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Robert F. Kennedy Jr., Esq.  
(Subject to *pro hac vice* admission)  
Children's Health Defense  
1227 North Peachtree Parkway  
Peachtree, Georgia 30269  
Tel: 917-743-3868

Attorneys for the Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA**

CINDY KIEL, J.D., an Executive Associate  
Vice Chancellor at UC Davis, MCKENNA  
HENDRICKS, a UC Santa Barbara student,  
EDGAR DE GRACIA, a UCLA student, and  
LELAND VANDERPOEL, an employee at the  
Fresno satellite extension of the UCSF Medical  
Education Program, and FRANCES OLSEN,  
Professor of Law at UCLA,

Plaintiffs,

vs.

THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA, a Corporation, and MICHAEL  
V. DRAKE, in his official capacity as President  
of the UNIVERSITY OF CALIFORNIA,

Defendants.

**CASE NO. HG 20072843**

**BY FAX**

**PLAINTIFFS' *EX PARTE* APPLICATION  
TO RESET THE PRELIMINARY  
INJUNCTION HEARING DATE FROM  
NOVEMBER 12, 2020 BACK TO MID  
OCTOBER (corrected email addresses)**

Date:  
Time:  
Dept.:  
Reservation No.:

Unlimited Civil Jurisdiction

ASSIGNED FOR ALL PURPOSES TO:  
Hon. Richard L. Seabolt  
Department 521

Complaint filed: August 27, 2020  
Trial: ~~Not set~~

1 Plaintiffs, by their undersigned counsel, hereby submit this urgent, ex-parte application. The  
2 Court, *sua sponte*, reset Plaintiffs' Motion for Preliminary Injunction from October 14, 2020 to  
3 November 12, 2020.

4  
5 Defendants' Executive Order is set to take effect November 1, 2020. If this matter is not  
6 heard by the court before November 1, 2020, immediate danger and irreparable harm will befall  
7 Plaintiffs.

8  
9 Defendant's Executive Order affects over half a million UC students, staff and faculty.  
10 Plaintiff's Preliminary Injunction must be heard before the November 1, 2020 deadline.

11  
12 Plaintiffs therefore request that the Court correct this oversight and re-calendar the Motion  
13 for Preliminary Injunction to the original October 14, 2020 reserved date or to any other date during  
14 the weeks of October 13th or October 19<sup>th</sup>.

15 DATED: October 8, 2020  
16

17 s//Richard Jaffe  
18 Richard Jaffe, Esq.  
19 State Bar No. 289362  
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Attorneys for the Plaintiff

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**MEMORANDUM**

**Procedural History**

1. This action seeks to stop the enforcement of the UC's Executive Order ("EO") mandating the entire 510,000 members of the UC community to obtain a flu vaccine by November 1, 2020. (Exhibit A).

2. The original EO was dated July 31, 2020, but was first disseminated on August 7, 2020. (Exhibit A)

3. On August 27, 2020, Plaintiffs filed their original complaint for a permanent injunction.

4. On September 17, Plaintiffs filed the instant Motion for a Preliminary Injunction after having obtaining reservation number 2206283 and date of October 14, 2020 at 1:30 p.m. from the calendar clerk in Department 511.

5. At some point during the last week of September, the case was assigned to Department 521.

6. On October 5, 2020, a new date of November 12th was assigned as the hearing date of the preliminary injunction motion.

**Request for Reset of the Hearing to the Week of October 13th or October 19th**

7. Under both the Original Executive Order and the Revised Executive Order dated September 29, 2020, faculty and students who have to be on campus are required to take a flu shot by November 1, 2020. (Copies of both are attached hereto respectively as Ex. A and B). The July 31,

1 2020 order states: “c. Employees. Effective November 1, 2020, no person employed by the  
2 University or working on-site at any location owned, operated, or otherwise controlled by the  
3 University may report to that site for work unless they have received the 2020-2021 flu vaccine or an  
4 approved medical exemption. Requests for religious accommodations will be adjudicated through  
5 the interactive process consistent with existing location policies and procedures.”  
6

7 8. Further, the revised EO states “Effective November 1, 2020, all students, faculty, and staff  
8 living, learning or working on premises at any UC location must receive a flu vaccine, unless they  
9 receive an approved medical exemption or disability or religious accommodation . . . .”  
10

11 9. However, the UC or at least some campuses are continuing to advise employees that they  
12 have to get the flu shot unless they have a medical exemption or an accommodation. (Exhibit C)  
13

