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18 **UNITED STATES DISTRICT COURT**
19 **DISTRICT OF NEVADA**

20 Jonah Gold,

21 *Plaintiff,*

22 v.

23 BRIAN SANDOVAL, in his official
24 capacity as PRESIDENT OF THE
25 UNIVERSITY OF NEVADA, RENO, et
26 al.

27 *Defendants.*

28 **Case Number**
3:21-cv-00480-JVS-CLB

Plaintiff's Opposition to
Motion to Dismiss by All
Defendants

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION 1

II. LEGAL STANDARD 6

III. CORRECTLY UNDERSTANDING THIS CASE..... 7

 A. Correctly Understanding Separate But Equal 9

 B. Correctly Understanding The Implications of Masking and Testing 10

IV. STRICT SCRUTINY IS NECESSARY TO PREVENT GOVERNMENT
ELIMINATION OF NATURAL UNVACCINATED PEOPLE 13

V. IN THE DAYS OF JACOBSON V. MASSACHUSETTS 16

VI. EMERGENCY USE AUTHORIZATION 19

VII. INACCURACIES IN DEFENDANTS’ MOVING PAPERS 21

VIII. CONCLUSION 25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

US Constitution

4th Amendment.....11
 5th Amendment.....12
 14th Amendment..... 11, 13, 15

Statutes

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 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(I-III)19

Cases

AFSCME Council 79 v. Scott, 717 F.3d 851, 873-74 (11th Cir. 2013).....12
Anderson v. Angelone, 86 F.3d 932, 934 (9th Cir. 1996).....6
Anderson v. City of Taylor, 2005 U.S. Dist. Lexis 44706 (E.D. Mich. August 11, 2005)11
Arizona v. Biden, No. 2:21-cv-01568-MTL, Dkt. 34 (US District Court for the District of Arizona, 10/22/21).....15
Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)3
Astoria Fed. Sav. & Loan Ass'n v. Solimino, 501 U.S. 104, 111 S. Ct. 2166, 115 L. Ed. 2d 96 (1991).....6
Aviles v. De Blasio, 2021 U.S. Dist. LEXIS 38930 (S.D.N.Y. Mar. 2, 2021) ...11
Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).....6, 7
Bostic v. McClendon, 650 F. Supp. 245, 249 (N.D. Ga. 1986)12
BST Holdings, L.L.C. v. OSHA, No. 21-60845, 2021 U.S. App. LEXIS 33698 (5th Cir. Nov. 12, 2021).....14
Bumper v. North Carolina, 391 U.S. 543, 548, 88 S. Ct. 1788, 20 L. Ed. 2d 797 (1968).....12
Church of Lukumi Babalu Aye v. City of Hialeah, 508 U.S. 520, 531 (1993) ...24
Dahl v. Bd. of Trs. of W. Mich. Univ., No. 1:21-cv-757, 2021 U.S. Dist. LEXIS 167041, at *5 (W.D. Mich. Aug. 31, 2021).....13

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24 *9 (D. Nev. Feb. 1, 2013) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678

25 (2009)).....6

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Magliulo v. Edward Via Coll. of Osteopathic Med., No. 3:21-CV-2304, 2021

U.S. Dist. LEXIS 159265, at *18 (W.D. La. Aug. 17, 2021)..... 8, 11, 13

Michalski et al. v. St. John Fisher College, et al. (State of New York, Supreme

Court: County of Onondaga, Index No. 8063/2021)13

Nelson v Nat’l Aeronautics & Space Admin, 530 F.3d 865 (9th Cir. 2008)24

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District of Oklahoma, 11/4/21).....16

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District of Texas, 10/29/21)15

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912

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1 **I. INTRODUCTION**

2 The vast majority of the US does *not* mandate Covid-19 vaccination, testing, or
3 masks.¹ Not surprisingly, federal courts across the country have begun *granting* relief
4 to plaintiffs challenging Covid-19 vaccines, testing, and masks.²

5 Where exactly is a State’s red line that our Constitution requires?

6 If government mandated biotech injections (covid vaccines) are forced upon a
7 free and healthy young man against his physician’s advice, for participation in
8 society, where is the red line? If the biotech must simply be labelled “vaccine”, that is
9 not a meaningful red line because it prevents natural humans from existing in society.

10 Defendants hinge their defense on ‘rational basis review’, thinking that could
11 somehow allow them to freely step beyond the red line in this case.

12 Plaintiff is offering this Court mainstream consensus science and independent
13 scientific data³ from experts who are successful healing people daily.

14
15 ¹ Bunis, D, et al. (November 2021). *List of Coronavirus-Related Restrictions in Every*
16 *State*. AARP. [https://www.aarp.org/politics-society/government-elections/info-](https://www.aarp.org/politics-society/government-elections/info-2020/coronavirus-state-restrictions.html)
17 [2020/coronavirus-state-restrictions.html](https://www.aarp.org/politics-society/government-elections/info-2020/coronavirus-state-restrictions.html); see also *Ballotpedia (2021). State-level mask*
18 *requirements in response to the coronavirus (COVID-19) pandemic, 2020-2021.*
19 [https://ballotpedia.org/State-](https://ballotpedia.org/State-level_mask_requirements_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020-2021)
20 [level_mask_requirements_in_response_to_the_coronavirus_\(COVID-](https://ballotpedia.org/State-level_mask_requirements_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020-2021)
21 [19\)_pandemic,_2020-2021.](https://ballotpedia.org/State-level_mask_requirements_in_response_to_the_coronavirus_(COVID-19)_pandemic,_2020-2021)

22 ² See section VI below (“Strict Scrutiny Is Necessary To Prevent Government
23 Elimination of Natural Unvaccinated People”).

24 ³ Plaintiff America’s Frontline Doctors is widely supported in explaining mainstream
25 and independent data. See also Public Health and Medical Professionals for
26 Transparency (December 8, 2021). *FOIA Documents*. [https://phmpt.org/wp-](https://phmpt.org/wp-content/uploads/2021/11/5.3.6-postmarketing-experience.pdf)
27 [content/uploads/2021/11/5.3.6-postmarketing-experience.pdf](https://phmpt.org/wp-content/uploads/2021/11/5.3.6-postmarketing-experience.pdf) (Pfizer’s own report
28 reveals that from December 1, 2020 to February 28, 2021, the first 90 days that
Pfizer’s Covid vaccine had been rolled out, there were 1,223 deaths recorded and
42,086 adverse reactions and vaccine injuries reported worldwide. The largest
number of adverse reactions was recorded in the United States (13,739) and the UK

1 Respectfully, Plaintiff’s position is more *balanced* than Defendants’. Perhaps
2 this would be surprising if one were unapprised of the character evidence that Covid-
3 19 biotech comes from convicted felons.⁴

4 One of the scholarly criticisms of our judiciary in the Covid-19 era has been
5 the judiciary’s deference to pharma science hiding behind the curtain ‘mainstream
6 government information only’. This often comes across to the public as a form of
7 partiality rather than faithful compliance with Rule 702 of the Federal Rules of
8 Evidence (re qualification of experts), especially to the extent that a judge summarily
9 dismisses all evidence/cases of widespread vaccine harm regardless of plaintiffs’ top
10 experts proffered.

11 For example, last week the fully vaccinated professor Martin Makary, MD,
12 MPH, with Johns Hopkins Bloomberg School of Public Health, appeared before
13 Congress and openly criticized public health officials for publishing studies not
14 worthy of “a 7th-grade science experiment” and pushing Covid-19 policies that are
15 “too extreme, too rigid and are no longer driven by clinical data.” Dr. Makary upheld
16 the scientific consensus for natural immunity, especially in young people, and
17
18

19 _____
20 (13,404). Researchers only included reports that they deemed to be serious cases.
21 Reports are submitted voluntarily, and the magnitude of underreporting is unknown).

