug is administered or dispensed
 to, or used involving, one or more human subjects. For the purposes of this part, an
 experiment is any use of a drug except for the use of a marketed drug in the course
 of medical practice.” (21 CFR 312.3 “Clinical investigation”).

1 devices according to the product’s labeling, known as “expanded access
2 protocols.”⁷
3

4 38. “Unlicensed use” means the use of a medical product for a purpose
5 not licensed by the FDA (legal indication, usage, and contraindications) according
6 to the product’s labeling.
7

8 39. A drug manufacturer may promote a licensed product only according
9 to its legal indication and uses.⁸
10

11 40. Only the FDA can assign the drug, biologic, or device its legal
12 indication and classification.
13

14 41. Moreover, a drug, biologic, or device is legally governed by its
15 classification and FDA-licensed indication, usage, and contraindication.
16

17 42. A drug or biologic is never governed by its formulation.
18
19

20 ⁷ 21 U.S.C. § 360bbb *et. seq.* Short Title: “Expanded Access to Unapproved
21 Therapies and Diagnostics”

22 ⁸ “Under the provisions of the Food, Drug and Cosmetic Act, a company must
23 specify the intended uses of a product in its new drug application to FDA. Once
24 approved, the drug may not be marketed or promoted for so-called ‘off-label’ uses
25 – *i.e.*, any use not specified in an application and approved by FDA. Pfizer
26 promoted the sale of Bextra for several uses and dosages that the FDA specifically
27 declined to approve due to safety concerns. The company will pay a criminal fine
28 of \$1.195 billion, the largest criminal fine ever imposed in the United States for
any matter.” - Justice Department Announces Largest Health Care Fraud
Settlement in Its History. Justice.gov. Published September 2, 2009. Accessed
November 12, 2023. <https://www.justice.gov/opa/pr/justice-department-announces-largest-health-care-fraud-settlement-its-history>

1 43. Congress expressly authorized only the HHS Secretary to authorize
2 expanded access protocols for the investigational and unlicensed use of drugs,
3 biologics, and devices.⁹

5 44. Congress enacted Project Bioshield¹⁰ in 2004, establishing emergency
6 expanded access protocols¹¹ for the investigational and unlicensed emergency use
7 of drugs, biologics, and devices for large populations.

9 45. Medical products authorized under this section of law are known as
10 medical countermeasures (MCMs).¹²

12 46. A drug or biologic under EUA/EUI is considered investigational, and,
13 as a matter of law, it cannot have a licensed indication for its emergency use.¹³

15 47. On December 11, 2020, the FDA issued to Pfizer-BioNTech the first
16 COVID-19 EUA for its investigational drug (officially named Pfizer-BioNTech

24 ⁹ 21 U.S.C. §360bbb(a)

25 ¹⁰ <https://www.govinfo.gov/content/pkg/PLAW-108publ276/pdf/PLAW-108publ276.pdf>

26 ¹¹ 21 U.S.C. § 360bbb-3

27 ¹² National Defense Authorization Act 2004 TITLE XVI—DEFENSE
28 BIOMEDICAL COUNTERMEASURES <https://www.govinfo.gov/content/pkg/PLAW-108publ136/pdf/PLAW-108publ136.pdf>

¹³ 21 U.S.C. §360bbb-3(a)(2)(A,B)

COVID-19 Vaccine¹⁴), and the FDA confirmed that Pfizer’s product “is an investigational vaccine not licensed for any indication.”¹⁵

48. On December 18, 2020, the FDA issued to ModernaTX, Inc., an EUA for its investigational drug (officially named Moderna COVID-19 Vaccine), and the FDA confirmed that Moderna’s product “is an investigational vaccine not licensed for any indication.”¹⁶

49. On February 27, 2021, the FDA issued to Janssen Biotech, Inc., an EUA for its investigational drug (officially named Janssen COVID-19 Vaccine), and the FDA confirmed that Janssen’s product “is an investigational vaccine not licensed for any indication.”¹⁷

50. On August 23, 2021, the FDA re-issued an EUA¹⁸ for Pfizer-BioNTech COVID-19 Vaccine, informing the public that:

- (1) This product **has not been approved or licensed by FDA**, but has been authorized for emergency use by FDA, under an EUA to prevent Coronavirus Disease 2019 (COVID-19) for use in individuals 12 years of age

¹⁴ *Id.* The FDA improperly allowed Pfizer to add the word “Vaccine” to its investigational name. The court should not confuse this name to mean the drug’s legal indication. Pfizer-BioNTech COVID-19 Vaccine is an investigational drug having no legal indication to treat, cure, or prevent any known disease. The FDA classified the drug as an “investigational new drug.”

¹⁵ 86 Fed.Reg. 5200, Jan. 19, 2021

¹⁶ 86 Fed.Reg. 5200, Jan. 19, 2021

¹⁷ 86 Fed.Reg. 28608, May 27, 2021

¹⁸ Exhibit “August 23, 2021 Pfizer EUA letter. See: “Conditions of Authorization” (Y)

1 and older; (emphasis added)

- 2 (2) The emergency use of this product is only authorized for
3 the duration of the declaration that circumstances exist
4 justifying the authorization of emergency use of the
5 medical product under Section 564(b)(1) of the FD&C
6 Act unless the declaration is terminated or authorization
7 revoked sooner.

8 51. Congress requires the HHS Secretary to establish the Scope of
9 Authorization¹⁹ for MCMs, determine the conditions by which persons can
10 participate in an activity (e.g., manufacturing, distribution, administration,
11 use/participation) and access the product,²⁰ and then publish the Scope of
12 Authorization in the Federal Register²¹ for public notice.

14 52. As an example, the HHS Secretary issued an EUA for Moderna (86
15 Fed.Reg. 5200, Jan. 19, 2021), Janssen (86 Fed.Reg. 28608, May 27, 2021), and
16 Pfizer (86 Fed.Reg. 5200, Jan. 19, 2021).

18 53. In each EUA, the HHS Secretary establishes the conditions by which
19 persons can participate in the program.

21 54. The conditions of the EUA are in addition to any applicable
22 requirements under 21 U.S.C. §360bbb-3.
23
24
25

26
27 ¹⁹ 21 U.S.C. §360bbb-3(d)

28 ²⁰ 21 U.S.C. §360bbb-3(e)

²¹ 21 U.S.C. §360bbb-3(b)(4)

1 55. The COVID-19 drugs under Defendants' Policy requirements were
2 the property of the federal government.
3

4 56. The federal government created the CDC COVID-19 Vaccination
5 Program to distribute the property to residents of California.
6

7 57. The program required absolute voluntary participation of all persons,
8 and only persons authorized by the CDC could participate in the federal property.
9

10 58. President Biden was under a legal obligation to adhere to 21 U.S.C.
11 §360bbb-3, Article VII of the ICCPR Treaty, 45 CFR Part 46, the Belmont Report,
12 10 U.S.C. § 980, and additional laws and regulations when distributing federal
13 property.
14

15 59. Defendants were not authorized by the U.S. Congress, California
16 legislature, or any other authority to interfere in the distribution of the federal
17 government's COVID-19 property.
18

19 60. Congress requires the HHS Secretary to ensure that individuals
20 considering the use of the MCM are informed of their legal rights²² under the
21 statute (option to accept or refuse).
22

23 61. During the declared emergency, the right to accept exempts the
24 application of 21 U.S.C. § 355(a)'s prohibition on introducing unlicensed drugs
25
26
27

28 ²² 21 U.S.C. §360bbb-3(e)(1)(A)(ii)(III)

1 into commerce; thus, the individual has the legal authority to participate in the
2 administration of the unlicensed use of the MCM.
3

4 62. Congress specifically conferred the right to refuse upon a person
5 considering the administration of a product authorized under the statute because, in
6 1972, the nation was made aware of human rights atrocities committed against
7 African-American males at the hands of their own government.²³
8

9 63. In 1973, Senator Edward Kennedy held live hearings in support of
10 passing the National Research Act, exposing medical research abuses by the
11 federal government and pharmaceutical companies, primarily impacting persons of
12 color, women, Indians, and the poor.
13
14

15 64. In 1974, Congress enacted the National Research Act²⁴ establishing
16 Institutional Review Boards, the Belmont Report,²⁵ and the requirement of the
17 HHS Secretary to promulgate regulations governing the protection of humans
18 involved in federally funded investigational medical products.
19
20

21 65. In the early 1980s, the HHS Secretary published those regulations
22
23

24
25 ²³ Tuskegee Study - Timeline - CDC - OS. Published 2023. Accessed November 23, 2023.
<https://www.cdc.gov/tuskegee/timeline.htm>

26 ²⁴ Title II of the National Research Act –
<https://www.govinfo.gov/content/pkg/STATUTE-88/pdf/STATUTE-88-Pg342.pdf>

27 ²⁵ The National Commission for the Protection of Human Subjects of Biomedical
28 and Behavioral Research. - Belmont Report. Colorado, DC: U.S. Department of
Health and Human Services, 1979

1 under 45 CFR Part 46 (Common Rule).

