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**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

**PLAINTIFF CINDY KIEL'S
DECLARATION IN SUPPORT OF
PLAINTIFFS' MOTION FOR A
PRELIMINARY INJUNCTION**

By Fax

UNLIMITED CIVIL JURISDICTION

DEPARTMENT 511

Date: October 14, 2020

Time: 1:30 PM

Reservation ID- 2206283

Action Filed: August 27, 2020

Trial Date: None Set

I Cindy Kiel declare as follows:

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**PLAINTIFF CINDY KIEL'S DECLARATION IN SUPPORT OF PLAINTIFFS' MOTION
FOR A PRELIMINARY INJUNCTION**

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1. I submit this declaration in support of Plaintiffs’ Motion for a Preliminary Injunction. If called to testify, I could competently testify as follows:
2. I serve as the Executive Associate Vice Chancellor for Research at the University of California at Davis. In this role I have oversight for research grants and contracts, the human research protection program, ethical animal care and use, research misconduct investigations, conflict of interest disclosures and management, quality assurance in clinical trials and the Responsible Conduct of Research ethics education program.
3. My underlying graduate degree is in law but in the 22 years I have worked in research administration, compliance and ethics, I have read thousands of research proposals, protocols and publications primarily with the goal to discern whether research misconduct or bias has occurred in the design, conduct or reporting of research.
4. I have been privileged to have worked at multiple universities that uphold the highest ethical standards for research including the University of California at Davis. In our human subjects protection program, we pride ourselves in ensuring the ability of individuals to make voluntary, uncoerced and fully informed decisions about the medical risks they are willing to take to advance our knowledge of the human body and new pharmaceutical products that may end up saving lives.
5. I believe strongly that the principle of autonomy in medical risk decision making extends beyond the research realm and that individuals must also have the right to make fully informed, uncoerced, voluntary decisions about medical procedures after knowing all of the risks and benefits of taking a medical product or refusing that product. This principle of autonomy is embodied in the California Patient’s Bill of Rights.

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6. Medical decisions should be made in the privacy of the relationship between an individual and their selected primary care physician.
7. Medical decisions should not be made by an employer that knows nothing of the medical history or life experiences of the individual on whom they purport to mandate a medical product.
8. As a supervisor in the UC System, I believe it would be unethical and unlawful to enforce the UC flu vaccine order on the employees that work for me simply because it was ordered. I am not a physician, and more importantly, I am not my staff members' physician nor is the President of the UC System and thus I have no standing to order or enforce a medical procedure of any kind on any other person.
9. My employees and I have a right to privacy regarding our medical decisions and it is none of the UC System's business to know what medical decisions I make with my care provider just as it is none of my business to know what medical decisions my employees have made including whether or not they have taken or refused a flu vaccine. It is a violation of my constitutional right to privacy to be required to submit medical information to the UC should I require a medical exemption. I can perform the duties of my position whether I receive a flu vaccine or not.
10. It is also not my employer's business to know my religious background and how an employee's beliefs contribute to their decision regarding whether to obtain a flu vaccine or not. Since the criteria for approval or denial of a religious exemption is left up to each campus in an iterative, undefined process, it is likely that decisions may lead to campuses or supervisors second-guessing whether or not an employee's religious belief is "valid"

1 or not. This is a violation of constitutional rights and discriminatory against individuals
2 based on their religious beliefs.

3 11. I have served in the US military and as part of that service, I knew going in that certain
4 vaccinations or proof of immunity were required and I complied. However, when the
5 military began enforcing a new vaccine program for anthrax based on a theory that it
6 might protect troops from theoretical biowarfare attacks, I chose to not engage in this
7 experimental use of anthrax vaccines and went into the inactive ready reserve instead.
8 Ever since that experience, I vowed I would never again apply for or accept any job that
9 required me to give up my bodily integrity for a paycheck.

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11 12. After all, service in the military to protect the individual freedoms our constitution
12 guarantees means nothing if a state entity can at any time simply dictate by an executive
13 order what a person must inject into their bodies while holding the threat of losing their
14 livelihood, educational opportunities and other civil rights over their heads.

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16 13. Similarly, the UC System has suddenly decided to force a new vaccination requirement
17 based on an experimental theory that forcing students, faculty and staff to receive a flu
18 shot might reduce use of health system resources during a theoretical second wave of
19 Covid19 that may or may not happen.

20 14. When I applied for the position at UC Davis, there was no medical surveillance or
21 vaccine requirements for my role. I have continued to serve in this role for over nine
22 years. If I had known a vaccine requirement would be implemented downstream, I would
23 have never applied for the position, I would not have uprooted my family from Missouri
24 and moved them across the country and I would not have incurred the costs associated
25 with this transition. Thus, the executive order feels very much like a bait and switch
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1 scheme, unilaterally changing fundamental terms of employment with no employee input
2 into the decision.