22 International Alliance of Physicians and Medical Scientists (October 29, 2021).
23 *Declaration*. <https://doctorsandscientistsdeclaration.org>.

24 The point here is not to provide an exhaustive list of independent medical
25 sources, but to emphasize that *independent* information is essential to *independent*
26 judgment. Both historically and today, mainstream public health information is
27 routinely wrong and then clarified later, at which point the public is happy that not
28 everyone was forced to go along. The judiciary serves a key checks and balances role
to ensure that people are not forcefully injected by the government.

⁴ Here is just a sample: Department of Justice data cited by Groeger, L (2014). *Big
Pharma’s Big Fines*. ProPublica. <https://projects.propublica.org/graphics/bigpharma>.

1 confirmed the unsustainability of Covid boosters. “Is this what we’ve come to,”
2 Makary asked Congress, “Pharma tells us what to do and the CDC just falls in line?”⁵

3 We also caution the Court regarding factual and legal inaccuracies in
4 Defendants’ moving papers, such as Defendants’ Motion at page 10, lines 8-10,
5 “Plaintiff argues that the Vaccine Policy implicates his fundamental right to
6 informational privacy by requiring disclosure of vaccination status to his employers.”
7 *See* ECF 28 at 10:8-10.

8 This is actually not an employment case. Plaintiff is a college student.

9 To Defendants’ credit though, Defendants do at least implicitly acknowledge
10 their position is the minority one, as they note in their Motion at 2:6-7, “like other
11 state vaccine policies throughout the states *within the Ninth Circuit*. [emphasis
12 added]”. *Id.* at 2:6-7.

13 On a motion to dismiss, courts take the facts alleged in the Complaint as true.⁶
14 Applied here, this Court can rule for Plaintiff on *any* of the following independent
15 grounds:

- 16 • A narrow statutory ruling that Covid-19 emergency use authorized (EUA)
17 products cannot be mandated, for the simple reason that federal statute (and
18 recent federal case law) explicitly prohibit it.⁷

19
20 ⁵ U.S. Congress (December 14, 2021). *A Global Crisis Needs A Global Solution: The*
21 *Urgent Need To Accelerate Vaccinations Around The World*. Select Subcommittee
22 on the Coronavirus Crisis. [https://coronavirus.house.gov/subcommittee-](https://coronavirus.house.gov/subcommittee-activity/hearings/global-crisis-needs-global-solution-urgent-need-accelerate)
[activity/hearings/global-crisis-needs-global-solution-urgent-need-accelerate](https://coronavirus.house.gov/subcommittee-activity/hearings/global-crisis-needs-global-solution-urgent-need-accelerate).

23 ⁶ *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009).

24
25 ⁷ 21 U.S.C. § 360bbb-3; *John Doe #1 #14 & Jane Doe #1 #2 v. Austin*, No. 3:21-cv-
26 [1211-AW-HTC](#), 2021 U.S. Dist. LEXIS 236327, at *17 (N.D. Fla. Nov. 12, 2021)
27 (finding that EUA vaccines cannot be mandated, “Because the plaintiffs have not
28 shown they are (or will be) required to receive an EUA-labeled, non-BLA-compliant
vaccine, the plaintiffs have not shown a likelihood of success”).

- 1 • A narrow ruling that because Jonah Gold's doctor does not recommend the
2 vaccine, the doctor will be respected.
- 3 • A comprehensive ruling that healthy Americans have the fundamental
4 constitutional right to decline a government injection of biotechnology, even in
5 an emergency.

6 What is not acceptable though would be for the Court to deny *every* ground for
7 judicial relief sought, as the result would be giving a State unchecked power to
8 mandate biotech. Surely this Court has a red line (notably this Court's TRO denial
9 earlier this month did not specify where that red line is). Plaintiff urges the Court to
10 recognize there comes a time for *everyone* to want to decline a vaccine – for many it
11 is a Covid booster, or a swine flu shot, or any of the 250+ vaccines currently in
12 research and development according to the trade publication PhRMA.⁸ Natural
13 immunity works and it is irrational for government to mandate its eradication.
14 Rather, it is just and right and necessary to respect natural people, as most
15 jurisdictions have during Covid, *because of our Constitution*.⁹

16 Defendants are correct on one point: this Court's job is not peer-review.
17 Judicial review requires something even more thorough than peer-review: expert
18 vetted review with opportunity for cross-examination of live witnesses. This allows
19 the lawyers to actually do their jobs. Indeed, in public health constitutional
20 challenges, lawyers are supposed to carefully review epidemiological evidence and
21
22

23
24 ⁸ PhRMA (July 21, 2020). *Report: Medicines in Development for Infectious Diseases*
25 *2020 Report*. [https://phrma.org/resource-center/Topics/Report/Medicines-in-](https://phrma.org/resource-center/Topics/Report/Medicines-in-Development-for-Infectious-Diseases-2020-Report)
26 [Development-for-Infectious-Diseases-2020-Report](https://phrma.org/resource-center/Topics/Report/Medicines-in-Development-for-Infectious-Diseases-2020-Report); PhRMA. (2016). *New report*
27 *highlights more than 250 vaccines in development*. [https://catalyst.phrma.org/new-](https://catalyst.phrma.org/new-report-highlights-more-than-250-vaccines-in-development)
[report-highlights-more-than-250-vaccines-in-development](https://catalyst.phrma.org/new-report-highlights-more-than-250-vaccines-in-development).

28 ⁹ See section III below (“Correctly Understanding the Case”)

1 public records to assist the court.¹⁰ Dismissing cases outright is disfavored.

2 Defendants are correct when they state in the Motion to Dismiss at page 14,
3 lines 2-3, “scientific understanding of COVID-19 is rapidly developing.” But that is
4 not a good reason for the government to require one-size-fits-all biotech injections
5 into its citizens. If our Constitution is to mean what it says, then there must be a red
6 line.

7 For Jonah, his doctor does not recommend the vaccine because it can only
8 statistically harm him. The parties therefore have a justiciable dispute, because
9 Defendants implemented a one-size-fits-all’ segregation policy that discards Jonah’s
10 doctor’s assessment.

11 Once again to their credit Defendants concede Plaintiff has the right of
12 informed refusal, as noted in the Motion to Dismiss at page 1, lines 15-16, “Plaintiff
13 can choose for himself whether he wishes to comply with the Vaccine Policy”. But
14 Defendants fail to address Plaintiff’s allegations that respectable doctors agree that
15 placing patients under duress is a discredited and unlawful tool of coercion. See e.g.,
16 Dr. Ponesse Decl. ¶I.4 (“Autonomy and Coercion”), and Complaint ¶¶9, 13, 23-25.
17 Duress comes from the discredited era of ‘separate but equal’ schooling, where
18 authorities make life increasingly difficult or impossible until the disfavored student
19 accepts their subjugation or exits the premises.

20 In summary, Defendants are fallaciously attempting to mislead this Court to
21 work from an entirely different set of facts than those alleged in the Complaint. If the
22

23 ¹⁰ Wendy E. Parmet, Public Health and Constitutional Law: Recognizing the
24 Relationship, 10 J. Health Care L. & Pol’y 13 (2007). Available
25 at: <http://digitalcommons.law.umaryland.edu/jhclp/vol10/iss1/3> (“Epidemiology,
26 however, also plays an important role in constitutional law, especially in many
27 doctrines and cases, some of which were discussed above, in which the state's
28 purported attempt to protect public health is relevant to the determination of the
constitutionality of state action... To answer each of these questions, the Court had to
review and assess epidemiological evidence.”)

