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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

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AARON KHERIATY, M.D.,

Plaintiff,

v.

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.

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Plaintiff, Aaron Kheriaty, M.D. (“**Plaintiff**”) for his verified complaint, against THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, and MICHAEL V. DRAKE, in his official capacity as President of the University of California, (collectively “**Defendants**”) by and through his attorneys, alleges as follows:

INTRODUCTION

1. The equal protection clause of the Fourteenth Amendment to the U.S. Constitution requires a state to treat an individual in the same manner as others in similar conditions and circumstances. The Fourteenth Amendment further recognizes and guarantees fundamental rights and liberty interests of personal autonomy and bodily integrity. Plaintiff brings this action because the University of California Irving (“**UCI**”) will soon refuse to allow him back on campus and is thereby violating his liberty interests and treating him differently from other similarly situated individuals who are permitted back on campus.

2. Over the eons of human development, our bodies have created a remarkable immune system capable of protecting us against a wide variety of pathogenic viruses. This system includes an enormously diverse repertoire of cells with a nearly unlimited capacity to recognize and ‘adapt’ to previously unseen viruses. Rather than having to re-

1 create the same immunological response every time a virus attacks the body, our immune
2 systems have an innate form of memory which prevents reinfection with the same virus.
3 This memory system creates antibodies to all antigens of a given virus thereby providing
4 previously infected individuals with neutralizing immunity to a previously encountered
5 virus (“naturally immune individuals”).

6 3. While different vaccines for COVID-19 work in different ways, they are all
7 designed to create immunity to a portion of the virus (specifically, the spike protein),
8 without creating too many side effects, in the hope that this partial immunity to a portion
9 of the virus will confer neutralizing immunity to the entire virus when encountered by
10 the vaccinated individual. Despite humanity’s best efforts at mimicking the immune
11 system’s protection, the immunity generated after infection with a virus, including
12 SARS-CoV-2 (the virus which causes the disease COVID-19, hereinafter the “virus” or
13 the “COVID-19 virus”), creates a more robust and durable form of immunity to a virus
14 than any vaccine can create.

15 4. Recent studies related to COVID-19 vaccines demonstrate these weaknesses
16 in vaccine-induced immunity. While someone who has had the COVID-19 virus will
17 typically immediately neutralize the virus upon re-exposure, thereby preventing
18 reinfection and transmission, studies have found that an individual vaccinated for
19 COVID-19 can still become infected with and have the same amount of virus in their
20 nasopharynx as an unvaccinated individual with COVID-19. The vaccinated individual
21 should typically have fewer symptoms, however that individual can still transmit the virus
22 to others.

23 5. The University of California (“UC”) recently enacted a new policy to
24 “facilitate the protection of the health and safety of the University community” by
25 ensuring that individuals who return to campus have immunity to the virus that causes
26 COVID-19 (the “Mandate”). However, to reach this goal, UC decided that only
27 vaccinated individuals will be permitted on a UC campus come this fall, ignoring those
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1 who have natural immunity to the virus. Thus, the policy provides “for a COVID-19
2 Vaccination Program under which any” student, faculty, or staff member “is required,
3 subject to limited deferrals, exceptions, and associated non-pharmaceutical interventions,
4 to be fully vaccinated against COVID-19 before physically accessing the University’s
5 Locations and Programs.” In enacting this policy, the University is treating naturally
6 immune individuals differently from individuals whose immunity was created by one of
7 the COVID-19 vaccines.

8 6. Plaintiff is a physician and professor of Psychiatry and Human Behavior at
9 the UCI School of Medicine (“UCI”). He is one of the estimated 3.9 million
10 Californians¹ who are confirmed to have contracted the COVID-19 virus. He was
11 infected with the virus in July 2020 and experienced many of the common symptoms
12 associated with COVID-19, including a cough and loss of taste and smell. In fighting off
13 the virus, his body created a robust natural immunity to every antigen on the COVID-19
14 virus, not just the spike protein of the virus as happens with the COVID-19 vaccines.
15 Nevertheless, UCI has told Plaintiff that he cannot return to his teaching position unless
16 he receives a COVID-19 vaccine. Thus, UC is treating him differently by refusing to re-
17 admit him to campus when other individuals who are considered immune to the virus are
18 being admitted back simply because their immunity was created by a vaccine. This policy
19 is illogical and cannot withstand strict scrutiny or even a rational basis test because
20 naturally immune individuals, like Plaintiff, have at least as good or better immunity to
21 the virus that causes COVID-19 than do individuals who are vaccinated.