14 10. It is imperative that this preliminary injunction motion be heard prior to the November 1,  
15 2020 hearing date. Regardless of what Defendants might advise the Court, the UC’s official position  
16 and its public position is that coming to the campuses on or after November 1, 2020 requires a flu  
17 shot (or an accepted medical exemption or accepted religious or disability accommodation). Indeed,  
18 as indicated, despite the language in the EO’s, the UC continues to omit the fact they do not need to  
19 take the shot if they work remotely. (Exhibit C).  
20

21 11. Unless the Defendants are willing to agree to a standstill agreement and publicly state  
22 that the flu mandate will not go into effect until after the Court issues its ruling on the preliminary  
23 injunction, and immediately cease advising the community that it needs to get a flu shot by  
24 November 1, 2020, this Court should reset the hearing well prior to the November 1, 2020 effective  
25 date of the mandate.  
26

1 12. Plaintiffs and all members of the UC community who are required to come to campuses  
2 as of November 1, 2020 have a right to have this preliminary injunction motion heard before having  
3 to be forced into non-compliance with the Executive Orders and hope for the University's largess in  
4 not being subject to being fired or expelled from school. It is a matter of fundamental fairness.

5  
6 13. The Defendants oppose this Request and want this motion heard after the Flu mandate  
7 takes effect, but have stated (not publicly) that it will not take any adverse action against members  
8 who do not comply. But that does not address the problem of those employees who do not know of  
9 these private assurances and feel compelled to take the shot prior to November 1, 2020 on pain of  
10 enforcement in accordance with the two written and seemingly binding executive orders.

11  
12 14. No prior relief or similar relief has been requested from the Court.

13  
14 Respectfully submitted,

15  
16 DATED: October 8, 2020

17 s//Richard Jaffe  
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Peachtree, Georgia 30269  
Tel: 917-743-3868

Attorneys for the Plaintiffs

1 **DECLARATION OF RICHARD JAFFE, ESQ. IN SUPPORT OF PLAINTIFFS' EX PARTE**  
2 **APPLICATION TO RESET PRELIMINARY INJUNCTION HEARING DATE**

3  
4 I Richard Jaffe, Esq. declare as follows:

- 5  
6 1. I am Plaintiffs' lead counsel in this case. I have personal knowledge of the facts set forth  
7 herein. I submit this declaration in support of the instant ex parte application to reset the  
8 preliminary hearing date in this case within the next two weeks for the reasons set forth  
9 hereinafter, and I called to testify I would testify as follows:  
10  
11 2. This action was commenced to stop the UC executive order mandating that all of the 510,000  
12 members of the UC community receive a flu vaccine by November 1, 2020.  
13  
14 3. And therein lies the problem. The case had been set for hearing per reservation for October 14,  
15 2020 at 1:30 PM with Dept. 511, which would have resulted in a decision on this motion well  
16 in advance of the November 1, 2020 flu mandate deadline.  
17  
18 4. By setting the preliminary injunction hearing on November 12, 2020, the Court or the calendar  
19 clerk has denied the Plaintiffs' the relief requested and even their right to seek relief. Students,  
20 employees and faculty who have to be on campus will not be able to do so as of November 1,  
21 2020 under the original and revised order. They must have an opportunity to present their case.  
22  
23 5. Plaintiffs are in immediate danger and will suffer irreparable harm if the November 1, 2020  
24 deadline passes before the emergency matter is heard by the court.  
25  
26 6. Plaintiffs believe that they have a right, and indeed a constitutional right, to have this motion  
timely heard, not after the requested November 1, 2020 mandate has already gone into effect.  
7. Attached s Exhibit C is a true and correct screen shot from the UC I reminding people that all

1 have to receive the flu shot by November 1<sup>st</sup>. There is no carve out for remote teaching or  
2 working. The UC is providing misinformation to its employees in order to force all of them to  
3 get the flu shot even those who are working remotely.

4 8. If this Department does not have the time or resources to hear this motion in a timely fashion,  
5 the Plaintiffs request that this motion be sent back Department 511 so this matter can be timely  
6 adjudicated.

7 9. I have consulted with Marisa Chun Counsel for the Defendants and have been advised that the  
8 Defendants intend to oppose this request for this Court to reset the preliminary injunction  
9 hearing date for the week of October 13<sup>th</sup> or the week of October 19<sup>th</sup>. I believe that Defendants  
10 prefer that the hearing take place on November 12, 2020 after the Flu Mandate goes into effect  
11 under the term of the two executive orders and such other advisories like Exhibit C which the  
12 UC is sending to employees and others.