1 Court acquiesces to Defendants' efforts, it would technically convert the Motion to
2 Dismiss into one for summary judgment.¹¹

3 **II. LEGAL STANDARD**

4 To survive a motion to dismiss, a complaint must contain sufficient factual
5 allegations that, taken as a whole, state a facially plausible claim to relief. *Bell Atl.*
6 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *La. Mun. Police Emps. Ret. Sys. v.*
7 *Wynn*, 2013 U.S. Dist. LEXIS 14013, at *9 (D. Nev. Feb. 1, 2013) (quoting *Ashcroft*
8 *v. Iqbal*, 556 U.S. 662, 678 (2009)). A claim is plausible when the facts alleged allow
9 the court to draw "a reasonable inference" that the defendant is liable for the alleged
10 actions. *Id.* In considering a motion to dismiss, a court must accept the well-pleaded
11 factual allegations in the complaint as true, *id.*, and "draw all reasonable inferences in
12 favor of the plaintiff." *In re Stratosphere Corp. Sec. Litig.*, 1 F. Supp. 2d 1096, 1103
13 (D. Nev. 1998) (citing *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir.
14 1987)).

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18 ¹¹ FRCP 12(d), "If, on a motion under Rule 12(b)(6) or 12(c), matters outside the
19 pleadings are presented to and not excluded by the court, the motion must be treated
20 as one for summary judgment under Rule 56." See also, *Anderson v. Angelone*, 86
21 F.3d 932, 934 (9th Cir. 1996) ("A motion to dismiss . . . must
22 be treated as a motion for summary judgment... if either party... submits
23 materials outside the pleadings in support or opposition to the motion, and if the
24 district court relies on those materials."). However, reliance on matters of public
25 record "does not convert a Rule 12(b)(6) motion to one for summary judgment."
Mack v. S. Bay Beer Distribs., 798 F.2d 1279, 1282 (9th Cir. 1986), *abrogated on*
other grounds by Astoria Fed. Sav. & Loan Ass'n v. Solimino, 501 U.S. 104, 111 S.
26 Ct. 2166, 115 L. Ed. 2d 96 (1991).

26 Indeed, Defendants submitted a factual declaration (from Dr. Labus) that is
27 filled with inaccuracies. To set the record straight, Plaintiff therefore redirects the
28 Court to Plaintiff's expert declarations on record, together with a follow-up
expert declaration from Dr. Alexander to expose the scientific inaccuracies in the State
expert declaration.

1 When considering a motion to dismiss under Rule 12(b)(6) for failure to state a
2 claim, dismissal is appropriate only when the complaint does not give the defendant fair
3 notice of a legally cognizable claim and the grounds on which it rests.¹²

4 **III. CORRECTLY UNDERSTANDING THIS CASE**

5 Defendants are state actors preventing a naturally immune student (Plaintiff
6 Jonah Gold) from following his doctor’s advice to decline a Covid-19 vaccine.
7 Scientifically, the vaccine can provide Jonah no benefit, and also cannot benefit the
8 community. The only thing the vaccine can do, statistically, is harm Jonah. As a
9 penalty for doing the right thing, Jonah is currently suffering daily harm from UNR’s
10 ‘separate but equal’ campus policies against unvaccinated students.

11 New undisputed information about Covid-19 has come to light nationwide, and
12 it must be addressed squarely by this Court because the new information expressly
13 *contradicts* Nevada’s overbroad vaccine mandate upon every college student.

14 We begin with two (2) facts that are certain:

15 (1) The entire worldwide scientific consensus is now that Covid-19 vaccination
16 does not prevent infection or transmission of the coronavirus. Every serious
17 person admits this openly today, including all US Health Agencies, which is
18 why the CDC Director stated on CNN, “what the vaccines can’t do
19 anymore is prevent transmission.”¹³

20 (2) The Plaintiff in this case (Jonah) has proven natural immunity to Covid-19;
21 he is an 18-year old healthy unvaccinated college student (hence a
22 >99.997% chance of survival) that poses no danger to himself or others.¹⁴

24
25 ¹² *Twombly*, 550 U.S. at 555.

26 ¹³ See Complaint ¶¶1-2 citing health authorities, and see CNN (August 5, 2021). *The*
27 *Situation Room, interview with CDC Director Walensky.*
28 <https://twitter.com/CNNSitRoom/status/1423422301882748929>.

1 According to experts and his own doctor, it is statistically impossible for
 2 Covid-19 vaccination to benefit this young man or benefit public health; but there is a
 3 statistical likelihood that Covid-19 vaccination will harm him.¹⁵ Due to Nevada’s
 4 outrageously overbroad vaccine mandate, Jonah does not qualify for a medical
 5 exemption under the rigid ACIP *recommendations* that are *required* [sic] by
 6 Defendants’ overbroad mandate.¹⁶ Jonah is now unforgivingly required to be
 7 vaccinated to: (a) meet his academic standards in college, (b) congregate in the dorm
 8 where he lives, and (c) exist normally as a healthy and wholesome college student
 9 here in the land of the free and the home of the brave.¹⁷

11
 12 ¹⁴ See Jonah Gold declaration in support of Temporary Restraining Order, with
 13 attached supportive letter from Jonah’s doctor.

14 ¹⁵ See Plaintiff’s top medical expert declarations in support of Temporary Restraining
 15 Order.

16 ¹⁶ It is undisputed that ACIP makes non-binding recommendations only, yet
 17 Defendants have ‘required’ those recommendations be followed. See DPBH
 18 (September 2021). *University – Medical Immunization Exemption Certificate*.
 19 Nevada State Immunization Program. [https://www.unr.edu/main/pdfs/verified-
 20 accessible/divisions-offices/student-services/admissions-records/university-medical-
 21 immunization-exemption.pdf](https://www.unr.edu/main/pdfs/verified-accessible/divisions-offices/student-services/admissions-records/university-medical-immunization-exemption.pdf). CDC (November 3, 2021). *Interim Clinical
 22 Considerations for Use of COVID-19 Vaccines Currently Approved or Authorized in
 23 the United States, Contraindications and precautions*. Covid-19 Vaccination.
[https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-
 24 us.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fvaccines%2Fcovid-
 25 19%2Finfo-by-product%2Fclinical-considerations.html#Contraindications](https://www.cdc.gov/vaccines/covid-19/clinical-considerations/covid-19-vaccines-us.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fvaccines%2Fcovid-19%2Finfo-by-product%2Fclinical-considerations.html#Contraindications).

26 ¹⁷ As described in detail herein, with the support of State Attorney Generals, Federal
 27 courts have overturned many draconian Covid-19 regulations. See e.g., *Magliulo v.*
 28 *Edward Via Coll. of Osteopathic Med.*, No. 3:21-CV-2304, 2021 U.S. Dist. LEXIS
 159265, at *18 (W.D. La. Aug. 17, 2021) (granting college students a temporary
 restraining order against college’s enforcement of a Covid-19 vaccine mandate with
 mandatory masking and testing of the unvaccinated), “In addition to showing
 constitutional harm, Plaintiffs have shown irreparable harm because of their inability

1 Thus, we come to an uncomfortable realization, which we hereby place
2 squarely before this Court: mandatory Covid-19 vaccination would be a senseless
3 public health *sacrifice* of Plaintiff Jonah Gold. See Plaintiff’s expert declarations on
4 record in this action, such as top bioethics professor Julie Ponesse, PhD (“What
5 sacrifices is it acceptable to ask of individuals in order to achieve public health?”)
6 and former senior advisor with the primary health agency of the US government,
7 professor Paul E. Alexander, PhD (“These factors need to be given strong clinical
8 consideration when weighed against the risks and/or real ‘sacrifices’ associated with
9 receiving any of the current COVID-19 vaccines.”) Defendants do not possess clear
10 and unquestionable authority of law to force Jonah to engage in a harmful medical
11 procedure.