22 7. In the more than 19 months that the world has been transfixed by the
23 COVID-19 pandemic, evidence shows that the reinfection rate after natural infection is
24 less than 1%, and there are no documented cases of reinfection and transmission to others
25 by naturally immune individuals. In contrast, COVID-19 vaccination in the optimal

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27 ¹ See <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/Immunization/nCOV2019.aspx>.
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1 setting of a clinical trial has, at best, an estimated 67% to 95% efficacy (depending on the
2 COVID-19 vaccine and the variant of the virus) and the vaccine manufacturers and public
3 health agencies have made clear that booster doses will likely be needed, due to waning
4 immunity created by the vaccines. Likewise, recent United States Centers for Disease
5 Control and Prevention (“CDC”) studies have been replete with reports of so-called
6 “breakthrough cases” where individuals are infected after they are fully vaccinated. Dr.
7 Rochelle Walensky, Director of the CDC, and Dr. Anthony Fauci, Director of NIH’s
8 NIAID, have explained that the amount of virus in those individuals’ noses is the same
9 as the unvaccinated who have COVID-19.² This has led to the CDC’s revised guidelines
10 recommending a return to masks for those who have been vaccinated and experts to
11 conclude that “vaccination is now about personal protection” because “herd immunity is
12 not relevant as we are seeing plenty of evidence of repeat and breakthrough infections.”³

13 8. As described more fully herein, UCI’s refusal to readmit Plaintiff to campus
14 unless he receives a vaccine is an equal protection violation. The right of individuals to
15 their bodily integrity, which includes a right to refuse medical treatment, has long been
16 recognized as one of the fundamental liberty rights afforded under due process. By
17 forcing Plaintiff to receive a vaccine he does not want or need, and that may cause harm,
18 in order to be treated equally as other individuals who are also immune, UCI’s Mandate
19 implicates Plaintiff’s substantive due process rights, and the Court should analyze his
20 equal protection claim under the strict scrutiny analysis, i.e., whether the Mandate is both
21 satisfying a compelling government need and is implemented by the least restrictive
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23 ² See [https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm?s_cid=mm7031e2_w](https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm?s_cid=mm7031e2_w#contribAff)
24 [#contribAff](https://www.msnbc.com/all-in/watch/dr-fauci-explains-updated-cdc-mask-guidance-for-vaccinated-people-amid-covid-hotspots-117489221538); see also [https://www.msnbc.com/all-in/watch/dr-fauci-explains-updated-](https://www.msnbc.com/all-in/watch/dr-fauci-explains-updated-cdc-mask-guidance-for-vaccinated-people-amid-covid-hotspots-117489221538)
25 [cdc-mask-guidance-for-vaccinated-people-amid-covid-hotspots-117489221538](https://www.msnbc.com/all-in/watch/dr-fauci-explains-updated-cdc-mask-guidance-for-vaccinated-people-amid-covid-hotspots-117489221538) at 1:09;
26 see also <https://www.nytimes.com/2021/07/30/health/covid-cdc-delta-masks.html?smtyp=cur&smid=tw-nytimes>.

27 ³ See <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>; see
28 also <https://www.washingtonpost.com/health/2021/07/29/cdc-mask-guidance/>.

1 means. Defendants cannot satisfy either of these prongs. Even though a government
2 entity has a compelling government interest in preventing the spread of COVID-19, that
3 interest is not furthered by compelling Plaintiff to be vaccinated to satisfy this interest
4 because he is already naturally immune and, unlike the vaccinated, if exposed to the virus,
5 has neutralizing immunity. By failing to acknowledge that naturally immune individuals
6 are unlikely to spread the virus, and certainly far less likely than the vaccinated, the
7 Mandate is not narrowly tailored.