13 10. To my knowledge, Defendants' Attorneys' email addresses are as follows:

14 Marisa Chun at mchun@crowell.com

15 Norman J. Hamill at norman.hamill@ucop.edu

16 Kristen J. Madigan at kmadigan@crowell.com

17 Suzanne E. Rode at srode@crowell.com

18 Katharine Essick at Katharine.essick@ucop.edu

19 11. I declare under penalty of perjury under the laws of the State of California that the foregoing is  
20 true and correct and that this declaration was executed on October 8, 2020, in Westport, Ct.

21  
22  
23  
24  
25   
26 Richard Jaffe, Esq.

1 **DECLARATION OF EMAIL SERVICE PURSUANT TO EMERGENCY RULE 12 AND**  
2 **THE AGREEMENT OF COUNSEL**

3 I am a member of the California bar and I am counsel to the Plaintiffs (and over 18 and not a  
4 party to this action).

5 Pursuant to Emergency Rule 12, and upon the agreement of counsel, on October 8, 2020, I  
6 served this Plaintiffs' Ex parte Request to Reset the Preliminary Injunction Hearing Date by email  
7 on:

8 Marisa Chun at [mchun@crowell.com](mailto:mchun@crowell.com),

9 Norman J. Hamill at [norman.hamill@ucop.edu](mailto:norman.hamill@ucop.edu),

10 Kristen J. Madigan at [kmadigan@crowell.com](mailto:kmadigan@crowell.com)

11 Suzanne E. Rode at [srode@crowell.com](mailto:srode@crowell.com)

12 Katharine Essick at [Katharine.essick@ucop.edu](mailto:Katharine.essick@ucop.edu)

13 I declare under penalty of perjury under the laws of the State of California that the foregoing is true  
14 and correct and that this declaration was executed on October 8, 2020, in Westport, Ct.  
15

16  
17   
18 Richard Jaffe



# EXHIBIT “A”



**University of California  
Executive Order  
July 31, 2020**

**Background and Findings**

As of this date, the world is facing a severe health crisis in which COVID-19, a new respiratory illness caused by a novel coronavirus, places millions of people at risk of serious illness or death. The World Health Organization has declared that the disease is a pandemic. Declarations of Emergency have been issued by the President of the United States, the Governor of California, and California counties and other local jurisdictions, including those where the University maintains campuses and other significant operations.

In California alone, notwithstanding concerted statewide efforts to mitigate the spread of the disease, nearly 400,000 people already have been diagnosed with COVID-19 and more than 7,500 have perished. As of this writing, statewide positivity rates and hospitalizations are trending upward; on any given day, over 8,000 are hospitalized and more than 2,000 are so sick that they are being treated in intensive care units.

On March 19 of this year, the State Public Health Officer [issued an order](#) directing all individuals living in the State to stay at home except as needed to facilitate authorized, necessary activities or to maintain the continuity of operations of critical infrastructure sectors. This order caused virtually every government agency and private organization in the State to transition to remote operations to the greatest extent possible. Since then, the State has developed and refined a Pandemic Roadmap to guide prudent resumption of on-site or in-person operations and the University is developing and implementing plans to transition remote activities back to its campuses consistent with applicable public health orders and directives.

According to the [Centers for Disease Control & Prevention](#), flu vaccination has long been accepted as a safe and effective way to prevent millions of illnesses and thousands of related doctor and hospital visits every year. In recent years, [flu vaccines have reduced the risk of flu-associated hospitalizations among older adults on average by about 40%](#). A [2018 study](#) showed that from 2012 to 2015, flu vaccination among adults reduced the risk of being admitted to an intensive care unit (ICU) with flu by 82 percent. Flu vaccination has been associated with [lower rates of some cardiac events](#) among people with heart disease, especially among those who had had a cardiac event in the past year. It can reduce worsening and hospitalization for flu-related chronic lung disease. It has been shown in [separate studies](#) to be associated with reduced hospitalizations among people with [diabetes](#) and [chronic lung disease](#). A [2018 study](#) that included influenza seasons from 2010-2016 showed that getting a flu shot reduced a pregnant woman's risk of being hospitalized with flu by an average of 40 percent. Flu vaccination has been shown in several studies to reduce severity of illness in people who get vaccinated but still

get sick. For example, a 2017 [study](#) showed that flu vaccination reduced deaths, intensive care unit (ICU) admissions, ICU length of stay, and overall duration of hospitalization among hospitalized flu patients. A [2018 study](#) showed that among adults hospitalized with flu, vaccinated patients were 59 percent less likely to be admitted to the ICU than those who had not been vaccinated. Among adults in the ICU with flu, vaccinated patients on average spent 4 fewer days in the hospital than those who were not vaccinated. Finally, by getting vaccinated, a person can protect those around them, including those who are more vulnerable to serious flu illness.