12 This case is important. 14 top doctors and scientists have already filed
13 supportive declarations for Jonah (such as Yale epidemiology professor Harvey
14 Risch, MD, PhD who rigorously explains how several scientific statements are
15 blatantly wrong on the website that Defendants direct the public for information), and
16 many more top doctors will also join the procession of experts here if needed to
17 ensure Jonah’s good health prevails over unbridled state power to broadly mandate
18 biotech in every arm.

19 **A. Correctly Understanding Separate But Equal**

20 Jonah has committed the ‘offense’ of simply existing with natural immunity.
21 The history of forced segregation is exactly this – falsely and indiscriminately
22 branding an entire group of natural people as dirty and unclean. History shows the
23 effects of such segregation are *generational*. In essence, UNR mandates, ‘this
24 drinking water fountain is for vaccinated people only’, the stain of such an
25 unconstitutional policy is upon the entire university, both today and in the future.

26 _____
27 to complete curriculum requirements, disclosure of their ‘unvaccinated’ status, and
28 excessive restrictions.”

1 History will prove this true. Plaintiff realizes that Defendants may think that naturally
 2 immune people are unclean, but science proves Defendants wrong. Plaintiff realizes
 3 Defendants are deferring to authority (such as the FDA, see Motion at pp. 2-4), but
 4 history proves that is a frequently failed strategy, including recently with FDA-
 5 approved opioids. And federal courts are routinely the bodies to say so.

6 **B. Correctly Understanding The Implications of Masking and Testing**

7 As a human with natural immunity, it is unreasonable to require Plaintiff to
 8 submit to disfavored masking and testing.¹⁸

9 Plaintiff's experts confirm it is a statistical certainty that a person who is Covid
 10 recovered is *not* at risk of reacquiring Covid-19. But should such a person undergo
 11 repeated PCR testing at a lab which uses a cycle threshold >30, it is inevitable that
 12 sooner or later this person will have a false positive result. The popular commercial
 13

14
 15 ¹⁸ Borger, P, et al. (2020). *External peer review of the RTPCR test to detect SARS-*
 16 *CoV-2 reveals 10 major scientific flaws at the molecular and methodological level:*
 17 *consequences for false positive results.* Corman-Drosten Review Report.
<https://cormandrostenreview.com/report/>.

18 See, compendium of studies showing face masks do not work to stop Covid-
 19 19, but rather actively harm individual health and public health.
 20 <https://www.aflds.org/covid/masks/> (“Indeed, harms from prolonged masking are
 21 increasingly being documented in many scientific studies, especially in the areas of
 22 healthcare workers, school children, newborn infants, and bacterial infections in the
 23 general population, as described below.... Prolonged use of N95 and surgical masks
 24 by healthcare professionals during COVID-19 has caused adverse effects such as
 25 headaches, rash, acne, skin breakdown, and impaired cognition in the majority of
 those surveyed... Aiello and colleagues described a study in which 1437 university
 students were randomized by dormitory to three arms: control, surgical masks alone,
 and surgical masks plus hand hygiene[;] the study could not distinguish the relative
 contributions of each intervention.”)

26 Spitzer, M (2020). *Masked education? The benefits and burdens of wearing*
 27 *face masks in schools during the current Corona pandemic.* Trends in Neuroscience
 and 16 Education. 2020;20:100138.
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7417296/>.

1 labs in Nevada use a Ct >40, guaranteeing false results. A false positive result will
2 force Plaintiff into a wholly unnecessary quarantine which is very punitive.

3 In addition, the vast majority of counties and states have stopped Covid-19
4 oppression (vaccine passports, mandatory testing and masking).¹⁹ Recent case law
5 has criticized mandatory testing and found it unenforceable in context.²⁰ PCR nasal
6 testing involves a swab being placed inside a student's nose by a stranger to remove
7 genetic material that is then sent to a PCR laboratory for evaluation. Although some
8 promote the test as painless and quick, many students experience it as painful and
9 traumatic. Well-recognized side effects include bloody nose, nasal discomfort,
10 headaches and nasal lesions.²¹

11 Mandatory public health testing is disfavored in American law, and the Covid
12 test collection of a person's DNA is even *more* invasive than a regular blood test. See
13 e.g., *Anderson v. City of Taylor*, 2005 U.S. Dist. Lexis 44706 (E.D. Mich. August 11,
14 2005) (mandatory blood draws for a firemen's "wellness program" under FEMA
15 auspices was invalidated as a Fourth Amendment seizure because the blood draws
16 were mandatory and the firemen were subject to punishment for not agreeing); *Dubbs*
17 *v. Head Start, Inc.*, 336 F.3d 1194, 1203 (10th Cir. 2003) (reversing pretrial dismissal
18 of parents' 14th Amendment challenge to the school's practice of requiring blood tests
19

20
21 ¹⁹ See footnote 1.

22 ²⁰ *Magliulo v. Edward Via Coll. of Osteopathic Med.*, No. 3:21-CV-2304, 2021 U.S.
23 Dist. LEXIS 159265, at *18 (W.D. La. Aug. 17, 2021). Compare *Aviles v. De Blasio*,
24 2021 U.S. Dist. LEXIS 38930 (S.D.N.Y. Mar. 2, 2021) pending appeal in the 2nd
Circuit.

25 ²¹ Gupta, K et al (2021). *Adverse effects of nasopharyngeal swabs: Three*
26 *dimensional printed versus commercial swabs*. *INFECT CONTROL HOSP*
27 *EPIDEMIOL.* 2021;42(5):641-642.
28 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7308627/>.

1 and physical examinations without parental consent; the 10th Circuit cited the United
2 States Supreme Court to protect “fundamental rights” in medical decision making);
3 *Tomick v. United Parcel Serv., Inc.*, 511 F. Supp. 2d 235, 240 (D. Conn. 2007)
4 (“Consent to a drug test under threat of termination has been found to be involuntary
5 and thus not a waiver of the right to assert a violation of § 31–51(x) Id. “[A choice
6 between discharge or submitting to a drug test] is tantamount to no choice at
7 all....”).²²

8 Naturally immune people are in the class least likely to transmit the virus to
9 others. Vaccinated people are more likely to transmit the virus to others.²³

14 ²² See also, *AFSCME Council 79 v. Scott*, 717 F.3d 851, 873-74 (11th Cir. 2013) (“To
15 begin with, we do not agree that employees' submission to drug testing, on pain of
16 termination, constitutes consent under governing Supreme Court case
17 law. See *Lebron*, 710 F.3d at 1214-15. Although a “search conducted pursuant to a
18 valid consent is constitutionally permissible,” *Schnecko v. Bustamonte*, 412 U.S.
19 218, 222, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973), consent must be “in fact
20 voluntarily given, and not the result of duress or coercion, express or implied.” Id. at
21 248; see also *Bumper v. North Carolina*, 391 U.S. 543, 548, 88 S. Ct. 1788, 20 L. Ed.
22 2d 797 (1968); *Johnson v. United States*, 333 U.S. 10, 13, 68 S. Ct. 367, 92 L. Ed.
23 436 (1948) (consent invalid when “granted in submission to authority rather than as
24 an understanding and intentional waiver of a constitutional right”). Employees who
25 must submit to a drug test or be fired are hardly acting voluntarily, free of either
26 express or implied duress and coercion. See *Bostic v. McClendon*, 650 F. Supp. 245,
27 249 (N.D. Ga. 1986); cf. *Garrity v. New Jersey*, 385 U.S. 493, 497-98, 87 S. Ct. 616,
28 17 L. Ed. 2d 562 (1967) (holding that the government cannot require its employees to
relinquish their Fifth Amendment rights on pain of termination because “[t]he option
to lose their means of livelihood or to pay the penalty of self-incrimination” was “the
antithesis of free choice”).”)