8 9. Nor can the Mandate even satisfy rational basis analysis. Plaintiff is already
9 naturally immune to the virus. He is therefore less likely to infect other individuals than
10 are people who have been vaccinated. As a result, requiring him to be vaccinated in order
11 to return to campus is irrational. In addition, by targeting people who have had the virus
12 but remain unvaccinated, the Mandate unfairly singles out one unpopular group for
13 disparate treatment.

14 10. For these reasons, more fully explained below, Plaintiff seeks a preliminary
15 injunction and declaratory relief enjoining Defendants from enforcing the Mandate
16 against him or any other naturally immune individual.

17 **PARTIES**

18 11. Plaintiff, AARON KHERIATY, M.D., is an individual who resides in
19 Orange County, California. Plaintiff is currently employed at the University of
20 California, Irvine, School of Medicine.

21 12. Defendant THE REGENTS OF THE UNIVERSITY OF CALIFORNIA is
22 a California Corporation empowered under Article IX, Section 9 of the California
23 Constitution. Defendant owns and operates the University of California, Irvine, School
24 of Medicine. This Defendant is responsible for the implementation, and enforcement, of
25 the challenged policy, and, since its enactment, has directed, implemented, and enforced
26 the policy.

1 13. MICHAEL V. DRAKE, is the president of the University of California. This
2 Defendant is responsible for the implementation, and enforcement, of the challenged
3 policy, and, since its enactment, has directed, implemented, and enforced the policy.

4 14. Defendants are responsible for enforcing, have enforced, and will continue
5 to enforce in the future, the challenged mandate against Plaintiff, as further explained
6 herein.

7 **JURISDICTION AND VENUE**

8 15. This Court has subject-matter jurisdiction over this action under 28 U.S.C.
9 §§ 1331 and 1343(a).

10 16. Venue is proper in this judicial district under 28 U.S.C. § 1391 because
11 Defendants reside in this judicial district and a substantial part of the events or omissions
12 giving rise to this action occurred in this judicial district.

13 **FACTUAL BACKGROUND**

14 **I. PLAINTIFF HAD COVID-19**

15 17. Plaintiff is a professor of Psychiatry and Human Behavior at the UCI School
16 of Medicine and the director of the Medical Ethics Program at UCI Health. Plaintiff’s
17 residency training was at UCI from 2003-2007. In 2007, Plaintiff was hired by UCI as a
18 Health Sciences Assistant Clinical Professor. In 2013, Plaintiff was promoted to Health
19 Sciences Associate Clinical Professor and in 2019, Plaintiff was promoted again to Health
20 Sciences Clinical Professor and holds this position currently.

21 18. Plaintiff contracted the COVID-19 virus in July 2020, which was confirmed
22 by PCR testing, and he experienced many of the common symptoms associated with
23 COVID-19, including loss of taste and smell. Plaintiff fully recovered.

24 **II. COVID-19 IN CALIFORNIA AND FAILED RESTRICTIVE MEASURES**

25 19. The first confirmed case of the COVID-19 virus in California was on
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1 January 22, 2020.⁴ Governor Gavin Newsom (“**Newsom**”) instituted aggressive stay at
2 home orders in California on March 19, 2020, when there were approximately 900
3 cases within the state.⁵ Despite the aggressive stay at home orders, the virus continued
4 to spread.

5 20. The CDC has explained that even with protective measures as instituted in
6 California, “most of the U.S. population will be exposed to this virus [SARS-CoV-2].”⁶
7 The CDC estimates that, through May 2021, approximately 49% of those aged 18 to 49
8 years have been infected with SARS-CoV-2 despite lockdowns. This means that
9 approximately half of the individuals subject to the Mandate are likely to have already
10 had the virus and have natural immunity and, as discussed herein, have a lower risk than
11 vaccinated individuals of being re-infected with and transmitting the virus.

12 21. UC is a public university intended to serve the residents of California and is
13 open to students from around the world. It currently has more than 280,000 students
14 and more than 227,000 faculty and staff. UC is telling those that are naturally immune
15 that unless they get vaccinated that they need not bother leaving their homes since they
16 will be excluded from campus.

17 22. If Defendants instituted the Mandate with the goal of having a student body
18 and faculty that is immune to the COVID-19 virus, it would have exempted from the
19 Mandate those who are already immune due to having had COVID-19. Failure to do so
20 means that Defendants’ Mandate is not about immunity, it is only about vaccination
21 status.