During the SARS-CoV-2 pandemic, where COVID-19, like influenza, results in respiratory symptoms, it is even more critical than usual to assure widespread vaccination. As California progresses through its roadmap, the possibility of an outbreak or surge that overwhelms the health care system and causes hospitals to adopt [crisis standards of care](#) necessarily increases – as of July 20, 2020, thousands of new cases are being reported every day and hospitals are experiencing shortages of testing supplies and medications necessary to treat COVID-19. Population-level interventions that decrease the likelihood of disease transmission, hospitalization, and ICU utilization must therefore be considered and adopted where feasible.

As President of the University, I have concluded that critical steps must be taken to reduce the likelihood of severe disease among students, faculty and staff, particularly those on campus, and in turn to reduce the likelihood that our health systems will be overwhelmed.

### **Executive Order**

WHEREFORE AS PRESIDENT OF THE UNIVERSITY OF CALIFORNIA I DECLARE:

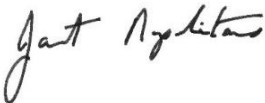
On the authority vested in me by Bylaw 30, Bylaw 22.1, Regents Policy 1500 and Standing Order 100.4(ee), and based on the foregoing circumstances, I hereby issue the following order, to be effective through the 2020-2021 flu season, and direct the following:

1. Each campus shall strongly encourage universal vaccination for all students, faculty, staff, and their families by October 31, 2020. Subject only to the exemptions and processes described below or in [Attachment A](#):
  - a. Deadline. Effective November 1, 2020, all students, faculty, and staff living, learning, or working at any UC location must receive a flu vaccine.
  - b. Students. The [Immunization Policy](#) is hereby amended to add influenza vaccine to the list of required vaccines for the duration of a statewide or any local public health emergency declared in response to the SARS-CoV-2 pandemic. Student exemption requests shall be adjudicated consistent with the [Immunization Exemption Policy](#).
  - c. Employees. Effective November 1, 2020, no person employed by the University or working on-site at any location owned, operated, or otherwise controlled by the University may report to that site for work unless they have received the 2020-2021 flu vaccine or an approved medical exemption. Requests for disability or

religious accommodations will be adjudicated through the interactive process consistent with existing location policies and procedures.

2. The University's health plans provide coverage for routine health maintenance vaccinations, including seasonal influenza vaccine, without copays to any covered students, faculty, staff, or their covered families.
3. The Vice President for Human Resources or her designee shall ensure that any applicable collective bargaining requirements are met with respect to the implementation of this order.
4. The Provost and the Executive Vice President or their designee(s) shall immediately consult with the Academic Senate on implementation of this order with respect to members of the University's faculty.
5. The Executive Vice President for UC Health or her designee shall provide technical guidance to the campuses at their request to facilitate execution of this mandate.

All University policies contrary to the provisions of this Executive Order, except those adopted by the Regents, shall be suspended to the extent of any conflict, during the period of this Order. The Executive Vice President – UC Health shall have the authority to issue further guidance about the parameters and use of this mandate, in consultation with the Provost and the Interim Vice President – Systemwide Human Resources.



---

Janet A. Napolitano  
President

## **ATTACHMENT A: EMPLOYEE EXEMPTIONS**

### **Medical Exemptions**

A list of established medical contraindications to and precautions for flu vaccine can be found at the Centers for Disease Control and Prevention website, *Guide to Contraindications*, online at: <https://www.cdc.gov/vaccines/hcp/acip-recs/general-recs/contraindications.html> (scroll to IIV) and currently includes:

Contraindications: Severe allergic reaction (e.g., anaphylaxis) after previous dose of influenza vaccine or to vaccine component.