²³ Keehner, J et al (2021). *Resurgence of SARS-CoV-2 Infection in Highly Vaccinated
Health System Workforce*. N Engl J Med 2021; 385:1330-1332.
<https://www.nejm.org/doi/full/10.1056/NEJMc2112981>.

1 Defendants’ brand of segregation is unequal application of the law, and a violation of
2 the Equal Protection clause.²⁴

3 **IV. STRICT SCRUTINY IS NECESSARY TO PREVENT GOVERNMENT**
4 **ELIMINATION OF NATURAL UNVACCINATED PEOPLE**

5 Plaintiff realizes the government is quite pleased with its mandatory
6 biotech injections “in every arm” that operate at the DNA level.

7 Fortunately, across the country, District Courts are beginning to apply strict
8 scrutiny to vaccine mandates at schools and places of employment, such as *Magliulo*
9 *v. Edward Via Coll. of Osteopathic Med.*, No. 3:21-CV-2304, 2021 U.S. Dist. LEXIS
10 159265, at *18 (W.D. La. Aug. 17, 2021) (agreeing with State attorney general and
11 granting TRO for student challenging college vaccine mandate because “VCOM can
12 likely show a compelling state interest (safety of students, employees, and patients),
13 but is unlikely to meet the second prong, that it used the least restrictive means of
14 compelling that interest.”); *Dahl v. Bd. of Trs. of W. Mich. Univ.*, No. 1:21-cv-757,
15 2021 U.S. Dist. LEXIS 167041, at *5 (W.D. Mich. Aug. 31, 2021) (granting TRO for
16 student challenging college vaccine mandate because “Plaintiffs have established a
17 likelihood of success on the merits of the Free Exercise Claims. Plaintiffs have
18 established that WMU's vaccination requirement is subject to strict scrutiny.”)

19 Many state courts are also applying strict scrutiny. See e.g., *Michalski et al. v.*
20 *St. John Fisher College, et al.* (State of New York, Supreme Court: County of
21 Onondaga, Index No. 8063/2021). Emergency Order to Show Cause With Temporary
22 Restraining Order, dated September 21, 2021 (granting TRO and Burden Shifting for
23 students asserting strict scrutiny in challenge to college vaccine mandate); *Friend et*
24 *al. v. City of Gainesville* (State of Florida, Circuit Court: Alachua County, Case No.

25 ²⁴ Parasidis, E et al. (February 16, 2021). *Assessing The Legality Of Mandates For*
26 *Vaccines Authorized Via An Emergency Use Authorization*. Health Affairs.
27 <https://www.healthaffairs.org/doi/10.1377/hblog20210212.410237/full/> (prominent
28 health law scholars state that individuals should not suffer reprisal for refusing an
EUA product).

1 01-2021-CA-2412). Order Granting Plaintiffs’ Petition for Temporary Injunction,
2 dated September 22, 2021 (applying strict scrutiny to grant TRO for city employees
3 challenging city’s vaccine mandate).

4 Undersigned counsel finds there are also District Court Judges applying
5 rational basis review in deference to government mandates that healthy people be
6 injected with Covid-19 gene therapy biotechnology (vaccines).

7 So far, the outcome of legal challenges to vaccine mandates (freedom v.
8 forcing biotechnology on healthy citizens) has depended *entirely* on the level of
9 scrutiny applied by the District Court Judge. Therefore, Plaintiff respectfully submits
10 that appellate court resolution of the conflict among District Courts may be likely to
11 decide the outcome of the pretrial motions in this case. Indeed, see *BST Holdings,*
12 *L.L.C. v. OSHA*, No. 21-60845, 2021 U.S. App. LEXIS 33698 (5th Cir. Nov. 12,
13 2021) (granting preliminary relief that halted the defendant’s vaccine mandate
14 through OSHA), stating:

15 “[T]he Mandate fails to consider what is perhaps the most salient fact of
16 all: the ongoing threat of COVID-19 is more dangerous to some
17 employees than to other employees... a naturally immune unvaccinated
18 worker is presumably at less risk than an unvaccinated worker who has
19 never had the virus. The list goes on, but one constant remains – the
20 Mandate fails almost completely to address, or even respond to, much
21 of this reality and common sense.... It is clear that a denial of the
22 petitioners’ proposed stay would do them irreparable harm. For one, the
23 Mandate threatens to substantially burden the liberty interests [footnote
24 omitted] of reluctant individual recipients put to a choice between their
25 job(s) and their jab(s). For the individual petitioners, the loss of
26 constitutional freedoms ‘for even minimal periods of time...
27 unquestionably constitutes irreparable injury.’ [citations omitted]
28 For similar reasons, a stay is firmly in the public interest. From
economic uncertainty to workplace strife, the mere specter of the
Mandate has contributed to untold economic upheaval in recent months.
Of course, the principles at stake when it comes to the Mandate are not
reducible to dollars and cents. The public interest is also served by
maintaining our constitutional structure and maintaining the liberty of

1 individuals to make intensely personal decisions according to their own
2 convictions – even, or perhaps particularly, when those decisions
3 frustrate government officials.”

4 There are 27 States of the Union (the majority) challenging vaccine mandates
5 in Court. It appears the days of deferential mandatory vaccination are numbered. *See*
6 *e.g.*, strong court filings against Covid-19 vaccine mandates from the Attorney
7 Generals for Texas, Arizona, and Oklahoma:

- 8 • Texas Attorney General, “Even one American being forced by
9 their government to receive a vaccine that they do not want out of fear
10 of losing their job is an irreparable injury and a stain on Defendants’
11 records.” Complaint in *Texas v. Biden*, No. 3:21-cv-309. Dkt 1. (US
12 District Court for the Southern District of Texas, 10/29/21).
13 [https://www.texasattorneygeneral.gov/sites/default/files/global/images/
14 20211029_TX%20v%20Biden%20et%20al%20\(file%20marked\).pdf](https://www.texasattorneygeneral.gov/sites/default/files/global/images/20211029_TX%20v%20Biden%20et%20al%20(file%20marked).pdf).
- 15 • Arizona Attorney General, “The federal employee mandate
16 violates employees’ constitutional right to bodily integrity and to refuse
17 medical procedures....While *Buck v. Bell* has never been overruled, its
18 inapplicability today is not seriously disputed. The same result should
19 obtain for *Jacobson*.” *Arizona v. Biden*, No. 2:21-cv-01568-MTL, Dkt.
20 34 (US District Court for the District of Arizona, 10/22/21).
21 [https://www.azag.gov/sites/default/files/docs/press-
22 releases/2021/motions/034%20Renewed%20Motion%20for%20TRO%
23 20and%20PI.PDF](https://www.azag.gov/sites/default/files/docs/press-releases/2021/motions/034%20Renewed%20Motion%20for%20TRO%20and%20PI.PDF).
- 24 • Oklahoma Attorney General, “Here are some related and non-
25 exhaustive considerations that compel the conclusion that this [vaccine]
26 mandate is arbitrary and capricious:... Defendants’ failure to exempt
27 those who have a natural immunity to COVID-19.... Being vaccinated
28 does not stop anyone from being a carrier of COVID-19.... This
mandate forcibly intrudes into the physical person of the federal
contractor’s employee; it penetrates not just into the individual’s skin
but into her bloodstream—and becomes a component of her body. *See*
Skinner, 489 U.S. at 616; *Schmerber*, 384 U.S. at 767–68. This involves
the person’s privacy, bodily integrity, and dignity. Society certainly
recognizes the right to avoid such a compelled intrusion as reasonable.”
Oklahoma v. Biden, No. 5:21-cv-01069-G (US District Court for the

1 Western District of Oklahoma, 11/4/21).
2 [https://www.oag.ok.gov/sites/g/files/gmc766/f/okla._v._biden_compl.p](https://www.oag.ok.gov/sites/g/files/gmc766/f/okla._v._biden_compl.pdf)
3 [df](https://www.oag.ok.gov/sites/g/files/gmc766/f/okla._v._biden_compl.pdf).