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23 _____
24 ⁴ See <https://www.latimes.com/world-nation/story/2020-08-21/surprising-tale-first-la-covid-19-case>.

25 ⁵ See <https://www.politico.com/states/f/?id=00000170-f5a4-d209-af70-fdae4c930000>;
26 see also <https://www.ksla.com/2020/03/20/california-becomes-first-state-order-lock-down/>.

27 ⁶ https://stacks.cdc.gov/view/cdc/86068/cdc_86068_DS1.pdf.

1 **III. PLAINTIFF HAS A LOWER RISK OF BECOMING RE-INFECTED**
2 **AND TRANSMITTING THE VIRUS THAN VACCINATED**
3 **INDIVIDUALS**

4 23. Peer reviewed studies on COVID-19 demonstrate the durability of natural
5 immunity following COVID-19 infection. The scientific evidence is clear that COVID-
6 19 recovered individuals have immunity that is far superior to vaccine-mediated
7 immunity. CDC and FDA data also shows that natural immunity has proved far more
8 than 99% effective while vaccine immunity is at best between 67% and 95% effective,
9 depending on the vaccine, and this is under the previous ideal conditions of a clinical
10 trial. Moreover, unlike those vaccinated for COVID-19 who can still become infected
11 and have the same amount of virus in their nose as those unvaccinated and infected with
12 COVID-19, there has never been a single documented case of a naturally immune
13 individual becoming re-infected with and transmitting the virus to anyone.

14 **A. Infection with COVID-19 Virus Provides Robust Long-Term Immunity**

15 24. The human body knows how to develop immunity to new viruses. The
16 adaptive immune system consists of an enormously diverse repertoire of B cells –
17 precursors of antibody-secreting plasma cells – and T cells with a nearly unlimited
18 capacity to recognize and ‘adapt’ to previously unseen pathogens.

19 25. As explained by Dr. Ryan Cole, a Mayo Clinic-trained pathologist, “Yes,
20 our antibody levels drop over time, however, scientifically, the memory B cells that make
21 antibodies have been proven to be present in our lymph nodes and bone marrow.” Dr.
22 Cole further explains, “They are primed and ready to produce a broad array of antibodies
23 upon...exposure. It would be physiologically, energetically impossible to maintain high
24 antibody levels to all the pathogens we are constantly exposed to, and we would look like
25 the ‘swollen Stay-Puft marshmallow man’ of lymph nodes, constantly, if the immune
26 system were required to do that.”
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1 26. In line with Dr. Cole’s explanation, numerous immunologic studies of
2 individuals that have had the COVID-19 virus demonstrate that they developed sustained,
3 broad and durable immunity and robust B cell and T-cell memory to the virus which
4 protect them from reinfection. In other words, natural immunity to the COVID-19 virus
5 continues to be present and effective even after antibody levels, detectable by lab tests,
6 wane over time. Similarly, in a study of monkeys that were deliberately re-exposed to
7 the COVID-19 virus after having COVID-19, *none* of them were re-infected.

8 27. Reflecting these findings, the natural immunity produced by the closely
9 related virus, SARS-CoV-1, is lifelong, supporting that the immunity from SARS-CoV-
10 2, the COVID-19 virus, is also lifelong. As explained by an infectious-disease physician
11 and professor at the UC: “Natural immunity after COVID-19 infection is likely lifelong,
12 extrapolating from data on other coronaviruses that cause severe illness, SARS and
13 MERS.”⁷

14 28. Consistent with these scientific studies, in the 19 months since the COVID-
15 19 virus first appeared in the United States, doctors and scientists have not identified any
16 naturally immune individual that was re-infected with and transmitted this virus to
17 anyone. This is despite the entire world’s scientific community turning its attention to
18 studying this virus.

19 **B. Natural Immunity is Superior to Vaccine Immunity**

20 *i. Natural Immunity – Great Than 99% Effective*

21 29. The hunt for re-infections has been a nationwide effort and out of the
22 estimated 120.2 million individuals in the United States who have been infected with
23 SARS-CoV-2 as of May 2021,⁸ there is not a single documented case of an individual
24 being re-infected with the virus and transmitting it to another person.