2 66. The regulations are lawful requirements of all federal agencies and
3
4 departments and persons conducting business with those agencies and departments.

5 67. The regulations were designed for the express purpose of protecting
6
7 humans involved in federally funded investigational projects.

8 68. This led to Congress developing adequate standards of informed
9
10 consent outlined in detail under 45 CFR § 46.116 and the Belmont Report.²⁶

11 69. The adequate standards of informed consent require the legally
12
13 effective informed consent²⁷ of the individual to be prospectively obtained when
14 involving them in federally funded investigational medical products.

15 70. This form of consent requires the person sponsoring the product²⁸ or
16
17 acting on behalf of the sponsor²⁹ to ensure the individual considering participation
18 is not under a “sanction,” “coercion,” “undue influence,” or “unjustifiable
19
20
21
22

23
24 ²⁶ 45 CFR § 46.101(c) & 45 CFR § 46.101(i) require any federally funded research
activity to come under the purview of the Belmont Report.

25 ²⁷ 45 CFR 46.116(a)(1); See also, Doc 8, Footnote 31, ¶ 72, 73, 74,

26 ²⁸ The federal government purchased all COVID-19 EUA drugs and became their
sponsor.

27 ²⁹ Shriners was acting on behalf of the federal and state government when
28 requiring Plaintiffs to inject the federal property into their bodies as a condition to
continue employment.

1 pressure” to participate.³⁰

2 71. Should participants come under those outside pressures, then the
3 person sponsoring the product fails to obtain the individual’s legally effective
4 informed consent, even if the individual consents to the use of the product.
5

6 72. Therefore, the option to “refuse” has significant Congressional history
7 for the purpose of preventing the U.S. government, pharmaceutical companies, and
8 Defendants from committing additional human rights atrocities.
9

10 73. The right to refuse the unlicensed use of the MCMs ensures that the
11 federal government and persons under its authority comply with the laws
12 pertaining to the investigational use of unlicensed MCMs.³¹
13

14 74. The lawful right of the individual to “consider” the use of the
15 unlicensed MCM is a right conferred upon the individual in clear and unambiguous
16 language by a valid act of Congress.
17

18 75. No government, public officer, private employer, or any other person
19 of authority may interfere in the individual’s autonomous choice, whether that
20 choice is to accept or refuse the use of the MCM.
21

22
23
24
25 ³⁰ The Belmont Report’s definition of “adequate standards” of informed consent.
26 See Part C: Applications 1. Informed Consent.

27 https://www.hhs.gov/ohrp/sites/default/files/the-belmont-report-508c_FINAL.pdf

28 ³¹ 45 CFR Part 46, the Belmont Report, Article VII of the ICCPR Treaty, Federal
Wide Assurance program, CDC COVID-19 Vaccination Program Providers
Agreement, among others.

1 76. The choice of whether to use or not use an MCM belongs exclusively
2 to the individual and not to a third party agreeing or disagreeing with that choice.
3

4 77. 21 U.S.C. §360bbb-3 is a pervasive federal scheme to introduce
5 MCMs into commerce only under a declared emergency.
6

7 78. The Supremacy Clause Doctrine dictates that no person has lawful
8 authority to establish, enforce, or continue in effect with a law, rule, regulation,
9 ordinance, or any other legal means that interferes with or amends the MCM's
10 expanded access protocol as established by the HHS Secretary and Congress.³²
11

12 79. Such interference poses an obstacle to accomplishing federal goals for
13 the unlicensed use of the MCMs.
14

15 80. Public and private employers may not use a state's at-will
16 employment law or any other common law as the means to interfere in Plaintiffs'
17 lawful authority to exercise their 21 U.S.C. §360bbb-3(e)(1)(A)(ii)(III) option.
18
19
20
21
22

23 ³² "FDA states that the terms and conditions of an EUA issued under section 564
24 preempt state or local law, both legislative requirements and common-law duties,
25 that impose different or additional requirements on the medical product for which
26 the EUA was issued in the context of the emergency declared under section 564." -
27 Emergency Use Authorization of Medical Products and Related Authorities,"
28 Section VII. U.S. Food and Drug Administration. Published 2022. Accessed June
6, 2023.

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

1 81. The use of that law to interfere with Plaintiffs' autonomous choice is
2 impossible to reconcile with federal law.³³
3

4 82. Congress does not intend to displace a state's at-will employment
5 doctrine in all areas of law. However, when the MCM scheme is viewed under the
6 field preemption test, it is clear that Congress preempts the use of the State's at-
7 will employment law when it is used solely to interfere in the administration of the
8 MCM.
9

10 83. Congress completely preempts a state, or political subdivision of a
11 state, or any other legal authority from establishing, enforcing, or continuing in
12 effect, with respect to a MCM under 21 U.S.C. §360bbb-3, any provision of law
13 that is different from, or is in conflict with, any requirement applicable under the
14 statute or the Scope of Authorization issued by the HHS Secretary.
15
16

17 84. Congress empowers the HHS Secretary with the authority to establish
18 the conditions by which persons participate in activities under 21 U.S.C. § 360bbb-
19 3.
20
21
22
23
24

25 ³³ *Arizona v. United States*, 567 U.S. 387, 399 (2012) (“[Congress’s] intent to
26 displace state law altogether can be inferred from a framework of regulation ‘so
27 pervasive . . . that Congress left no room for the States to supplement it’ or where
28 there is a ‘federal interest . . . so dominant that the federal system will be assumed
to preclude enforcement of state laws on the same subject.’”) (quoting *Rice v.*
Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947)).

1 85. However, Congress was explicit that “Nothing in this section provides
2 the Secretary any authority to require any person to carry out any activity that
3 becomes lawful pursuant to an authorization under this section.”³⁴
4

5 86. In other words, the HHS Secretary has lawful authority to grant
6 expanded access protocols for an MCM.
7

8 87. Still, Congress prohibits the Secretary from requiring any person to
9 manufacture, distribute, store, administer, inject, wear, test, or otherwise use the
10 product.
11

12 88. Defendants’ policy, relying on an EUA/EUI MCMs for compliance, is
13 arbitrary and capricious because Congress expressly prohibits persons from
14 manufacturing, distributing, administering, or using the MCM under involuntary
15 conditions.
16
17

18 89. Healthcare workers are not legally obligated to administer MCMs to
19 Plaintiffs, nor can Defendants require healthcare workers to perform that function.
20

21 90. Moreover, Plaintiffs are not required to use any product authorized
22 under the section of the law, nor can Defendants require Plaintiffs to use them as a
23 condition of anything.
24
25
26
27

28 ³⁴ 21 U.S.C. §360bbb-3(l)

1 91. Defendants do not claim to be the HHS Secretary, nor do they state by
2 what authority they can require that which Congress prohibits (i.e., involuntary
3 participation).