4 **V. IN THE DAYS OF JACOBSON V. MASSACHUSETTS**

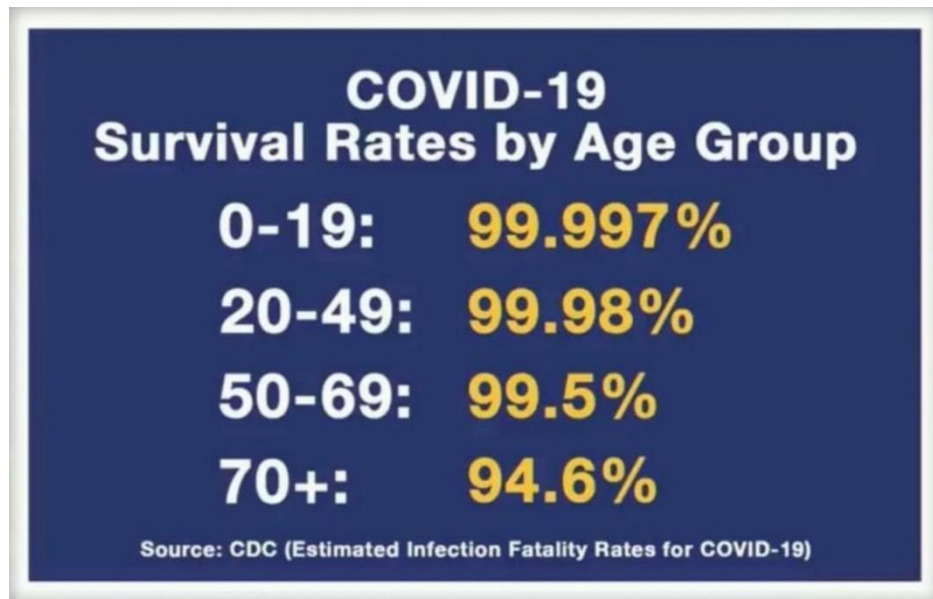
5 *Jacobson v. Massachusetts* has been referenced to justify the sacrifice of the
6 individual’s body for the perceived benefit of the masses. Indeed, the official syllabus
7 to *Jacobson* refers to “sacrifice” explicitly, “That the legislature has large discretion
8 to determine what personal sacrifice the public health, morals and safety require from
9 individuals is elementary.” *Jacobson v. Massachusetts*, 197 U.S. 11, 22 (1905).
10 Compelled sacrifice under *Jacobson* has increasingly been found archaic.

11 To be perfectly clear, one hundred and fifteen years after *Jacobson*, law and
12 justice confirm that the government does not have the right to sacrifice Jonah.

13 It was foundational to *Jacobson* that the vaccine was to halt the transmission of
14 a virus with 30% mortality. In contrast, Covid-19 has greater than 99.9%
15 survivability in plaintiff age group and >99.6% survivability overall for the American
16 population of all ages.²⁵

24 ²⁵ Reese, H. et al (November 25, 2020). *Estimated Incidence of Coronavirus Disease*
25 *2019 (COVID-19) Illness and Hospitalization—United States, February–September*
26 *2020*. *Clinical Infectious Diseases*, Volume 72, Issue 12, 15 June 2021, Pages e1010–
27 e1017. <https://doi.org/10.1093/cid/ciaa1780>. US Centers for Disease Control and
28 Prevention (2021). *Weekly updates by select demographic and geographic characteristics: provisional death counts for coronavirus disease (COVID-19)*.
https://www.cdc.gov/nchs/nvss/vsrr/covid_weekly/index.htm#AgeAndSex.

1 The average age of death from Covid *exceeds* a person’s life expectancy (age
2 82 vs. age 79.) It is manifestly unjust and unlawful to compel the sacrifice of young
3 people, especially in order to hypothetically protect individuals already exceeding
4 average life expectancy.



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15 Defendants are requiring Jonah to sacrifice himself to his own personal
16 detriment, and to the detriment of public health. Complaint ¶¶97-115. These are very
17 serious allegations deserving litigation.

18 Moreover, the entire worldwide scientific consensus is that Covid-19
19 vaccination does not prevent infection or transmission of the coronavirus. Therefore,
20 as a matter of law, Covid-19 vaccination cannot be considered a public health
21 measure, lest public health be redefined to support an unprecedented power grab.²⁶
22 All credible scientific experts and sources have found that these injections do not in

23
24 ²⁶ The fact that the CDC literally changed the definition of the word “vaccine” in
25 August 2021 to attempt to include these injections under a “vaccination” branding,
26 certainly to manipulate public sentiment, and likely to also avoid the proper standard
27 of judicial review, does not permit the judiciary to defer to the State with anything
28 less than strict scrutiny. Indeed, the *Jacobson* Court limited its holding to vaccine
mandates that were “adapted to prevent the spread of contagious diseases[.]”
Jacobson v. Massachusetts, 197 U.S. 11, 35 (1905).

1 fact prevent the transmission or acquisition of the coronavirus. Thus, the injections
2 are a personal health measure only.²⁷

3 To the extent this Court claims authority to mandate biotech under *Jacobson*,
4 197 U.S. at 35, “common belief of the people”, then consider the following recent
5 poll results of the American people that confirm the common belief supports natural
6 immunity rather than vaccination:

7 Do you believe people recovered from COVID-19 with natural
8 immunity from antibodies have the same level of protection as those
9 that are fully vaccinated? Yes: 46.5%, No: 29.2%, Not Sure: 24.3%.
10 The Trafalgar Group, *Nationwide Issues Survey – Covid Immunity*

11
12
13 ²⁷ See e.g., Moderna (November 2021). *Program Patents*.
<https://www.modernatx.com/patents>.

14 United States Securities and Exchange Commission (August 6, 2020).
15 *Moderna Form 10Q*.
16 <https://www.sec.gov/Archives/edgar/data/1682852/000168285220000017/mrna-20200630.htm>.

17 Nakagami H. (September 2021). *Development of COVID-19 vaccines utilizing*
18 *gene therapy technology*. *Int Immunol*. 2021 Sep 25;33(10):521-527.
<https://pubmed.ncbi.nlm.nih.gov/33772572/>.

19 FDA (October 2021). *Comirnaty*. Vaccines, Blood, and Biologics.
20 <https://www.fda.gov/vaccines-blood-biologics/comirnaty>.