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26 _____
27 ⁷ <https://www.wsj.com/articles/herd-immunity-is-near-despite-faucis-denial-116166245>
28 54.

⁸ See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/burden.html>.

1 30. A five-month study looking at reinfection rates in employees of the
2 Cleveland Clinic Health System previously infected with the COVID-19 virus found that
3 not one of the 1,359 previously infected subjects who remained unvaccinated was
4 reinfected with the virus despite a high background rate of COVID-19 in the hospital.
5 Irish researchers recently published a review of eleven cohort studies with over 600,000
6 total recovered COVID-19 patients, not all of whom were well defined and may have had
7 suspected COVID-19 with positive serologies later on who were followed up with over
8 ten months. They found the reinfection rate to be 0.27% “with no study reporting an
9 increase in the risk of reinfection over time.” Based on this data, the researchers were
10 able to assert that “naturally acquired SARS-CoV-2 immunity does not wane for at least
11 10 months post-infection.” Moreover, this study also did not document a single case of
12 reinfection that then resulted in transmission to another person.

13 31. Given that the current number of confirmed cases worldwide is
14 approximately 200 million,⁹ if reinfection was possible in even one percent of
15 individuals, the world would have observed 2 million second and third cases with many
16 requiring hospitalization and coming to clinical attention. No such large volume of
17 reinfection cases has come to clinical attention in any region of the world.

18 ***ii. Vaccine Immunity – Far Less than 99% Effective***

19 32. In contrast to greater than 99% efficacy from natural immunity, the efficacy
20 from vaccine immunity in a clinical trial setting is admittedly no greater than between
21 67% and 95%, depending on the COVID-19 vaccine. The Pfizer vaccine had initially, at
22 best, efficacy of 95%,¹⁰ the Moderna has efficacy of 94.5%,¹¹ and the J&J vaccine has
23 efficacy of approximately 67%,¹² and that was under previous ideal conditions in a
24 clinical trial, against the original wild-type variant of the virus. The COVID-19 vaccines

25 ⁹ See <https://covid19.who.int/>.

26 ¹⁰ See <https://www.fda.gov/media/144416/download>.

27 ¹¹ See <https://www.fda.gov/media/144673/download>.

28 ¹² See <https://www.fda.gov/media/146338/download>.

1 have had considerably less efficacy in the real world which has been the case based on
2 the data to date. But even assuming the optimal clinical trial efficacy numbers, this is
3 still far less than the efficacy from having had the COVID-19 virus, which is over 99%.

4 33. Vaccines, by design, attempt to emulate the immunity created by a natural
5 infection. Nonetheless, they have never achieved the same level of protection afforded
6 by natural infection from a virus. Every single vaccine for a virus confers an inferior
7 immunity to having had the actual virus. Even the best vaccines do not confer immunity
8 to all recipients.¹³ In those who do obtain some immunity from vaccination, the
9 temporary immunity created by any vaccine typically wanes over time. Hence, the
10 warning in the Mandate that COVID-19 boosters will be needed.¹⁴ This has been
11 confirmed by the pharmaceutical companies selling the COVID-19 vaccines and the CDC
12 has echoed the likely need for boosters of the COVID-19 vaccines, as discussed at its
13 advisory committee meeting on June 23, 2021.¹⁵

14 34. Dr. Ryan Cole, who spent the last 16 months examining and culturing the
15 COVID-19 virus specimens, recently explained why infection-induced immunity to this
16 virus is much deeper and broader than vaccine immunity:

17 A natural infection induces hundreds upon hundreds of

18
19 ¹³ Pfizer Recipient Fact Sheet can be viewed at <https://www.fda.gov/media/144414/download> (“The Pfizer-BioNTech COVID-19 Vaccine may not protect everyone”); Moderna Recipient Fact Sheet can be viewed at <https://www.fda.gov/media/144638/download> (“The Moderna COVID-19 Vaccine may not protect everyone”); and the J&J Recipient Fact Sheet can be viewed at <https://www.fda.gov/media/146305/download> (“The Janssen COVID-19 Vaccine may not protect everyone”).

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23 ¹⁴ <https://policy.ucop.edu/doc/5000695/SARS-Cov-2> at FAQ No. 4 which states,
24 “Infectious disease experts anticipate that annual or more frequent boosters will be
25 necessary and receipt of boosters will be required, consistent with product labeling, in
26 the same way that the initial vaccination is required by this policy and subject to the same
27 Exceptions and Deferrals.”