4
5 92. Therefore, when Defendants enacted its COVID-19 Vaccination
6 Policy relying exclusively on EUA COVID-19 drugs for compliance with the
7 Ordinance, they fraudulently usurped the authority of Congress, the HHS
8 Secretary, and Plaintiffs by amending the conditions established under 21 U.S.C.
9 §360bbb-3 by a valid act of Congress.
10

11
12 93. Defendants had no lawful power to insert themselves into a position
13 of authority delegated only to the United States HHS Secretary.
14

15 94. Defendants had no authority to amend the legal scheme by which
16 persons access the federal government's COVID-19 property.
17

18 95. Defendants had no authority to require of Plaintiffs that which the
19 U.S. Congress prohibits (i.e., mandatory participation).
20

21 96. Defendants' policy, as applied, was *ultra vires*; thus, it lacked the
22 force of law.

23 97. Defendants, therefore, misrepresented and extended their authority
24 under fraudulent pretense when establishing and acting under their Policy to
25 penalize Plaintiffs for not complying with the requirements of the Policy.
26

27
28 **C. EMERGENCY USE INSTRUCTION (EUI)**

1 98. The CDC has claimed the authority to grant expanded access
2 protocols it cites as Emergency Use Instructions for the unlicensed use of products.
3
4 However, no such authority exists in federal law.

5 99. The CDC claims that “The CDC Director has legal authority to create,
6 issue, and disseminate EUI for FDA-approved medical products. EUI inform
7 healthcare providers and recipients about such products’ approved, licensed, or
8 cleared conditions of use under circumstances that go beyond the scope of the
9 approved labeling (package insert).”³⁵
10

11
12 100. There are several issued EUIs for COVID-19 drugs that the public is
13 unaware of.
14

15 101. Until courts rule otherwise, authorities will continue to enact
16 mandatory policies relying on licensed drugs authorized by the CDC for unlicensed
17 use.
18

19 102. Because the CDC is issuing EUIs under the 21 U.S.C. §360bbb-3
20 authority of the HHS Secretary, they operate under the same treaties, laws, federal
21 agreements, and federal contracts as EUAs.
22
23
24

25
26 ³⁵ Questions and Answers about Emergency Use Instructions (EUI) below Are
27 Answers to Frequently Asked Questions about Emergency Use Instructions (EUI).
28 Refer to EUI for Pfizer-BioNTech COVID-19 Vaccine and Moderna COVID-19
Vaccine for Additional Doses. Accessed November 12, 2023.
<https://www.cdc.gov/vaccines/covid-19/eui/downloads/EUI-FAQ.pdf>

1 103. Defendants’ reliance on EUIs for compliance with their Policy
2 violated federal law and Plaintiffs’ Constitutional and statutory rights.
3

4 **D. THE PREP ACT**

5 104. In 2005, Congress passed the Public Readiness and Emergency
6 Preparedness Act, hereafter referred to as the PREP Act,³⁶ to provide immunities
7 for persons volunteering for “covered” activities.
8

9 105. In accordance therewith, the HHS Secretary issued a PREP Act
10 declaration for Medical Countermeasures against COVID-19 in February 2020.³⁷
11

12 106. As a matter of law, all COVID-19 drugs, influenza vaccines, masks,
13 and diagnostic testing articles under Defendants’ Ordinance No. 187134
14 requirements have been declared a countermeasure under the PREP Act.³⁸
15

16 107. The PREP Act, fundamentally, is an immunity statute.
17

18 108. Due to the near absolute immunities provided by the U.S. Congress
19 for persons involved in the various activities of “covered countermeasures,” the
20 statute establishes restrictions, obligations, and duties for persons and governments
21 involved in those activities.
22
23
24
25
26

27 ³⁶ 42 USC 247d-6d & 42 USC 247d-6e

28 ³⁷ 85 FR 15198

³⁸ See Amendments I-XI of 85 FR 15198

1 109. Congress expressly crafted language preempting state and local law
2
3 conflicting with the PREP Act,³⁹ which provides, in pertinent part:

4 (8) Preemption of State law

5 During the effective period of a declaration under
6 subsection (b)...no State or political subdivision of a
7 State may establish, enforce, or continue in effect with
8 respect to a covered countermeasure any provision of law
 or legal requirement that—

9 (A) is different from, or is in conflict with, any requirement
10 applicable under this section; and

11 (B) relates to the...administration...of the covered countermeasure,
12 **or to any matter included in a requirement applicable to the**
13 **covered countermeasure** under this section or any other provision
14 of this chapter, **or under the Federal Food, Drug, and Cosmetic**
15 **Act.**⁴⁰ [emphasis added].

16 110. Moreover, Congress informed legal authorities that:

17 (c) Voluntary program

18 The Secretary shall ensure that a State, local, or Department of
19 Health and Human Services plan to administer or use a covered
20 countermeasure is consistent with any declaration under 247d–
21 6d of this title...and that potential participants are educated with
22 respect to contraindications, **the voluntary nature of the**
23 **program**, and the availability of potential benefits and
24 compensation under this part. [Emphasis added.]⁴¹

26
27 ³⁹ 42 U.S.C. § 247d-6d(b)(8)

28 ⁴⁰ 21 U.S.C. § 301 et. seq.

⁴¹ 42 U.S.C. § 247d-6e(c)

1 111. The “voluntary nature” of the “program” consists of “covered
2 countermeasures,”⁴² “covered persons,”⁴³ “covered individuals,”⁴⁴ and “qualified
3 persons.”⁴⁵
4

5 112. Therefore, as a general rule, no person may utilize any lawful
6 authority to “establish,” “enforce,” or “continue in effect with” “any provision of
7 law or legal requirement” that otherwise conflicts or interferes with the “voluntary
8 nature” of the program by establishing involuntary conditions such as Defendants’
9 Policy.
10

11 113. Moreover, no person may utilize any lawful authority to “establish,”
12 “enforce,” or “continue in effect with” “any provision of law or legal requirement”
13 that interferes with “any matter” relating to any “requirement applicable to the
14 covered countermeasure” under 21 U.S.C. §360bbb-3 which includes a person’s
15 authority to accept or refuse the MCM without consequence.⁴⁶
16
17

18 114. **As a matter of law, Congress completely preempts a state, or
19 political subdivision of a state, or any other legal authority from establishing,**
20
21

22
23
24 ⁴² 42 USC § 247d-6d(i)(1)

25 ⁴³ 42 USC § 247d-6d(i)(2)

26 ⁴⁴ 42 USC 247d-6d(a)(3)(C)(i,ii)

27 ⁴⁵ 42 USC § 247d-6d(i)(8)

28 ⁴⁶ 42 U.S.C. § 247d-6d(b)(8)(b) states to any matter or requirement applicable to a countermeasure under the FDCA. 21 U.S.C. §360bbb-3(e)(1)(A)(ii)(III) is under the FDCA.

1 enforcing, or continuing in effect with respect to a countermeasure under the
2 PREP Act, any provision of law that is different from or is in conflict with, any
3 requirement applicable under the statute or the declared emergency and its
4 amendments as published in the Federal Register.
5

6
7 115. Therefore, Defendants were expressly preempted from using their
8 authority for the sole purpose of interfering with Plaintiffs' authority to determine
9 participation in a PREP Act "covered countermeasure."
10

11 116. The Policy, as applied, required Plaintiffs to inject or otherwise use a
12 PREP Act product (e.g., any COVID-19 drug, COVID-19 investigational testing
13 kits) as a condition to enjoy a privilege of government (e.g., public employment).
14

15 117. When Plaintiffs refused to surrender their statutory authority to refuse
16 the product's administration, Defendants, acting with moral turpitude, informed
17 Plaintiffs that they would lose access to living wages (public employment) and
18 their liberties.
19

20 118. Defendants' use of their Policy as the means to apply punitive actions
21 against Plaintiffs refusing administration of a countermeasure under the PREP Act
22 was *ultra vires* and, therefore, lacked the force of law.
23

24 119. Moreover, Defendants' use of their Policy to penalize Plaintiffs for
25 refusing the administration of a PREP Act countermeasure deprived Plaintiffs of
26 their Constitutional and statutory rights.
27
28

1 **E. FOURTEENTH AMENDMENT EQUAL PROTECTION OF**
 2 **LAWS**

3
 4 120. The Fourteenth Amendment to the U.S. Constitution guarantees equal
 5 protection of the laws.