21 A partial list of prominent scientists and persons who have stated this publicly
22 include: the CDC Director Dr. Walensky, the Director of the NIAID Dr. Fauci,
23 Harvard Professor Dr. Haseltine, Harvard Professor of Medicine Dr. Kulldorff,
24 University of Oxford Professor of Infectious Disease Epidemiology Dr. Gupta,
25 Professor of Medicine at Stanford University Medical School Dr. Bhattacharya, the
26 Chief Medical Officer of Moderna Dr. Zaks, the Chief Scientist of the WHO Dr.
27 Swaminathan, the Prime Minister of the United Kingdom the Honorable Boris
28 Johnson, the President of the United States Joe Biden, the Leader of the Oxford
Vaccine Team Professor Sir Andrew Pollard, EU research scientists Drs. Bhakdi,
Hockertz, Palmer, Wodarg, Surgeon General State of Florida Dr. Ladapo, Public
Health England, CDC, Nobel Prize Winner in Medicine Dr. Luc Montagnier and
prominent physician-scientist-Professor Dr. McCullough. All these, and many others,
have stated the injections do not stop transmission.

1 (October 2021). [https://thetrafalgargroup.org/COSA-National-](https://thetrafalgargroup.org/COSA-National-COVIDimmunity-Full-Report.pdf)
2 [COVIDimmunity-Full-Report.pdf](https://thetrafalgargroup.org/COSA-National-COVIDimmunity-Full-Report.pdf)

3 How confident are you that the federal government is reporting
4 unbiased information on the effectiveness of COVID-19 vaccines?
5 Confident: 44.5%, Not Confident: 50.8%.
6 The Trafalgar Group, *Nationwide Issues Survey – Vaccine Confidence*
7 (July 2021). [https://thetrafalgargroup.org/COSA-National-Vaccine-](https://thetrafalgargroup.org/COSA-National-Vaccine-Confidence-Full-Report.pdf)
8 [Confidence-Full-Report.pdf](https://thetrafalgargroup.org/COSA-National-Vaccine-Confidence-Full-Report.pdf)

9 Countless US government officials have also rejected the vaccines (at one
10 point Anthony Fauci admitted live on CSPAN that 40% of government scientists
11 declined the Covid vaccine). It is now commonplace for officials and reporters to be
12 caught on camera donning masks solely for public display, and otherwise flaunting
13 their own rules.

14 **VI. EMERGENCY USE AUTHORIZATION**

15 The Complaint ¶¶89-94 states the legal argument plain as day, which requires a
16 ruling for Plaintiff:

17 Contrary to popular belief, all Covid-19 vaccines available to the
18 Plaintiff are still authorized only for emergency use.²⁸ And the federal
19 law governing such authorization, 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(I-
20 III), grants the patient explicitly “the option to accept or refuse
21 administration of the [EUA] product”.

22 This is not mere semantics. ClinicalTrials.gov clearly states that the
23 Moderna clinical trials are ongoing through October 27, 2022,²⁹ and the

24 ²⁸ FDA (October 2021). *Comirnaty*. Vaccines, Blood, and Biologics.
25 <https://www.fda.gov/vaccines-blood-biologics/comirnaty>.

26 ²⁹ Moderna (updated June 10, 2021). *A Study to Evaluate Efficacy, Safety, and*
27 *Immunogenicity of mRNA-1273 Vaccine in Adults Aged 18 Years and Older to*
28 *Prevent COVID-19*. ClinicalTrials.gov Identifier: NCT04470427.
<https://clinicaltrials.gov/ct2/show/NCT04470427>.

1 Pfizer clinical trials are ongoing through May 2, 2023.³⁰

2 Every FDA fact sheet for a Covid-19 vaccine available to Plaintiff
3 states the same disclaimer, “It is your choice to receive or not receive
4 the [Pfizer-BioNTech, Moderna, Janssen] COVID-19 Vaccine. Should
5 you decide not to receive it, it will not change your standard medical
6 care.” This precise language is required by federal statute because
7 available Covid-19 vaccines are *not* FDA approved but rather are
8 Emergency Use Authorization (EUA) only.

9 The same precise statutory language also applies for all Covid-19 tests
10 and face coverings – they too are EUA and so pursuant to federal
11 statute if an individual declines these EUA products, it cannot change
12 the individual’s standard medical care.

13 Plaintiff in this case declines all these EUA products and Administrator
14 Defendants openly threaten to disenroll them and remove their standard
15 healthcare offered through Student Health Center Services.³¹ Therefore,
16 Administrator Defendants are openly violating federal law (in a field
17 preempted by federal law) in pursuit of Defendants’ highly suspect
18 ‘separate but equal’ campus segregation policies wherein students with
19 natural immunity are treated like second class citizens.

20 Nowhere in an FDA fact sheet for vaccines, face masks, or Covid-19
21 tests, does it specify that a person may be denied education, denied
22 student health services, disciplined, required to seek religious belief
23 accommodation, or otherwise discriminated against for refusal. Nor
24 does any fact sheet state that people declining will thus be forced to use
25 additional EUA products.

26 ³⁰ Pfizer BioNTech SE (updated October 27, 2021). *Study to Describe the Safety,*
27 *Tolerability, Immunogenicity, and Efficacy of RNA Vaccine Candidates Against*
28 *COVID-19 in Healthy Individuals*. ClinicalTrials.gov Identifier: NCT04368728.
<https://clinicaltrials.gov/ct2/show/NCT04368728>.

29 ³¹ See e.g., University of Nevada, Reno (November 5, 2021). *Insurance and Fees.*
30 Student Health Center. [https://med.unr.edu/student-health-center/welcome/insurance-](https://med.unr.edu/student-health-center/welcome/insurance-and-fees)
31 [and-fees](https://med.unr.edu/student-health-center/welcome/insurance-and-fees) (“If you have paid your student health fee, there is no charge for your
32 primary care office visit... If you are enrolled in 1 or more credits, you have
33 automatically been assessed the Student Health Fee.”)

1 **VII. INACCURACIES IN DEFENDANTS’ MOVING PAPERS**

2 Defendants submitted a factual declaration (from Dr. Labus) that is filled with
3 inaccuracies. To set the record straight, Plaintiff redirects the Court to Plaintiff’s
4 expert declarations on record, together with a follow-up declaration from Dr.
5 Alexander to expose the scientific inaccuracies in the State expert declaration.

6 Plaintiff’s position is more balanced than Defendants’ position. Here is a
7 representative sample of inaccuracies in Defendants’ Points and Authorities:

8 • **Page 2, lines 24-28 (footnotes 3 and 4):** Defendants use the word “diagnosed
9 as infected” when referring to the number of covid cases in the US and Nevada, but
10 the Johns Hopkins Maps cited uses the word “cases” (not diagnosed).

11 • **Page 3, lines 23-26 (footnotes 8 and 9):** Defendants refer to the EUA
12 documents for proof of efficacy, but such documents only state the vaccines “may be
13 effective” in preventing covid, and even that claim is proving outdated scientifically
14 (as evidenced by the need for constant boosters, the vaccines wane).

15 • **Pages 2-4 (Section II.B “The Development and Authorization of COVID-
16 19 Vaccines”):** Defendants cite statistically insignificant findings in the FDA’s
17 short-term clinical trials.³² Then Defendants double down by claiming the vaccine
18 can be deemed safe based upon the millions of doses administered, which is wrong
19 because Defendants fail to acknowledge Plaintiff’s expert-vetted evidence of
20 widespread vaccine injury, including for example in recently produced FOIA
21 documents from Pfizer.³³

22 • **Page 4, lines 4-6:** Defendants claim “Comirnaty is the same formulation as
23 the originally authorized Pfizer-BioNTech vaccine” and then goes on to state that
24 _____

25 ³² For correct information on the findings and weak statistical power of the clinical
26 trials, see Physicians for Informed Consent (December 2021). *Covid-19 Vaccines*.
27 <https://physiciansforinformedconsent.org/covid-19-vaccines/>.

28 ³³ See footnote 3 for early injury numbers.