3 15. The UC System suggests that it has long had flu vaccine requirements for health system
4 staff and they are simply extending this policy to the non-health system campuses but
5 they fail to state that an individual can opt out of the health system requirement by
6 agreeing to wear a mask during the influenza season. Since everyone is now required to
7 wear a mask on campus anyway due to the coronavirus pandemic, no one should have to
8 get a flu vaccine now.

9
10 16. The UC System has also suggested that the flu shot mandate will reduce the amount of
11 COVID19 testing, tracking, contact tracing and other surveillance activities. However,
12 because the UC campuses have adopted a widespread program of asymptomatic testing
13 of everyone on campus, this argument is null and void. The same amount of testing will
14 be occurring whether or not there is an increase in covid19 or flu-like symptoms in
15 faculty staff and students and those with flu will be quickly weeded out by this testing
16 with no additional follow-up or burden necessary.

17
18 17. Based on my role at UC Davis, it is now apparent that the President failed to consult with
19 any of the labor unions, staff assemblies, the systemwide faculty senate, any of the
20 campuses' faculty senates or the faculty federation at UC Davis prior to make this broad
21 vaccine mandate order. This is in violation of the principles of shared governance and
22 employment agreements and due process rights of faculty staff and students.

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24 18. This order was also implemented prior to being put on the Board of Regents agenda for
25 discussion and systemwide community input.

1 19. I personally know five individuals who have suffered debilitating injury from flu shots.

2 One was paralyzed with Guillian-Barre syndrome, one was hospitalized with severe
3 systemic issues (fever, etc.), another professional colleague is still pursuing her case in
4 the National Vaccine Injury Compensation program for SIRVA nerve damage rendering
5 her unable to lift her arm above shoulder level. I have heard from hundreds of
6 individuals that the only time they have become horribly ill with the flu has been the year
7 they decided to get a flu shot.
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9 20. Meanwhile, the flu vaccine has the highest rate of compensation for vaccine injuries than
10 any other vaccine in the National Vaccine Injury Compensation program created under
11 the National Vaccine Injury Compensation Act which removed liability from vaccine
12 manufacturers for their products.

13 21. I have witnessed personally that when units reporting to me have a high rate of flu
14 vaccination, I have far more individuals calling in sick than in units that tend to have
15 lower levels of vaccination participation (primarily due to geographic location between
16 the health system versus main campus). Because of this observation, I have hoped that
17 people in fact do not get a flu shot because I can't afford to have them out of the office
18 and not performing. Certainly, these are anecdotal observations, and I also know
19 individuals who swear that the flu shot protects them.
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21 22. When I have asked medical professionals about their thoughts on the flu vaccine, many
22 have told me that they don't get it themselves but they recommend it for their patients. I
23 have also found that many physicians are not fully up to date on vaccine research even
24 though they readily prescribe vaccines.
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23. So where do I turn to see if my personal observations are more generalizable? I turn to science.

24. Thus, I accessed flu vaccine research in pub med and read up on the clinical trials submitted to the FDA for flu vaccine approvals to find out for myself what the risks and benefits of flu vaccination were. During my research into flu vaccines, I discovered that the science is certainly not settled when it comes to either safety or efficacy of flu vaccines. Because researchers and vaccine makers are guessing about what viral strains might be prevalent in any given year, they are guessing about what strains to include. There is also evidence that the manufacturing process itself mutates the virus in ways that make the vaccine less efficacious.

25. I have read dozens of studies on the flu vaccine. I read them critically to ascertain how robust the design of the study is and whether there are any underlying conflicts of interest that might have created bias in the outcome of these studies. For example, randomized double blind placebo studies are far more credible than epidemiological studies where study design and data can easily be manipulated due to a research team's agenda.

26. I noticed an interesting correlation between research studies that suggested flu vaccines were safe and effective versus studies that were critical of flu vaccines. The supportive studies almost always seemed to have associated bias either because the study was funded by a vaccine manufacturer or a philanthropic entity that is known for its support of the vaccine industry or the researchers themselves had received funding, payments or consulting fees from vaccine manufacturing pharmaceutical companies.

27. I found the most credible source of information regarding efficacy and safety of flu vaccines to be the Cochrane Collaboration publications. This research entity did not

1 appear to have biased funding or conflicts up until recently. Those studies essentially
2 found that flu vaccines were not highly efficacious nor did they seem to prevent
3 hospitalizations or death from the flu.

4 28. Because the annual vaccines must be created in a short timeframe, they are not studied in
5 clinical trials for any extensive period to determine safety. I have been unable to find a
6 single clinical trial on a flu vaccine that used an inert placebo control group before it was
7 approved by the FDA.