6
 7 121. It is a well-established U.S. Supreme Court precedent that a federal
 8 statute conferring a right onto an individual in unambiguous language is
 9 enforceable under 42 U.S.C. § 1983.⁴⁷

10
 11 122. 21 U.S.C. §360bbb-3(e)(1)(A)(ii)(III) contains a required condition of
 12 the Secretary “to ensure that individuals to whom the product is administered are
 13 informed — ‘of the option to accept or refuse administration of the product.’”
 14

15 123. Therefore, the statute conferred a legal right onto Plaintiffs to accept
 16 or refuse any product authorized under 21 U.S.C. §360bbb-3. The “option” is a
 17 federally secured right established by a valid act of Congress.
 18

19 124. Defendants owed a Constitutional duty to treat Plaintiffs equally
 20 before the law, irrespective of their chosen statutory option. That Constitutional
 21 duty required Defendants to ensure Plaintiffs were free from outside pressures
 22
 23

24
 25 ⁴⁷ *Maine v. Thiboutot*, 448 U.S. 1 (1980), the court held that “Even were the
 26 language ambiguous, however, any doubt as to its meaning has been resolved by
 27 our several cases suggesting, explicitly or implicitly, that the §1983 remedy
 28 broadly encompasses violations of federal statutory as well as constitutional law.”
 See also, *Health and Hospital Corporation of Marion Cty. V. Talevski*, 599 U.S.
 ____ (2023).

1 when considering either option and, once the option was chosen, to treat Plaintiffs
2 equally, irrespective of the option chosen.
3

4 125. As a matter of law, Defendants are not allowed to treat persons
5 choosing the option to accept differently than persons choosing the option to refuse
6 under 21 U.S.C. §360bbb-3(e)(1)(A)(ii)(III).
7

8 126. The statute does not afford Defendants the legal authority to establish
9 positive or negative benefits based on an individual's 21 U.S.C. §360bbb-3 chosen
10 option. Such conditions violate the Equal Protection doctrine guaranteed to
11 Plaintiffs under the Fourteenth Amendment.
12

13 127. However, Defendants' Policy prospectively applied punitive actions
14 only to persons (Plaintiffs) exercising the federally secured option to refuse under
15 21 U.S.C. §360bbb-3(e)(1)(A)(ii)(III) and the PREP Act in violation of Plaintiffs'
16 Fourteenth Amendment rights.
17

18 128. Therefore, Defendants' Policy stating, "Failure to comply with the
19 mandate to be vaccinated and/or failure to provide the appropriate qualifying
20 exemption documentation may result in disciplinary action, being placed on unpaid
21 leave, and/or separated from District service" violated the Fourteenth
22 Amendment's Equal Protection Doctrine because it did not apply the 21 U.S.C.
23 §360bbb-3(e)(1)(A)(ii)(III) options equally to Plaintiffs.
24
25
26
27
28

1 129. Defendants refused to acknowledge the option to refuse and only
2 protected the option to accept.
3

4 130. Defendants' Policy and actions taken under its authority were *ultra*
5 *vires* because it required the Los Angeles Unified School District to treat Plaintiffs
6 differently solely on their 21 U.S.C. §360bbb-3(e)(1)(A)(ii)(III) option and PREP
7 Act choice of participation, in violation of the Fourteenth Amendment's Equal
8 Protection Doctrine.
9
10

11 **F. FOURTEENTH AMENDMENT DUE PROCESS**

12 131. The Due Process Clause of the Fourteenth Amendment to the U.S.
13 Constitution guarantees the right to due process of law before infringing a citizen's
14 interest in life, liberty, or property.
15

16 132. 21 U.S.C. §360bbb-3(e)(1)(A)(ii)(III) contains a required condition of
17 the Secretary "to ensure that individuals to whom the product is administered are
18 informed — 'of the option to accept or refuse administration of the product.'"
19

20 133. The option applies to any product authorized under the statute, which
21 includes COVID-19 testing articles, masks, and other drugs, biologics, and
22 devices.
23
24

25 134. The PREP Act requires only voluntary participation.

26 135. Defendants Policy stripped Plaintiffs of their legal right to choose the
27 21 U.S.C. §360bbb-3(e)(1)(A)(ii)(III) option to refuse without consequence and
28

1 subjected them to involuntary participation in a PREP Act countermeasure without
2 a hearing.
3

4 136. If there is a consequence to a person exercising a specific right
5 conferred upon them by a valid act of Congress, then the “right” is not a right.
6

7 137. Defendants violated the substantive due process rights of Plaintiffs
8 when enacting their Policy because that Ordinance prospectively stripped
9 defendants of their federally secured legal right to refuse.
10

11 138. The PREP Act strips an individual of their due process rights to seek
12 judicial relief should injury occur from the use of a product under the statute’s
13 authority, but only after the person legally and effectively consents⁴⁸ to the use of
14 the product (i.e., free from outside pressures). This reason is why the “program” is
15 under “voluntary conditions.”
16
17

18 139. Defendants cannot compel Plaintiffs, under threat of penalty, to
19 surrender their due process rights.
20

21 140. Such a requirement is a hostile attack on the fundamental principles
22 upon which the federal Constitution is founded.
23
24
25

26 ⁴⁸ Investigational uses of products funded or under federal authority must comply
27 with 45 CFR § 46.116, 122 and the Belmont Report which defines “legally
28 effective informed consent.” Defendants are not authorized to obtain Plaintiffs’
consent and such fact demonstrates its mandate is *ultra vires*.

1 141. At all times pertinent, Defendants refused to acknowledge Plaintiffs’
2 statutory authority to refuse the MCMs and PREP Act countermeasures without
3 consequence.
4

5 142. Therefore, irrespective of any procedure to allow Plaintiffs a date,
6 time, and place to air their complaint, their rights were never adjudicated
7 impartially.⁴⁹
8

9 143. Defendants violated the procedural due process rights of Plaintiffs by
10 refusing to acknowledge their statutory authority to refuse the MCMs without
11 incurring a penalty or losing a benefit to which they were otherwise entitled.
12

13 144. Moreover, Defendants did not provide Plaintiffs with an opportunity
14 to have their complaint heard before an impartial committee that would adjudicate
15 through the understanding of Plaintiffs’ right to refuse compliance with the Policy,
16 as applied, which is a violation of Plaintiffs’ Fourteenth Amendment procedural
17 due process rights.
18

19 145. Worse yet is the shocking and outrageous behavior of Defendants
20 using their Policy to prospectively strip Plaintiffs’ due process rights should they
21 incur an injury from the use of PREP Act countermeasure.
22
23
24
25
26
27

28 ⁴⁹ Plaintiffs have the Constitutional right “to present [their] case and have its merits
fairly judged.” *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982)

1 146. Persons who surrendered their Constitutional protections due to
2 Defendants' coercive Ordinance and injected one of the investigational drugs into
3 their bodies and also incurred injury from the countermeasure's use are prohibited
4 by the PREP Act from seeking judicial relief for all practical purposes.
5

6 147. Defendants' enactment of their Policy, as applied, was *ultra vires*
7 because it stripped Plaintiffs of legal rights outside of their Fourteenth Amendment
8 due process rights.
9