Precautions: Guillain-Barré Syndrome <6 weeks after a prior dose of influenza vaccine

Moderate or severe acute illness with or without fever

Egg allergy other than hives, e.g., angioedema, respiratory distress, lightheadedness, recurrent emesis; or required epinephrine or another emergency medical intervention (IIV may be administered in an inpatient or outpatient medical setting and under the supervision of a health care provider who is able to recognize and manage severe allergic conditions).

Any request for medical exemption must be documented on the attached Medical Exemption Request Form and submitted by an employee to the designated campus medical official (collectively an “Authorized HCP”).

### **Faculty and Staff Appeals<sup>1</sup>**

Each campus shall designate a local Immunization Exemption Appeals Officer (IEAO) for faculty and staff appeals. The IEAO shall have appropriate qualifications and training to adjudicate appeals, meaning at a minimum California licensure as a physician, physician’s assistant, or advance practice nurse, who in turn may consult with other experts as necessary (e.g., environmental health and safety, infectious disease, occupational health).

Individuals who wish to appeal denial of a medical exemption must submit a written request to the Authorized HCP, along with documentation provided by their treating medical provider on the Medical Exemption Request Form.

Appeals should be de-identified and forwarded to the IEAO. Decisions should be communicated to the Authorized HCP, who will, in turn, communicate the IEAO decision to the faculty or staff member. IEAO decisions shall be rendered within 60 days of receipt by the IEAO and an

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<sup>1</sup> An Immunization Exemption Appeals Committee (IEAC) has been established to evaluate student appeals. The IEAC is chaired by the UC Health Chief Medical Officer of Student Health and Counseling, and is convened as needed to evaluate medical exemption requests denied at the campus level for which students have submitted an appeal.

individual will not be barred from any campus activity while an appeal is pending. If the exemption denial is upheld, the faculty or staff member will be expected to comply with the immunization requirement within 15 days.

In active infectious disease outbreak situations, individuals granted medical exemptions may not be allowed to come to campus. These situations will be determined on a case-by-case basis, and in consultation with public health officials with jurisdiction.

The UC Immunization Exemption Policy Committee (IEPC) is a system-wide committee, appointed by the Executive Vice President, UC Health. It is comprised of UC faculty, staff and students, and public health officials. Members are selected from diverse backgrounds, and include actively practicing physicians, including at least one infectious disease specialist, and may also include faculty with expertise in a variety of other fields, such as medical ethics, law, public health, and international student services. Members serve a term of no less than one year. Campuses may consult with the IEPC on significant questions of policy.

# University of California Medical Exemption Request Form

BERKELEY \* DAVIS \* IRVINE \* LOS ANGELES \* MERCED \* RIVERSIDE \* SAN DIEGO \* SAN FRANCISCO



SANTA BARBARA \* SANTA CRUZ

Name of Patient: \_\_\_\_\_

Status: ☐ Faculty ☐ Staff

Date of Birth: \_\_\_\_\_ MRN: \_\_\_\_\_

Name of Health Care Provider: \_\_\_\_\_

License Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

State of Issuance: \_\_\_\_\_

License Type: ☐ Medical or Osteopathic Physician ☐ Nurse Practitioner ☐ Physician's Assistant

Practice Address: \_\_\_\_\_

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

I hereby certify that the above-referenced patient qualifies for a medical exemption from influenza vaccine, as further provided below:

Reason for Exemption:

☐ CDC Contraindication ☐ CDC Precaution ☐ Manufacturer's Insert Contraindication ☐ Other

Provide a detailed explanation here regardless of the reason indicated immediately above:

\_\_\_\_\_

This contraindication or precaution is: ☐ Permanent ☐ Temporary

- If temporary, the expiration date for the exemption is: \_\_\_\_\_

Signature of Health Care Provider: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

*Faculty and Staff: Return this completed form to your campus-Authorized HCP.*

For Official Use Only:

☐ Approved ☐ Denied Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_

UC Location: <Choose One> \_\_\_\_\_

# EXHIBIT “B”





**University of California**  
**Executive Order**  
**Issued: July 31, 2020**  
**Revised: September 29, 2020**

**Background and Findings**

As of this date, the world is facing a severe health crisis in which COVID-19, a new respiratory illness caused by a novel coronavirus, places millions of people at risk of serious illness or death. The World Health Organization has declared that the disease is a pandemic. Declarations of Emergency have been issued by the President of the United States, the Governor of California, and California counties and other local jurisdictions, including those where the University maintains campuses and other significant operations.