1 they can be used interchangeably, but the citation offered makes no such statement at
2 to “same formulation” but only indicates interchangeable use. Moreover, the Vaccine
3 Information Sheet the Defendants cited actually lists some different ingredients
4 between the Comirnaty and EUA vaccines on page 4.

5 • **Page 4, lines 10-17:** The Defendants make several statements as to the
6 vaccine being “safe and effective”, that “serious side effects that could cause long-
7 term health problem are extremely unlikely”, “no long term side effects have been
8 detected”, and otherwise have “impressive safety records”. These statements were
9 made by the Defendants while only citing the CDC vaccine safety page, which does
10 not contain any references to studies supporting such findings (hence, raw deferral to
11 authority). In fact, just a few lines and a couple footnotes above, the Defendants
12 conceded that only 12,000 of the over 40,000 or so participants in the study were
13 followed for as long as six months, and we know the placebo group was offered the
14 vaccine during this time so it is actually impossible to compare safety data between
15 the vaccinated and unvaccinated during this time.³⁴ Moreover, right after the above-
16 footnoted statements, the Defendants make statements that studies show natural
17 immunity does not protect against Covid-19 re-infection and that the vaccines have
18 “impressive safety records”, but again Defendants make these statements without any
19 citations to studies. And, the Vaccine Information Fact Sheet, at page 4-5, lists many
20 possible side effects and adverse events and the Comirnaty Vaccine Insert clearly
21 lists myocarditis as a risk as well as many other adverse reactions at pages 6-13.
22 <https://www.fda.gov/media/151707/download>. And said insert, at page 15, makes
23 clear “COMIRNATY has not been evaluated for the potential to cause
24 carcinogenicity, genotoxicity, or impairment of male fertility.” So, claiming there is
25 no long-term safety risk without having studies to support such claim is
26 disingenuous. It is also fully rebutted by Plaintiff’s 14 top medical experts.

27
28 ³⁴ See footnote 32.

1 • **Page 9, lines 8-19:** Defendants cite *Jacobson v. Massachusetts* for the
2 proposition that a court should only intervene if a “statute purporting to have been
3 enacted to protect the public health, the public morals, or the public safety has no real
4 or substantial relation to those objects, or is beyond all question, a plain, palpable
5 invasion of rights secured by fundamental law” as if it was case closed. This was not
6 true, for the *Jacobson* Court considered and discussed the plaintiff’s assertions
7 regarding the generally accepted fact that the vaccine prevented transmission and its
8 potential harm. Here, the Defendants are unable to rebut the evidence the vaccine is
9 ineffective in preventing illness or transmission. Rather, Defendants merely argue
10 that their decision should not be questioned, even though Defendants are relying on
11 the same public agencies that have been *repeatedly* questioned and overruled in the
12 past. Even in *Klaasen v Trustees of Ind. Univ* cited by Defendants, the District Court
13 acknowledged that “*Jacobson* doesn't justify blind deference to the government when
14 it acts in the name of public health or in a pandemic.” *Klaassen v. Trs. of Ind. Univ.*,
15 No. 1:21-CV-238 DRL, 2021 U.S. Dist. LEXIS 133300, at *56 (N.D. Ind. July 18,
16 2021).

17 • **Page 9, lines 20-21,** Defendants cite *Roman Catholic Diocese of Brooklyn v.*
18 *Cuomo*, 141 S. Ct. 63, 70 (2020) (Gorsuch, J., concurring) for the proposition that
19 *Jacobson* “essentially applied rational basis review”. Notably, the cite is to Justice
20 Gorsuch’s concurring opinion and not the main opinion. Justice Gorsuch recently
21 opined in another recent case that he would apply strict scrutiny to overturn a Covid-
22 19 vaccine mandate by healthcare workers. *Dr. A. v. Hochul*, No. 21A145, 2021 U.S.
23 LEXIS 6279, at *13-14 (Dec. 13, 2021),

24 “If the estimated number of those who might seek different
25 exemptions is relevant, it comes only later in the proceedings when
26 we turn to the application of strict scrutiny. See *Holt v. Hobbs*, 574 U.
27 S. 352, 368, 135 S. Ct. 853, 190 L. Ed. 2d 747 (2015) (considering
28 sizes of different groups seeking exemptions). At that stage, a State
might argue, for example, that it has a compelling interest in

1 achieving herd immunity against certain diseases in a population. It
 2 might further contend the most narrowly tailored means to achieve
 3 that interest is to restrict **vaccine** exemptions to a particular number
 4 divided in a nondiscriminatory manner between medical and religious
 5 objectors. With sufficient evidence to support claims like these, the
 6 State might prevail. See *infra*, at 10-11. But none of that bears on the
 7 preliminary question whether such a mandate is generally applicable
 8 or whether it treats a religious person less favorably than a secular
 9 counterpart. Failing either the neutrality or general applicability test is
 10 enough to trigger strict scrutiny and impose on New York the burden
 11 of showing that its law serves a compelling interest and employs the
 least restrictive means of doing so. *Lukumi*, 508 U. S., at 531. And
 even accepting for present purposes that the State [*14] can meet the
 first of these burdens, it cannot satisfy the second. Cf. *Mills*, 595 U.
 S., at ___ - ___, 211 L. Ed. 2d 243 (opinion of Gorsuch, J.) (slip op., at
 6-8).”

12 • **Page 10, line 8 to page 11, line 2:** *In Re Crawford*, 194 F.3d 954, 958 (9th Cir.
 13 1999), is cited for the proposition that informational privacy is a “conditional right
 14 which may be infringed upon showing a government interest.” Yet, it is not that
 15 simple, for the court explained a balancing test was necessary at page 959.

16 • **Page 11 (footnotes 63 and 65):** *Endy v. County of Los Angeles*, 975 F.3d 757,
 17 768 (9th Cir. 2020), is an information privacy case where the County alleged Plaintiff
 18 sexually assaulted two children, but those claims were later dismissed, and the county
 19 never corrected its records. Here, Defendants, citing *Endy*, claim that because there
 20 is a legitimate government interest in receiving Plaintiff’s vaccine status, and the fact
 21 that Defendants are not sharing Plaintiff’s information with others, it forecloses a
 22 constitutional violation. The standard the *Endy* court used, however, was whether the
 23 information was publicly “disseminated or disclosed” (*Id.* at 769), and although the
 24 Defendants are presumably not making such disclosure they are indeed requiring or
 25 compelling self-disclosure by mandating certain conduct. And, according to *Nelson v*
 26 *Nat’l Aeronautics & Space Admin*, 530 F.3d 865 (9th Cir. 2008) (cited by Defendants
 27 at footnote 61), “where the government's actions compel disclosure of private
 28 information, it ‘has the burden of showing that its use of the information would

1 advance a legitimate state interest and that its actions are narrowly tailored to meet
2 the legitimate interest.’ *Crawford, 194 F.3d at 959* (internal quotation marks
3 omitted). We must ‘balance the government's interest in having or using the
4 information against the individual's interest in denying access.’”

5 **VIII. CONCLUSION**

6 For the foregoing reasons, Plaintiff respectfully requests that the Court deny
7 the unmeritorious Motion to Dismiss and allow the required day in court.

8 Dated this December 20, 2021 /s/ Adam Fulton

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CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5(b), I hereby certify that I am an employee of JENNINGS & FULTON, LTD., and that on the 20th day of December 2021, I caused a true and correct copy of the foregoing **PLAINTIFF’S OPPOSITION TO MOTION TO DISMISS BY ALL DEFENDANTS** to be served as follows:

_____ by depositing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, enclosed in a sealed envelope; or

_____ by facsimile transmission, pursuant to F.R.C.P. 5(b), as indicated below; or

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