10 **G. UNCONSTITUTIONAL CONDITIONS DOCTRINE**

11 148. Governments are preempted from requiring persons to participate in
12 an EUA, EUI, or PREP Act countermeasure as the basis to enjoy a privilege of the
13 government (e.g., education, use of facilities, unemployment benefits, public
14 employment, etc.) to which they are otherwise entitled.
15

16 149. The Supreme Court has held that a person "may not barter away his
17 life or his freedom, or his substantial rights" (*Home Ins. Co. of New York v. Morse*,
18 87 U.S. 455, 451 (1874)).
19

20 150. The Los Angeles Unified School District holds authority over public
21 employment and establishes the conditions by which persons can enjoy that public
22 benefit.
23

24 151. The US Supreme Court held:
25

26 "It would be a palpable incongruity to strike down an act of
27 state legislation which, by words of express divestment, seeks
28

1 to strip the citizen of rights guaranteed by the federal
 2 Constitution, but to uphold an act by which the same result is
 3 accomplished under the guise of a surrender of a right in
 4 exchange for a valuable privilege which the state threatens
 5 otherwise to withhold. It is not necessary to challenge the
 6 proposition that, as a general rule, the state, having power to
 7 deny a privilege altogether, may grant it upon such conditions
 8 as it sees fit to impose. But the power of the state in that respect
 9 is not unlimited; and **one of the limitations is that it may not**
 10 **impose conditions which require the relinquishment of**
 11 **constitutional rights.** If the state may compel the surrender of
 12 one constitutional right as a condition of its favor, it may, in
 like manner, compel a surrender of all. **It is inconceivable that**
guaranties embedded in the Constitution of the United
States may thus be manipulated out of existence (emphasis
 added).”⁵⁰

13 152. Defendants’ Policy established a condition that Plaintiffs must inject
 14 or otherwise use an EUA, EUI, or PREP Act product as a condition to enjoy the
 15 government privilege of continuing or starting public employment. The U.S.
 16 Supreme Court held:

18 Broadly stated, the rule is that the right to continue the exercise
 19 of a privilege granted by the state cannot be made to depend
 20 upon the grantee’s submission to a condition prescribed by the
 21 state which is hostile to the provisions of the federal
 22 Constitution.⁵¹

26 ⁵⁰ *Frost Trucking Co. v. R.R. Com*, 271 U.S. 583, 593-94 (1926)

27 ⁵¹ *Western Union Tel. Co. v. Kansas*, 216 U.S. 1, 47, 48 S. Ct. 190; *Western*
 28 *Union Tel. Co. v. Foster*, 247 U.S. 105, 114, 38 S. Ct. 438, 1 A. L. R. 1278. (*U.S.*
v. Chicago, M., St. P. &P. Railway Co., 282 U.S. 311, 328-329 (1931)).

1 153. The Policy was “hostile” to the federal Constitution because it enabled
 2 Defendants to “impose conditions which require[d] the relinquishment of
 3 constitutional rights” “as a condition” of Plaintiffs to enjoy a “privilege” of the
 4 government, thus manipulating the Constitution “out of existence.”
 5

6 154. Therefore, the Policy was *ultra vires* because it established an
 7 unconstitutional condition upon Plaintiffs to enjoy a privilege of the government to
 8 which they were otherwise entitled.
 9

10 **H. WILLFUL AND WANTON DISREGARD FOR RIGHTS**

11 155. At all times pertinent, Defendants concealed Plaintiffs’ rights to refuse
 12 administration of an EUA, EUI, or PREP Act product, which are under laws having
 13 significant legal consequences to Plaintiffs’ legal rights.
 14

15 156. Individuals who consent to receive one of the MCMs must agree to
 16 the following terms and conditions, including but not limited to:
 17

- 18 A. forfeiture of civil litigation rights resulting from
 19 injuries;⁵²
- 20 B. allowing their private identifiable information to be
 21 collected and used for a variety of purposes by unknown
 22 persons;⁵³
- 23
- 24
- 25

26 ⁵² PREP Act forfeits all civil actions for damages in most situations.

27 ⁵³ Each EUA and/or the CDC COVID-19 Vaccination Program Provider Program
 28 requires manufacturers and/or emergency stakeholders to obtain private
 identifiable information.

- C. allow their involvement with the EUA product to be cataloged by various persons for unknown purposes,
- D. allow the data collected about their adverse events to be utilized by researchers for unknown purposes and for eternity,⁵⁴
- E. assume greater risks to their safety, health, and legal rights.⁵⁵

157. Defendants enacted a “vaccination” program but exclusively relied on EUA/EUI/PREP Act drugs that are not licensed as vaccines or any other indication for compliance.

158. Defendants did not inform Plaintiffs that EUA drugs were not licensed by the FDA nor classified as a “vaccine.”

159. Defendants’ Policy statement that, “District employees who serve the District in any capacity may apply to seek exemption from the COVID- 19 vaccine requirements,” was a direct assault on the U.S. Congress because it established a law that fundamentally changed federal legislation.

⁵⁴ Each EUA and/or the CDC COVID-19 Vaccination Program Provider Program requires manufacturers and/or emergency stakeholders to monitor, report and study a variety of adverse reactions to EUA products.

⁵⁵ 21 U.S.C. §360bbb-3 requires potential recipients to be made aware of the risks, alternatives, and the fact that the product is only authorized by the Secretary under emergency conditions. These elements provide potential recipients with the required information to make a quality and legally effective decision to consent. Therefore, consent means the individual agrees to assume more than minimal risk as defined in 21 CFR 50.3(k).

1 160. Plaintiffs' authority to reject the administration of an EUA, EUI, or
2 PREP Act product is absolute.

3
4 161. Defendants had no authority to establish a requirement to seek an
5 exemption as the right to refuse an EUA/EUI/PREP Act product.

6
7 162. Defendants enacted a Policy outside the scope of their discretionary or
8 other authority and in defiance of the United States Congress and the federal
9 Constitution.

10
11 163. Defendants used the Policy as the means to apply coercive and
12 punitive punishment to Plaintiffs for the sole reason of them exercising a legal
13 right of which Defendants were restricted from interfering.

14
15 164. Defendants used the Policy to terminate the employment of Plaintiffs
16 or otherwise withheld a benefit to which Plaintiffs were otherwise entitled in
17 violation of Plaintiffs' Fourteenth Amendment and statutory rights.

18
19 165. Defendants destroyed the emotional well-being of Plaintiffs, and their
20 dreams, goals, housing, retirement accounts, healthcare, and the lives of the loved
21 ones relying upon Plaintiffs having access to living wages, solely because Plaintiffs
22 chose a federally secured right Defendants disagreed with, and it infuriated them.

23
24
25 166. Therefore, Defendants enacted a Policy providing them legal cover to
26 accomplish that which the Constitution and the U.S. Congress prohibited.

1 167. Defendants engaged in lawless activity that shocked the conscience as
 2 outrageous, intolerable, and extreme, and placed Plaintiffs in severe emotional
 3 distress, fearing for their lives⁵⁶ and livelihoods. Such debased leadership is
 4 unheard of in modern societies and exceeds the bounds of decency.
 5

6 **VI. LEGAL CLAIMS**

7
 8 168. The facts described above constitute a deprivation of several rights
 9 guaranteed to Plaintiffs by the United States Constitution, federal statutes, and
 10 treaties.
 11

12 169. These deprivations are actionable under 42 U.S.C. § 1983 because the
 13 Defendants acted under color of state law when enacting and acting upon
 14 Ordinance No. 187134 involving drugs, biologics, and devices under federal
 15 authority and or its funding.
 16

17 170. Court precedent demonstrates that federal statutes and regulations
 18 with rights conferring language are enforceable under 42 U.S.C. §1983.⁵⁷
 19
 20
 21

22
 23 ⁵⁶ VAERS reported 1,562,008 entries from December 2020 through May 26, 2023,
 24 including 35,272 deaths (1.6 per hour) and 263,462 (12.11 per hour) serious
 25 injuries for the new and unvetted mRNA drugs. These numbers demonstrate
 26 historical entries for any drug reported to VAERS since it was first established.