In California alone, notwithstanding concerted statewide efforts to mitigate the spread of the disease, by late July, nearly 400,000 people had been diagnosed with COVID-19 and more than 7,500 had perished. Statewide positivity rates and hospitalizations were trending upward; on any given day, over 8,000 were hospitalized and more than 2,000 were so sick that they were being treated in intensive care units. As of this writing, the numbers of cases and deaths have doubled: over 800,000 cases have been reported, with over 15,000 fatalities. While hospitalization and ICU rates are currently down, statewide positivity and transmission rates are starting to climb again, and state officials have predicted a significant increase in hospitalizations over the next month.

On March 19 of this year, the State Public Health Officer [issued an order](#) directing all individuals living in the State to stay at home except as needed to facilitate authorized, necessary activities or to maintain the continuity of operations of critical infrastructure sectors. This order caused virtually every government agency and private organization in the State to transition to remote operations to the greatest extent possible. Since then, the State has developed and refined a Pandemic Roadmap to guide prudent resumption of on-site or in-person operations and the University is developing and implementing plans to transition remote activities back to its campuses consistent with applicable public health orders and directives.

According to the [Centers for Disease Control & Prevention](#), flu vaccination has long been accepted as a safe and effective way to prevent millions of illnesses and thousands of related doctor and hospital visits every year. In recent years, [flu vaccines have reduced the risk of flu-associated hospitalizations among older adults on average by about 40%](#). A [2018 study](#) showed that from 2012 to 2015, flu vaccination among adults reduced the risk of being admitted to an intensive care unit (ICU) with flu by 82 percent. Flu vaccination has been associated with [lower rates of some cardiac events](#) among people with heart disease, especially among those who had had a cardiac event in the past year. It can reduce worsening and hospitalization for flu-related

chronic lung disease. It has been shown in [separate studies](#) to be associated with reduced hospitalizations among people with [diabetes](#) and [chronic lung disease](#). A [2018 study](#) that included influenza seasons from 2010-2016 showed that getting a flu shot reduced a pregnant woman's risk of being hospitalized with flu by an average of 40 percent. Flu vaccination has been shown in several studies to reduce severity of illness in people who get vaccinated but still get sick. For example, a 2017 [study](#) showed that flu vaccination reduced deaths, intensive care unit (ICU) admissions, ICU length of stay, and overall duration of hospitalization among hospitalized flu patients. A [2018 study](#) showed that among adults hospitalized with flu, vaccinated patients were 59 percent less likely to be admitted to the ICU than those who had not been vaccinated. Among adults in the ICU with flu, vaccinated patients on average spent 4 fewer days in the hospital than those who were not vaccinated. Finally, by getting vaccinated, a person can protect those around them, including those who are more vulnerable to serious flu illness.

During the SARS-CoV-2 pandemic, where COVID-19, like influenza, results in respiratory symptoms, it is even more critical than usual to assure widespread vaccination. As California progresses through its roadmap, the possibility of an outbreak or surge that overwhelms the health care system and causes hospitals to adopt [crisis standards of care](#) necessarily increases – as of July 20, 2020, thousands of new cases are being reported every day and hospitals are experiencing shortages of testing supplies and medications necessary to treat COVID-19. Population-level interventions that decrease the likelihood of disease transmission, hospitalization, and ICU utilization must therefore be considered and adopted where feasible.

As President of the University, I have concluded that critical steps must be taken to reduce the likelihood of severe disease among students, faculty and staff, particularly those on campus, and in turn to reduce the likelihood that our health systems will be overwhelmed.

### **Executive Order**

WHEREFORE AS PRESIDENT OF THE UNIVERSITY OF CALIFORNIA I DECLARE:

On the authority vested in me by Bylaw 30, Bylaw 22.1, Regents Policy 1500 and Standing Order 100.4(ee), and based on the foregoing circumstances, I hereby issue the following order, to be effective through the 2020-2021 flu season, and direct the following:

1. Universal Vaccine Encouraged. Each campus shall strongly encourage universal vaccination for all students, faculty, staff, and their families by October 31, 2020.
2. Mandate for those on Campus. Effective November 1, 2020, all students, faculty, and staff living, learning, or working on premises at any UC location must receive a flu vaccine, unless they receive an approved medical exemption or disability or religious accommodation, as described below or in Attachment A.
3. Disability or Religious Accommodations. Requests for disability or religious accommodations may be made by any person subject to this order and will be adjudicated through the interactive process consistent with existing location policies and procedures.

