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Attorneys for Defendants
13 The Regents of the University of California and
14 Michael V. Drake

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

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

21 Plaintiff,

22 v.

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

26 Defendants.

Case No. HG20072843
Unlimited Civil Jurisdiction
ASSIGNED FOR ALL PURPOSES TO:
Hon. Richard L. Seabolt
Department 521

**DECLARATION OF COURTNEY
O'CONNOR IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

Date: October 14, 2020
Time: 01:30 p.m.
Dept.: 521
Reservation No.: 2206283

Complaint filed: August 27, 2020
Trial: None set

1 I, Courtney O'Connor, declare:

2 1. I provide this declaration in support of Defendants The Regents of the University
3 of California and Michael V. Drake's ("Defendants") Opposition to Plaintiffs' Motion for
4 Preliminary Injunction. I base this declaration on facts within my personal knowledge, to which I
5 could and would testify competently if called upon to do so.

6 2. I am the Associate Director for Conduct and Student Support Services in the
7 Office of Student Development in Student Housing and Dining Services at University of
8 California at Davis ("UC Davis"). I have been employed in higher education for 20 years and at
9 UC Davis since 2006. I was previously the Assistant Director for Policy and Conduct in the same
10 department. In my current role, I coordinate departmental response for students in crisis and
11 provide support for students experiencing complex mental health and personal issues. I am also
12 responsible for the development, implementation, and enforcement of policies concerning student
13 behavior in residence halls and Student Housing and Dining Services managed apartments. I
14 manage the administration of a conduct process for over 6,000 students living in Student Housing
15 and Dining Services managed housing facilities. I was previously responsible for the
16 administration of the conduct process for over 500 UC Davis Registered Student Organizations. I
17 also assist in developing, reviewing, and interpreting Student Housing and Dining Services and
18 UC policies. I directly supervise a staff of three professionals (two Conduct and Student Support
19 Specialists and one Student Judicial Affairs Officer for Student Housing) and work closely with
20 academic advisors, faculty, and other campus departments to make appropriate accommodations
21 for students in distress. My department is part of UC Davis Student Housing and Dining Services,
22 a department of approximately 600 non-student staff and 1,500 student staff.

23 3. I am part of the Student Housing and Dining Services team responsible for
24 implementing UC Davis's COVID-19 response. I have developed behavioral policies to mitigate
25 the spread of COVID-19 for students in congregate housing. I am also responsible for developing
26 policies and procedures related to COVID-19 testing, isolation, and quarantine. I am part of the
27 campus workgroup developing and training the Aggie Public Health Ambassador position. Flu
28 vaccines are critical at UC Davis during the COVID-19 pandemic. Although asymptomatic

1 people will be tested weekly for COVID-19, that does not eliminate the need to prevent the
2 spread of the flu. COVID-19 testing is not currently offered seven days a week and it takes three
3 days to receive COVID-19 results. It is misguided to assume that because we are regularly testing
4 for COVID-19 we do not need to vaccinate for the flu. We do not have unlimited quarantine
5 spaces for students exposed to COVID-19 and cannot afford to quarantine students with the flu
6 while awaiting COVID-19 test results. The impact of relocating to a quarantine space is
7 significant, both from a logistical standpoint as well as a social and emotional health standpoint.
8 Flu vaccines will reduce the risk of a student being unnecessarily placed in a quarantine space.

9 4. I have received the flu vaccine almost every year for at least the past 14 years,
10 either through UC Davis Occupational Health, my primary care physician, or at a pharmacy. I
11 received the flu vaccine even when I was pregnant with my son. My husband and 11-year old son
12 also get a flu vaccine every year. My mother and father are in their eighties and suffer from
13 dementia and Parkinson's disease, respectively. I ensure they receive their flu vaccine yearly.
14 They have full-time in-home care, and I require their caregivers certify yearly they have received
15 the flu vaccine. It is very important to me that I protect my health and safety, as well as the health
16 and safety of my family, particularly my elderly parents whom I visit 6 days a week. I have never
17 felt ill or experienced flu-like symptoms as a result of taking the flu vaccine. Over the last 14
18 years, I can only recall getting the flu once, in 2009 during the swine flu pandemic.

19 5. I am aware of the Executive Order requiring UC students, faculty, and staff to
20 receive a flu vaccine by November 1, 2020 if they plan to be on campus. I first learned of the
21 Executive Order through the ordinary channels at UC Davis. My initial thought upon learning
22 about the new policy for this year was that it was a great step forward in helping to keep the UC
23 community safe and healthy. As a person who works with policy, I was pleased to learn about the
24 efforts UC Davis will take to ensure compliance with the mandate. I informed the staff I supervise
25 of the requirement at the first opportunity. As a UC supervisor, I was pleased that I did not have
26 to coax my staff's compliance with the policy, as no one voiced any concern about the policy or
27 objection to his or her required compliance. Two of my staff members informed me that they
28 receive the flu vaccine every year irrespective of any requirement to do so. A third had no

1 objection to getting the flu vaccine. They seemed to understand that the flu vaccine policy is not
2 only to protect them, but also to protect against the possibility that they may be symptomatic or
3 asymptomatic transmitters of the flu to other UC Davis community members. Additionally, they
4 understood that since they only have to get the vaccine if they plan to be on campus, there is an
5 inherent accommodation for staff who do not wish to comply. Regardless, I understand that all of
6 my direct reports intend to comply by getting a flu shot by November 1.

7 6. I strongly support the University's flu vaccine requirement for several interrelated
8 reasons. First, I believe in science.