27 ⁵⁷ *Maine v. Thiboutot*, 448 U.S. 1 (1980), the court held that “Even were the
 28 language ambiguous, however, any doubt as to its meaning has been resolved by
 our several cases suggesting, explicitly or implicitly, that the §1983 remedy
 broadly encompasses violations of federal statutory as well as constitutional law.”
 See also, *Health and Hospital Corporation of Marion Cty. V. Talevski*.

1 171. Defendants were, and are, restricted from attempting to use their
2 authority to amend the above-referenced statutes, regulations, treaties, agreements,
3 and contracts due to the Supremacy Clause Doctrine and express language under
4 the PREP Act.
5

6 172. The Supremacy Clause Doctrine, and the express preemption
7 language in the PREP Act and 21 U.S.C. §360bbb-3 (the EUA statute), restrict
8 public and private employers from using laws, Ordinances, or regulations to
9 require individuals to participate in any EUA or PREP Act activity or use any EUA
10 or PREP Act product.
11

12 173. This extends to any at-will employment law, doctrine, or custom an
13 employer would otherwise claim as the right to interfere with 21 U.S.C. §360bbb-
14 3, or PREP Act protocols and to amend conditions established by Congress for
15 Plaintiffs' benefit.
16

17 **FIRST CAUSE OF ACTION**

18 **42 U.S.C. § 1983 – Subjected to Investigational Drug Use**

19 174. Plaintiffs incorporate by reference the allegations contained in
20 paragraphs 1 through 160, as if fully set forth herein.
21

22 175. 21 U.S.C. §360bbb-3, Article VII of the ICCPR Treaty, Federal Wide
23 Assurance, 10 U.S.C. § 980, EUA Scope of Authorization letters, the CDC
24 COVID-19 Vaccination Program Provider Agreement, 45 CFR Part 46, the
25
26
27
28

1 Belmont Report, and the Fourteenth Amendment clearly and unambiguously create
 2 rights enforceable pursuant to 42 U.S.C. § 1983.
 3

4 176. 21 U.S.C. §360bbb-3(e)(1)(A)(ii)(III) (the EUA statute) contains a
 5 required condition of the Secretary “to ensure that individuals to whom the product
 6 is administered are informed — ‘of the option to accept or refuse administration of
 7 the product.’”
 8

9 177. 21 U.S.C. §360bbb-3, the CDC COVID-19 Vaccination Program
 10 Provider Agreement, and each EUA’s Scope of Authorization contains research
 11 conditions for COVID-19 medical products meeting 45 CFR 46.102(l)’s definition
 12 of research requiring adherence to 45 CFR § 46.101⁵⁸ *et seq.*
 13
 14

15 178. “Before involving a human subject in research covered by this policy,
 16 an investigator shall obtain the legally effective informed consent of the subject or
 17 the subject’s legally authorized representative.”⁵⁹ 45 CFR 46.116(a)(1)
 18

19 179. 45 CFR § 46.116 and the Belmont Report contain the only known
 20 definition of legally effective informed consent.
 21

22
 23
 24 ⁵⁸ “This policy applies to all research involving human subjects conducted,
 25 supported, or otherwise subject to regulation by any Federal department or agency”
 26 45 CFR 46.101(a).

27 ⁵⁹ The CDC COVID-19 Vaccination Program was not a clinical trial but it was
 28 administered under required research parameters requiring adherence to 45 CFR
 Part 46, the Belmont Report, Article VII of the ICCPR Treaty, 10 U.S.C. § 980,
 among other treaties, federal executive agreements, federal contracts, and state
 laws.

1 180. 45 CFR 46.116(b)(8) states: “A statement that participation is
2 voluntary, refusal to participate will involve no penalty or loss of benefits to which
3 the subject is otherwise entitled, and the subject may discontinue participation at
4 any time without penalty or loss of benefits to which the subject is otherwise
5 entitled.”
6
7

8 181. The Belmont Report, having the force of law,⁶⁰ declares, “An
9 agreement to participate in research constitutes a valid consent only if voluntarily
10 given. This element of informed consent requires conditions free of coercion and
11 undue influence” and “Respect for persons requires that subjects, to the degree that
12 they are capable, be given the opportunity to choose what shall or shall not happen
13 to them. This opportunity is provided when adequate standards for informed
14 consent are satisfied.”
15
16
17

18 182. Defendants breached their duties to establish “adequate standards” of
19 informed consent when applying “sanctions,” “coercion,” “undue influence,” and
20 “unjustifiable pressures” on Plaintiffs to participate in COVID-19 investigational
21 new drugs and devices (e.g., masks, testing articles). At all times pertinent,
22 Defendants did not obtain Plaintiffs’ legally effective informed consent.
23
24
25
26
27

28 ⁶⁰ 45 CFR § 46.101(c), 45 CFR 46.101(i), 45 CFR § 46.122

1 183. Article VII of the ratified International Covenant on Civil and
 2 Political Rights (ICCPR) Treaty affirms that "...no one shall be subjected without
 3 his free consent to medical or scientific experimentation."
 4

5 184. The Defendants' actions described above, individually and/or
 6 collectively, acting under color of law, and in deprivation of the Constitutional
 7 rights and rights secured by the above federal statutes, regulations, and treaty,
 8 unlawfully subjected Plaintiffs to the use of investigational medical products under
 9 threat of penalty outside of their legally effective informed consent as described in
 10 the above facts, thereby causing them damages described in Paragraphs 236
 11 through 242, *infra*.
 12
 13
 14

15 **SECOND CAUSE OF ACTION**

16 **42 U.S.C. § 1983 – Deprivation of Equal Protection Rights**

17
 18 185. Plaintiffs incorporate by reference the allegations contained in
 19 paragraphs 1 through 160, as if fully set forth herein.
 20

21 186. The CDC COVID-19 Vaccination Program Provider Agreement, and
 22 the implementing statutes and regulations found at 45 CFR Part 46, the Belmont
 23 Report, 21 U.S.C. §360bbb-3, Article VII of the ICCPR Treaty, Federal Wide
 24 Assurance, the EUA Scope of Authorization letter, and the Fourteenth Amendment
 25 clearly and unambiguously create rights enforceable pursuant to 42 U.S.C. § 1983.
 26
 27
 28

1 187. The Fourteenth Amendment to the U.S. Constitution guarantees equal
2 protection of the laws.

3
4 188. At all times pertinent, Defendants intentionally penalized only
5 Plaintiffs who exercised their federal statutory right to refuse administration of a
6 product under the PREP Act or an EUA drug (e.g., Pfizer-BioNTech COVID-19
7 Vaccine), biologic, or device (e.g., masks, COVID-19 testing articles), thereby
8 applying the laws unequally to Plaintiffs and depriving them of their Constitutional
9 Equal Protection Rights.
10

11
12 189. The Defendants' actions described above, individually and/or
13 collectively, and in derogation of the Constitution and the above statutes,
14 regulations, and treaty, have deprived the Plaintiffs of their equal protection rights
15 as described in the above facts, thereby causing them damages described in
16 Paragraphs 236 through 242, *infra*.
17

18 **THIRD CAUSE OF ACTION**

19 **42 U.S.C. § 1983 – Deprivation of Constitutional**

20 **Procedural Due Process Rights**

21
22 190. Plaintiffs incorporate by reference the allegations contained in
23 paragraphs 1 through 398, as if fully set forth herein.
24

25 191. At all times pertinent, Defendants ignored Plaintiffs 21 U.S.C.
26 §360bbb-3(e)(1)(A)(ii)(III) rights in an attempt to increase the number of
27
28

1 participants in the CDC COVID-19 Vaccination Program, resulting in the
 2 deprivation of Plaintiffs' substantive and procedural Due Process rights.
 3

4 192. "The fundamental requisite of due process of law is the opportunity to
 5 be heard." *Louisville & Nashville R. Co. v. Schmidt*, 177 U. S. 230, 177 U. S. 236.
 6