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9 29. Every vaccine insert also states that it was not studied for mutagenicity, carcinogenicity
10 or reproductive harm and that it was not studied in pregnant women and yet the CDC
11 recommends that pregnant women receive a flu vaccine even though there is no scientific
12 evidence that it is safe for them or their unborn child to do so. To the contrary, there is a
13 post FDA approval study that showed an over 1,400% increase in miscarriages for
14 women who received a flu shot during the first trimester of pregnancy versus those that
15 did not. And yet, the UC System flu vaccine executive order does not provide an
16 exception for faculty staff or students who are pregnant and the CDC contraindications
17 would not otherwise provide this as a medical exemption.

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19 30. The most disturbing research I uncovered about flu shots that is directly related to the
20 UC System executive order are studies showing significant increases in other upper
21 respiratory infections including coronavirus infections in individuals who receive a flu
22 shot versus those that do not.

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24 31. There have not yet been any research studies published looking at whether flu shots
25 increase an individual's risk of getting COVID19 or if flu shots increase the risk of
26 severe infection from COVID19. Because earlier research studies have shown the

1 potential risk of increased severity and incidence of coronavirus infection in vaccinated
2 individuals, the UC System flu shot executive order is dangerous and reckless. If prior
3 research remains true for COVID19, not only will the executive order fail to attain its
4 goal of reducing the use of health system resources, it may actually increase demand
5 while putting faculty students and staff to much greater harm during a coronavirus
6 pandemic than what they would have otherwise faced. If the UC System prides itself on
7 following the science when developing policies, it has certainly failed to follow the
8 science with this executive order because the science has clearly not yet been done. In the
9 absence of this science, the UC Executive Order is both reckless and dangerous.
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11 32. Because I have chosen to fully inform myself about the risks and benefits of flu
12 vaccination. I have never received one before nor will I agree to receive one in the future
13 unless long term, large-scale double-blind placebo-based studies show it to be extremely
14 effective with little to no risk of harm. Until those studies are done, I consider the flu shot
15 to be experimental regardless of their FDA approval status.
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17 33. Each year, the FDA, the CDC and the manufacturers of flu vaccines have no clue if the
18 shot will or will not work for the upcoming flu season. We only learn in hindsight if it
19 was deemed to be 9%, 15% or 50% effective. Time and time again we hear that they
20 picked the wrong strain, or the manufacturing process mutated the vaccine virus to make
21 it ineffective against the strain it was purported to protect against. This weighs heavily on
22 the negative side of the risk-benefit equation when deciding whether to undergo this
23 particular medical intervention. With such low historical efficacy rates, and the
24 constantly mutating influenza viral strains it is highly unlikely that a flu shot will ever
25 contribute to “herd immunity”.
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1 34. Every flu shot manufacturer vaccine insert warns the user that there are no guarantees
2 that it will work at all for the recipient. If the manufacturer of a medical product is
3 unwilling to stand behind that product and guarantees neither safety nor efficacy, I am
4 not willing to take 100% of the potential risk to my health by using that product.

5 35. In the Executive Order mandating flu shots, the UC System did not agree to take on the
6 risk and liability should any of its faculty staff or students suffer from a flu vaccine
7 injury. If an employer wants to dictate a medical intervention it should also take on 100%
8 of the risk and liability for making that decision for someone else. I will not be forced by
9 my employer that is unwilling to take on liability of harm in order to be a guinea pig for
10 pharmaceutical companies who use propaganda instead of actual science to push their flu
11 shots.
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13 36. I have had flu-like infections on multiple occasions in the past and I have never before
14 sought medical attention for this minor health inconvenience. In the past, I have not even
15 used sick leave, wearing “working sick” as a badge of honor. Due to lessons learned
16 during the COVID19 pandemic, I have certainly changed my mind about going to work
17 while ill and in the future, I plan on staying home or working remotely if I do become ill.
18 However, it is extremely unlikely that even if I got the flu, I would use any health system
19 resources whatsoever. I grew up in a home where we never ran to the doctor for every
20 little fever, snuffle or cough and my innate immune system with home remedies to stay
21 comfortable work incredibly well for me.
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23 37. Compared with the severe adverse events caused by the flu shot in a number of my
24 friends and colleagues, I prefer to take my chances with the seasonal flu and trust in my
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1 immune system to clear the infection just as it has always done in the past with no impact
2 on any health system.

3 38. The UC System executive order flies directly in the face of the principle of autonomy in
4 medical risk decision, undermines student, faculty and staff rights to privacy and bodily
5 integrity, is based on one-sided cherry-picked biased and flawed science, is unlikely to
6 achieve the specific aims for why it was adopted and was implemented for reasons that
7 are purely theoretical and fictional in nature.

8 39. I believe the order to be both unlawful and unethical, a violation of constitutional
9 rights and potentially reckless and dangerous during this pandemic. I declare under
10 penalty of perjury under the laws of the State of California that the foregoing is true and
11 correct and that this declaration was executed on September 15, 2020 in Davis,
12 California.
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17 _____
18 Cindy Kiel
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