4. Coverage. The University's health plans provide coverage for routine health maintenance vaccinations, including seasonal influenza vaccine, without copays to any covered students, faculty, staff, or their covered families.
5. Implementation.
  - a. The Interim Vice President for Human Resources or her designee shall ensure that any applicable collective bargaining requirements are met with respect to the implementation of this order.
  - b. The Provost and the Executive Vice President or their designee(s) shall immediately consult with the Academic Senate on implementation of this order with respect to members of the University's faculty.
  - c. The Executive Vice President for UC Health or her designee shall provide technical guidance to the campuses at their request to facilitate execution of this mandate.

All University policies contrary to the provisions of this Executive Order, except those adopted by the Regents, shall be suspended to the extent of any conflict, during the period of this Order. The Executive Vice President – UC Health shall have the authority to issue further guidance about the parameters and use of this mandate, in consultation with the Provost and the Interim Vice President – Systemwide Human Resources.

A handwritten signature in black ink, reading "Michael V. Drake" with a stylized flourish at the end.

---

Michael V. Drake, MD  
President

## **ATTACHMENT A: EMPLOYEE EXEMPTIONS**

### **Medical Exemptions**

A list of established medical contraindications to and precautions for flu vaccine can be found at the Centers for Disease Control and Prevention website, *Guide to Contraindications*, online at: <https://www.cdc.gov/vaccines/hcp/acip-recs/general-recs/contraindications.html> (scroll to IIV) and currently includes:

Contraindications: Severe allergic reaction (e.g., anaphylaxis) after previous dose of influenza vaccine or to vaccine component.

Precautions: Guillain-Barré Syndrome <6 weeks after a prior dose of influenza vaccine

Moderate or severe acute illness with or without fever

Egg allergy other than hives, e.g., angioedema, respiratory distress, lightheadedness, recurrent emesis; or required epinephrine or another emergency medical intervention (IIV may be administered in an inpatient or outpatient medical setting and under the supervision of a health care provider who is able to recognize and manage severe allergic conditions).

Any request for medical exemption must be documented on the attached Medical Exemption Request Form and submitted by an employee to the designated campus medical official or disability coordinator (collectively an “Authorized Official”).

### **Faculty and Staff Appeals<sup>1</sup>**

Each campus shall designate a local Immunization Exemption Appeals Officer (IEAO) for faculty and staff appeals. The IEAO shall have appropriate qualifications and training to adjudicate appeals, meaning at a minimum California licensure as a physician, physician’s assistant, or advance practice nurse, who in turn may consult with other experts as necessary (e.g., environmental health and safety, infectious disease, occupational health).

Individuals who wish to appeal denial of a medical exemption must submit a written request to the Authorized Official, along with documentation provided by their treating medical provider on the Medical Exemption Request Form.

Appeals should be de-identified and forwarded to the IEAO. Decisions should be communicated to the Authorized Official, who will, in turn, communicate the IEAO decision to the faculty or staff member. IEAO decisions shall be rendered within 60 days of receipt by the IEAO and an

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<sup>1</sup> An Immunization Exemption Appeals Committee (IEAC) has been established to evaluate student appeals. The IEAC is chaired by the UC Health Chief Medical Officer of Student Health and Counseling, and is convened as needed to evaluate medical exemption requests denied at the campus level for which students have submitted an appeal.

individual will not be barred from any campus activity while an appeal is pending. If the exemption denial is upheld, the faculty or staff member will be expected to comply with the immunization requirement within 15 days.

In active infectious disease outbreak situations, individuals granted medical exemptions may not be allowed to come to campus. These situations will be determined on a case-by-case basis, and in consultation with public health officials with jurisdiction.

The UC Immunization Exemption Policy Committee (IEPC) is a system-wide committee, appointed by the Executive Vice President, UC Health. It is comprised of UC faculty, staff and students, and public health officials. Members are selected from diverse backgrounds, and include actively practicing physicians, including at least one infectious disease specialist, and may also include faculty with expertise in a variety of other fields, such as medical ethics, law, public health, and international student services. Members serve a term of no less than one year. Campuses may consult with the IEPC on significant questions of policy.