9 7. Second, when on the UC Davis campus, my staff and I regularly interact face-to-
10 face with each other and with the student population. I need to ensure not only that am I
11 protected, but that my family, my staff, and their families are protected. I feel a personal
12 responsibility not to get the students I meet with sick. While I am not currently required to work
13 on campus, numerous Student Housing and Dining Services staff members are, and I may need to
14 be present on campus if COVID-19 related issues arise. For example, within the last two weeks, I
15 have been on campus eight days overseeing COVID-19 testing. If the flu were to go around our
16 office this winter, we need to ensure that we are protecting ourselves and our students from the
17 flu. I am generally optimistic that all of the measures UC has put in place systemwide, and the
18 measures UC Davis has put in place on our campus, will help prevent the widespread COVID-19
19 infection outbreaks other campuses across the country are experiencing. I am also aware,
20 however, of the potential for the flu season to undermine the tremendous efforts undertaken by
21 the entire UC community to responsibly handle the ongoing pandemic.

22 8. Third, by protecting the students from contracting the flu, the flu vaccine
23 requirement also helps prevent potential academic disruptions. Because UC Davis is on a quarter
24 system, it would be extremely difficult for a student who gets the flu and misses two weeks of
25 class to recover academically. He/she/they would then be forced to deal with the emotional and
26 financial struggle of withdrawing for the quarter or taking incompletes in their courses. The fact
27 that students are primarily taking classes online provides no guarantee that students would be able
28 to continue to attend class even while sick since, as anyone who has had the flu can attest, the

1 symptoms of the flu can be debilitating. I have counseled many students who have had to
2 withdraw because of missing class due to illness. The mental strain of the process and the loss of
3 academic progress can be overwhelming and have a lasting effect on a student's college
4 experience. Further, the financial costs of withdrawal can be significant. Even if a student does
5 not have to withdraw, their grades can be negatively impacted by missed coursework as a result
6 of illness. The simple act of receiving a flu shot—something that is as mundane as taking
7 vitamins—is a minor inconvenience if it means we can prevent derailing the academic experience
8 of our students.

9 9. Fourth, UC Davis has an obligation to protect not only the health and safety of its
10 students, faculty, and staff, but also members of the surrounding Davis community. An
11 unnecessary and preventable outbreak of the flu on campus on top of the continuing COVID-19
12 crisis has significant potential to overwhelm local healthcare facilities. In Yolo County, the
13 number of available ICU beds dropped to zero in July¹, and that was without adding in the health
14 care resource impact of the flu.

15 10. While UC Davis has moved its curriculum to online classes, many students have
16 returned to the Davis area. To understand the size of the population returning to Davis, UC Davis
17 conducted a survey about where students plan to live this quarter. Results indicated that in
18 addition to approximately 11,000 students already living in or near Davis, 13,000 planned to
19 return. In total, approximately 50% of undergraduate students and 70% of graduate students are
20 planning to live in Davis and surrounding communities. It is estimated these percentages
21 represent 23,000 to 25,000 students.²

22 11. There are several reasons students are living in Davis even though classes are
23 being held remotely. In Davis, students living off-campus typically sign leases for the upcoming
24 academic year in February or March. Significant numbers of students signed leases for the 2020-

25 ¹ CBS Sacramento, "Yolo County Reports No Staffed ICU Beds Available as of Wednesday,
26 Lands on Coronavirus Watch List," available at
27 <https://sacramento.cbslocal.com/2020/07/08/yolo-county-coronavirus-watch-list-no-icu-beds/>
(last accessed Sept. 29, 2020).

28 ² UC Davis Press Release, "COVID-19 Efforts to Expand Beyond Campus Community,"
available at <https://www.ucdavis.edu/news/covid-19-efforts-expand-beyond-campus-community/>
(last accessed Sept. 29, 2020).

1 2021 school year prior to the shelter-in-place orders in March and subsequent decision by UC
2 Davis to move fall classes to online instruction. Students with leases starting September 1, 2020
3 found they would not be released and therefore have returned to live in the apartments and houses
4 they are having to pay for. Of the approximately 4,600 to 4,850 students planning to live-on
5 campus, some have no other stable or safe place to live. Students experiencing food or housing
6 insecurity at home have access to resources in Davis they otherwise would not have.
7 Additionally, international students who might otherwise have returned home when remote
8 learning was announced have stayed because of challenges associated with time zones and classes
9 being scheduled using Pacific time.

10 12. Based upon my experience working with UC Davis students, as well as my
11 experience with friends and colleagues, a person who says that they have never gotten the flu
12 even though they have never taken the flu vaccine has not been exposed or is asymptomatic.
13 Regardless of an individual's diet or lifestyle choices, based upon the research I have done, it is
14 not possible to develop a "natural immunity" to a virus. If you come into contact with the flu
15 virus, then you may become sick or you may be asymptomatic – either way, you will likely
16 develop some immunity. I do not believe a flu infection can be prevented by lifestyle choices
17 such as eating vegetarian or avoiding chemicals. Like Plaintiff Leland Vander Poel, who works at
18 UCSF Fresno, I am also a vegetarian. However, I still get the flu shot every year because I
19 understand and have no qualms about relying on basic science.

20 13. Having worked at UC Davis for many years, I have found the community of
21 individuals I most frequently come into contact with are vaccinated. They are educated, believe in
22 science, and have not found "anti-vaxxer" ideology to be persuasive or true. Because UC faculty
23 and staff like myself are supported with a paid sick leave policy, there is no reason for individuals
24 to come to work if sick. My department actively encourages individuals who are sick to stay
25 home so as not to pass along illness to others.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed in Sacramento, California, on this 29th day of September 2020.

Courtney O'Connor
Courtney O'Connor