7 193. Plaintiffs have the Constitutional right "to present [their] case and
 8 have its merits fairly judged." *Logan v. Zimmerman Brush Co.*, 455 U.S. 422
 9 (1982). At all times pertinent, Defendants refused to acknowledge Plaintiffs'
 10 Constitutional and Statutory rights, thereby nullifying impartiality.
 11

12 194. Defendants did not provide Plaintiffs with a date, time, place, or
 13 procedure to defend their right to refuse injection of an unlicensed drug before an
 14 impartial body considering their lawful authority to refuse before depriving them
 15 of their liberty and property.
 16

17 195. The Defendants' actions described above, individually and/or
 18 collectively, and in derogation of the Constitution and the above statutes,
 19 regulations, and treaty, have deprived the Plaintiffs of their procedural due process
 20 rights as described in the above facts, thereby causing them damages described in
 21 Paragraphs 236 through 242, *infra*.
 22
 23
 24

25 **FOURTH CAUSE OF ACTION**

26 **42 U.S.C. § 1983 – Deprivation of Constitutional Substantive**

27 **Due Process Rights**

1 196. Plaintiffs incorporate by reference the allegations contained in
2 paragraphs 1 through 398, as if fully set forth herein.
3

4 197. The CDC COVID-19 Vaccination Program Provider Agreement, and
5 the implementing statutes and regulations found at 45 CFR 46, the Belmont
6 Report, 21 U.S.C. §360bbb-3, Article VII of the ICCPR Treaty, Federal Wide
7 Assurance, the EUA Scope of Authorization letter, and the Fourteenth Amendment
8 clearly and unambiguously create rights enforceable pursuant to 42 U.S.C. § 1983.
9
10

11 198. The Due Process Clause of the Fourteenth Amendment to the U.S.
12 Constitution guarantees the right to due process of law before infringing a citizen's
13 interest in life, liberty, or property.
14

15 199. Defendants' requirement that Plaintiffs inject unlicensed drugs into
16 their bodies as a condition to sell their labor "is not a legitimate exercise of the
17 police power of the State, but an unreasonable, unnecessary and arbitrary
18 interference with the right and liberty of the individual to contract in relation to
19 labor, and, as such, it is in conflict with, and void under, the Federal Constitution."
20
21

22 *Lochner v. New York*, 198 U.S. 45 (1905)⁶¹
23

24 200. Defendants' Policy, as applied, deprived Plaintiffs of their right under
25

26 ⁶¹ Although the U.S. Supreme Court no longer follows the *Lochner* doctrine, the
27 statement is applicable when viewed through the fact that the Defendants, acting on
28 a state custom, were stripped of their police power under 21 U.S.C. §360bbb-3 and
the PREP Act to deny Plaintiffs the right to sell their labors in the marketplace.

1 21 U.S.C. §360bbb-3 to refuse the administration of the authorized products, a
 2 violation of Plaintiffs' substantive due process rights.
 3

4 201. Defendants' Policy, as applied, deprived Plaintiffs of their lawful right
 5 to freely determine their participation in the administration of a PREP Act
 6 countermeasure, a violation of Plaintiffs' substantive due process rights.
 7

8 202. Defendants' Policy, as applied, required Plaintiffs to seek an
 9 exemption as the means to enjoy their 21 U.S.C. §360bbb-3 option, and their
 10 choice of free participation in a PREP Act countermeasure, a violation of
 11 Plaintiffs' substantive due process rights.
 12

13 203. Defendants' Policy, as applied, required Plaintiffs to surrender their
 14 substantive due process rights to seek judicial relief should they incur injury from
 15 the product's use or its administration as a condition to continue employment, a
 16 violation of Plaintiffs' substantive due process rights.
 17

18 204. The Defendants' actions described above, individually and/or
 19 collectively, and in derogation of the Constitution and the above statutes,
 20 regulations, and treaty, have deprived the Plaintiffs of their substantive due process
 21 rights as described in the above facts, thereby causing them damages described in
 22 Paragraphs 236 through 242, *infra*.
 23
 24
 25

26 **FIFTH CAUSE OF ACTION**

27 **Unconstitutional Conditions Doctrine - 42 U.S.C. § 1983**

1 205. Plaintiffs incorporate by reference the allegations contained in
2 paragraphs 1 through 160, as if fully set forth herein.
3

4 206. The CDC COVID-19 Vaccination Program Provider Agreement, and
5 the implementing statutes and regulations found at 45 CFR §46, the Belmont
6 Report, 21 U.S.C. §360bbb-3, Article VII of the ICCPR Treaty, Federal Wide
7 Assurance, the EUA Scope of Authorization letter, and the Fourteenth Amendment
8 clearly and unambiguously create rights enforceable pursuant to 42 U.S.C. § 1983.
9
10

11 207. “[T]he state, having power to deny a privilege altogether, may
12 grant it upon such conditions as it sees fit to impose. But the power of the state in
13 that respect is not unlimited; and one of the limitations is that it may not impose
14 conditions which require the relinquishment of constitutional rights. If the state
15 may compel the surrender of one constitutional right as a condition of its favor, it
16 may, in like manner, compel a surrender of all. It is inconceivable that guaranties
17 embedded in the Constitution of the United States may thus be manipulated out of
18 existence (emphasis added).” *Frost Trucking Co. v. R.R. Com.*, 271 U.S. 583, 593-
19
20
21
22 94 (1926)

23 208. Defendants established conditions requiring Plaintiffs to surrender
24 their Constitutional rights under the Fourteenth Amendment to enjoy privileges
25 they were otherwise entitled, such as public employment.
26
27
28

1 countermeasure and covered persons can participate and the use of such covered
 2 countermeasure.⁶²

3
 4 213. Congress preempted Defendants from establishing laws and
 5 continuing in effect with existing ones (i.e., at-will employment doctrine) that
 6 would otherwise interfere with Plaintiffs' authority with respect to "conduct
 7 undertaken" concerning "any matter included in a requirement applicable" to a
 8 "covered countermeasure" under the PREP Act or 21 U.S.C. §360bbb-3 including
 9 the required condition that *Plaintiffs be informed of their legal right to either*
 10 *accept or refuse said countermeasure.*^{63, 64}(Emphasis added.)

11
 12
 13 214. Congress was explicit that the HHS Secretary must establish
 14 conditions ensuring that "potential participants are educated with respect to...the
 15 voluntary nature of the program..."⁶⁵

16
 17 215. The "program" consists of those agreeing to manufacture, distribute,
 18 administer ("covered person"), and receive⁶⁶ ("covered individual") the product.

19
 20 216. Congress expressly restricted the HHS Secretary from having any
 21 authority to require any person to participate in any activity involving a "drug,"
 22
 23

24
 25 _____
 26 ⁶² 42 USC 247d-6d(b)(1)

27 ⁶³ 21 U.S.C. 301 is the Federal Food, Drug and Cosmetic Act, which ranges from
 28 §301 to §399, and thus includes 21 U.S.C. §360bbb-3(e)(1)(A)(ii)(III).

⁶⁴ 42 USC 247d-6d(b)(8)

⁶⁵ 42 USC 247d-6e(c)

⁶⁶ 42 U.S.C. §247d-6e(e)(2)

1 “biologic,” or “device” under 21 U.S.C. §360bbb-3⁶⁷ or any “covered
2 countermeasure” under the PREP Act.
3

4 217. By extension, any person authorized to participate in the program is
5 also restricted from mandating participation.
6

7 218. Defendants established laws and policies that conflicted with the
8 PREP Act and 21 U.S.C. §360bbb-3 when they required Plaintiffs to participate in
9 the use of a covered countermeasure under threat of penalty.
10

11 219. Moreover, Defendants engaged in policy-making and conduct that
12 conflicted with the PREP Act and the Fifth and Fourteenth Amendments of the
13 United States Constitution.
14

15 220. Mandatory participation in PREP Act covered countermeasures is a
16 severe violation of the Constitution’s Due Process guarantees.
17

18 221. No person can be required to enter into a legally binding agreement
19 requiring the forfeiture of legal rights under threat of penalty.
20

21 222. The terms and conditions associated with the PREP Act and 21 U.S.C.
22 §360bbb-3 represent a legally binding agreement as established by the U.S.
23 Congress.
24

25
26
27 ⁶⁷ 21 U.S.C. §360bbb-3(l): “Nothing in this section provides the Secretary any
28 authority to require any person to carry out any activity that becomes lawful
pursuant to an authorization under this section...”