# University of California Medical Exemption Request Form

BERKELEY \* DAVIS \* IRVINE \* LOS ANGELES \* MERCED \* RIVERSIDE \* SAN DIEGO \* SAN FRANCISCO



SANTA BARBARA \* SANTA CRUZ

Name of Patient: \_\_\_\_\_

Status: ☐ Student ☐ Faculty/Academic Personnel ☐ Staff/Other Employee

Date of Birth: \_\_\_\_\_ MRN: \_\_\_\_\_

Name of Health Care Provider: \_\_\_\_\_

License Number: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

State of Issuance: \_\_\_\_\_

License Type: ☐ Medical or Osteopathic Physician ☐ Nurse Practitioner ☐ Physician's Assistant

Practice Address: \_\_\_\_\_

Email: \_\_\_\_\_ Phone: \_\_\_\_\_

I hereby certify that the above-referenced patient qualifies for a medical exemption from the 2020-2021 seasonal influenza vaccine, as further provided below:

Reason for Exemption:

☐ CDC Contraindication ☐ CDC Precaution ☐ Manufacturer's Insert Contraindication

This contraindication or precaution is: ☐ Permanent ☐ Temporary

- If temporary, the expiration date for the exemption is: \_\_\_\_\_

Signature of Health Care Provider: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

*Students: Return this completed form to your Student Health Service.  
Faculty and Staff: Return this completed form to your campus-Authorized Official.*

For Official Use Only:

☐ Approved ☐ Denied Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Signature: \_\_\_\_\_

UC Location: <Choose One> \_\_\_\_\_

# EXHIBIT “C”



 **Inbox** 21

Starred

## Snoozed

**Important:**

Sent

## Drafts

## Categories

Meet

New meeting

My meetings **New**

## Mangouts

Sign In

Signing in will sign you into Hangouts

Index x

Flu Vaccine Support  @medsch.ucr.edu

to me ▾



You are receiving this reminder because you reported not receiving a flu vaccine for Flu Season 2020-21. Employees are required to have a flu vaccine prior to November 1, 2020. Please click on the link below to verify that you have received your flu vaccine or to request an accommodation:

**Follow this link to the Survey:**

**Take the Survey**

Please email [FLI\\_VACCINE\\_2020-2021@medrxiv.org](mailto:FLI_VACCINE_2020-2021@medrxiv.org) with any questions, or comments.

Thank you.

UCR Employee Health Assistance Committee



1 Richard Jaffe, Esq.  
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3 770 L Street, Suite 950  
4 Sacramento, California 95814  
5 Tel: 916-492-6038  
6 Fax: 713-626-9420  
7 Email: rickjaffeesquire@gmail.com

8 Robert F. Kennedy Jr., Esq.  
9 (Subject to *pro hac vice* admission)  
10 Children's Health Defense  
11 1227 North Peachtree Parkway  
12 Peachtree, Georgia 30269  
13 Tel: 917-743-3868

14 Attorneys for the Plaintiffs

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
16 **FOR THE COUNTY OF ALAMEDA**

17 CINDY KIEL, J.D., an Executive Associate  
18 Vice Chancellor at UC Davis, MCKENNA  
19 HENDRICKS, a UC Santa Barbara student,  
20 EDGAR DE GRACIA, a UCLA student, and  
21 LELAND VANDERPOEL, an employee at the  
22 Fresno satellite extension of the UCSF Medical  
23 Education Program, and FRANCES OLSEN,  
24 Professor of Law at UCLA,

25 Plaintiffs,

26 vs.

27 THE REGENTS OF THE UNIVERSITY OF  
28 CALIFORNIA, a Corporation, and MICHAEL  
V. DRAKE, in his official capacity as President  
of the UNIVERSITY OF CALIFORNIA,

Defendants.

**CASE NO. HG 20072843**

**BY FAX**

Unlimited Civil Jurisdiction

ASSIGNED FOR ALL PURPOSES TO:  
Hon. Richard L. Seabolt  
Department 521

**[PROPOSED ORDER ON] PLAINTIFFS'  
EX PARTE APPLICATION TO RESET  
THE PRELIMINARY INJUNCTION  
HEARING DATE FROM NOVEMBER 12,  
2020 BACK TO MID OCTOBER**

Date:  
Time: .  
Dept.: 521  
Reservation No.:  
Complaint filed: August 27, 2020  
Trial: None set

After having fully considered all papers and hearing all arguments of Counsel of the Parties,  
related to Plaintiffs' Ex parte application to reset the preliminary injunction hearing date from  
November 12, 2020 back to Mid-October. and good cause having been shown,

1  
2 IT IS HEREBY ORDERED THAT Plaintiffs' application is GRANTED.

3 Plaintiffs' Motion is set for October 2020, at o'clock

4 Date: October 2020

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8 Hon. Richard Seabolt  
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