1 223. Those terms require Plaintiffs to forfeit their right to seek judicial
2 relief from injuries sustained from the use of the countermeasure and injuries
3 sustained from the countermeasure's administration.
4

5 224. The agreement also requires Plaintiffs to divulge their private health
6 information and private identity and assume greater risks to their health, safety,
7 and legal rights.
8

9 225. Defendants' pronouncement that Plaintiffs must participate in covered
10 countermeasures prospectively denies Plaintiffs their due process rights should
11 they incur injury because the PREP Act denies them access to judicial relief for
12 those injuries.
13
14

15 226. Defendants utilized their position of authority to place Plaintiffs under
16 threat of penalty if they chose not to participate in a PREP Act countermeasure,
17 despite Defendants' positions having no such authority.
18

19 227. Defendants changing the voluntary nature of the program into an
20 involuntary program endangers the immunities of existing covered
21 countermeasures established by the HHS Secretary.
22

23 228. Defendants' interference is a direct assault on the Constitutional rights
24 of Plaintiffs, which opens the doors to legal remedies not envisioned by Congress
25 but required of the Constitution for resulting injuries sustained by individuals when
26 under threat of penalty to participate.
27
28

1 229. The Defendants' actions described above, individually and/or
2 collectively, and in derogation of the Constitution and the above statutes,
3 regulations, and treaty, deprived the Constitutional and federal legal rights of
4 Plaintiffs to only volunteer in PREP Act products as described in the above facts,
5 thereby causing them damages described in Paragraphs 236 through 242, *infra*.
6
7

8 **SEVENTH CAUSE OF ACTION**

9 **Intentional Infliction of Emotional Distress**

10
11 230. Plaintiffs incorporate by reference the allegations contained in
12 paragraphs 1 through 160, as if fully set forth herein.
13

14 231. When the United States Congress refused to allow Defendants to
15 apply consequences to Plaintiffs refusing to participate in the use of COVID-19
16 investigational drugs, Defendants engaged in a scorched-earth policy and inflicted
17 with malicious intent severe emotional distress to the fullest extent that one in their
18 positions of authority and power could inflict to the detriment of Plaintiffs'
19 emotional well-being.
20
21

22 232. The Defendants' conduct, committed with gross negligence,
23 recklessness, or intent, as described above, gives rise to a claim of outrageous
24 conduct and intentional infliction of emotional distress under the common law of
25 the State of California against the Defendants for the damages described in
26 Paragraphs 236 through 242, *infra*.
27
28

EIGHTH CAUSE OF ACTION

Implied Private Right of Action 21 U.S.C. §360bbb-3

233. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 160, as if fully set forth herein.

234. Should the court not agree that §1983 provides Plaintiffs with the procedural vehicle to sue for the deprivation of rights under the EUA statute, Plaintiffs claim that 21 U.S.C. §360bbb-3 contains an implied private right of action pursuant to *Cannon v. University of Chicago*, 441 U.S. 677 (1979), *Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498 (1990), and *Cort v. Ash*, 422 U.S. 66 (1975).

235. The Defendants' actions described above, individually and/or collectively, and in derogation of the Constitution and the above statutes, regulations, and treaty have deprived the Plaintiffs of their explicit right to refuse the administration of an emergency use authorized drug and/or medical product without penalty as described in the above facts, thereby causing them damages described in Paragraphs 236 through 242, *infra*.

VII. Damages Recoverable and Demanded

236. The following paragraphs are hereby incorporated by reference into Causes of Action One through Eight, as if set forth here *in extenso*.

237. As a direct and proximate result of the Defendants' unreasonable and unlawful actions, Plaintiffs have suffered past damages and will suffer future

1 damages, both compensatory and general, including, but not limited to, front and
2 back pay; loss of benefits; loss of accumulated sick pay; loss of retirement
3 accounts; lost earnings on retirement funds; vacation time, compensatory time, and
4 paid time off; negative tax consequences (in the event of a lump sum award),
5 including related accountant fees; attorney's fees; emotional distress; mental,
6 psychological and physical harm; loss of income; loss of enjoyment of life; for
7 which defendants are liable in compensatory, punitive, exemplary, legal, equitable,
8 and all other damages that this Court deems necessary and proper.

12 238. When the Defendants' behavior reaches a sufficient threshold,
13 punitive damages are recoverable in § 1983 cases. *Smith v. Wade*, 461 U.S. 30
14 (1983). Because Defendants' actions were intentional and willful, Plaintiffs are
15 entitled to, and hereby demand, an award of punitive damages against each and
16 every Defendant in an amount sufficient to deter them, individually and
17 collectively, from repeating their unconstitutional actions. *Smith v. Wade*, 461 U.S.
18 30 (1983)

22 239. Because Defendants' actions involved reckless or callous indifference
23 to the Plaintiffs' federally protected rights, Plaintiffs are entitled to, and hereby
24 demand, an award of punitive damages against each and every Defendant in an
25 amount sufficient to deter them, individually and collectively, from repeating their
26 unconstitutional actions. *Smith v. Wade*, 461 U.S. 30 (1983)

1 **ON THE FIRST CAUSE OF ACTION**

2 1. For damages described above for violating Plaintiffs' right to refuse
3
4 investigational EUA/EUI/Prep Act products.

5 2. For reasonable attorneys' fees.
6

7 **ON THE SECOND CAUSE OF ACTION**

8 1. For damages described above for the deprivation of Plaintiffs' equal
9
10 protection rights under the Constitution.

11 2. For reasonable attorneys' fees.
12

13 **ON THE THIRD CAUSE OF ACTION**

14 1. For damages described above for the deprivation of Plaintiffs' due
15
16 process rights under the Constitution.

17 2. For reasonable attorneys' fees.
18

19 **ON THE FOURTH CAUSE OF ACTION**

20 1. For damages described above for the deprivation of Plaintiffs'
21
22 substantive due process rights under the Constitution.

23 2. For reasonable attorneys' fees.
24

25 **ON THE FIFTH CAUSE OF ACTION**

26 1. For damages described above for violation of the Unconstitutional
27
28 Conditions Doctrine.

2. For reasonable attorneys' fees.

1 **ON THE SIXTH CAUSE OF ACTION**

2 1. For damages described above for the deprivation of Plaintiffs' rights
3
4 under the PREP Act.

5 2. For reasonable attorneys' fees.
6

7 **ON THE SEVENTH CAUSE OF ACTION**

8 1. For damages describe above due to intentional infliction of emotional
9 distress.
10

11 2. For reasonable attorneys' fees.
12

13 **ON THE EIGHTH CAUSE OF ACTION**

14 1. To allow the Plaintiffs a private right of action under the EUA statute
15 in the event the court does not find that §1983 provides Plaintiffs the procedural
16 vehicle to sue for deprivation of the rights identified above.
17

18 2. For reasonable attorneys' fees.
19

20 **ON ALL CAUSES OF ACTION**

21 1. For judgment in favor of Plaintiffs;

22 2. For costs of suit herein; and
23

24 ///

25 ///

26 ///

27 ///

28 ///

1 3. For such other and further relief as the Court may deem just and
2 proper.
3

4 Respectfully submitted,

5 Dated: December 7, 2023
6

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13 AND

15 Dated: December 7, 2023
16

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