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¹⁵ See <https://www.cdc.gov/vaccines/acip/meetings/downloads/slides-2021-06/06-COVID-Oliver-508.pdf>; see also, e.g., <https://www.nytimes.com/2021/04/16/world/pfizer-vaccine-booster.html>.

1 antibodies against all proteins of the virus, including the
2 envelope, the membrane, the nucleocapsid, and the
3 spike...Dozens upon dozens of these antibodies neutralize the
4 virus when encountered again. Additionally, because of the
5 immune system exposure to these numerous proteins
6 (epitomes), our T cells mount a robust memory, as well. Our T
7 cells are the ‘marines’ of the immune system and the first line
8 of defense against pathogens. T cell memory to those infected
9 with SARSCOV1 is at 17 years and running still....

10 In vaccine-induced immunity...we mount an antibody
11 response to only the spike and its constituent proteins ... [and]
12 this produces much fewer neutralizing antibodies, and as the
13 virus preferentially mutates at the spike, these proteins are
14 shaped differently and antibodies can no longer ‘lock and key’
15 bind to these new shapes. ¹⁶

16 35. Reflecting the foregoing, in an outbreak of COVID-19 among gold mine
17 workers in French Guiana, 60% of the fully vaccinated gold mine workers were infected
18 while none of the individuals with a prior COVID-19 infection were infected. Studies
19 analyzing the entire population of Israel has found that those with prior natural infection
20 had a higher rate of protection from infection, hospitalization, and severe illness than
21 those that had immunity from the COVID-19 vaccine. Another report from Israel found
22 a sixfold rate of COVID-19 infection among the vaccinated versus the naturally immune:

23 With a total of 835,792 Israelis known to have recovered from
24 the virus, the 72 instances of reinfection amount to 0.0086% of
25 people who were already infected with COVID. By contrast,
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27 ¹⁶<https://www.theblaze.com/op-ed/horowitz-israeli-government-data-shows-natural-immunity-from-infection-much-stronger-than-vaccine-induced-immunity#toggle-gdpr>.
28

1 Israelis who were vaccinated were 6.72 times more likely to get
2 infected after the shot than after natural infection.

3 36. Internal official emails with the UC healthcare system reflect the reality that
4 natural infection provides for greater protection:

5 a. In an email sent to the UCI School of Medicine on July 17, 2021, the
6 Associate Dean of Graduate Medical Education informed faculty and
7 residents, “[t]here has been a substantial increase in the number
8 of breakthrough infections [*i.e.*, infections in fully vaccinated individuals]
9 among our UCI health care workers, including residents and fellows.”

10 b. In an email sent to Medical Directors at UCI Health on July 22, 2021, the
11 CEO of UCI Health advised that “[t]he COVID-19 delta variant is now
12 responsible for the majority (75%) of UC cases, including several
13 breakthrough vaccine cases.”

14 c. In an email sent to directors at UCI on July 27, 2021 it explained that “due
15 to continued and increasing concerns about the spread of COVID-19,
16 even among vaccinated individuals, we will not be returning to the
17 classrooms as had been expected for the past several months.”

18 37. In contrast, there has been no such notice of increasing cases among those
19 who have recovered from COVID-19. This indicates that there is a sufficiently alarming
20 number of vaccinated individuals that are acquiring symptomatic COVID-19 that it
21 necessitated notice to the entire UCI School of Medicine about this issue and protocol
22 changes, while no such notice has been necessary for naturally immune individuals.

23 38. What is happening at UCI is similarly being seen nationwide as the number
24 of cases of COVID-19 in fully vaccinated individuals is rising precipitously. That
25 number was growing so rapidly and burdening resources to such an extent that the CDC
26 changed its reporting criteria to only report breakthrough cases resulting in
27 hospitalization or death.

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1 39. But simply taking the FDA and CDC data at face value, the reality is that
2 natural infection provides for greater than 99% protection while vaccine immunity
3 provides for, at best, between 67% and 95% protection.

4 **iii. COVID-19 Vaccines Do Not Prevent Infection and**
5 **Transmission**

6 40. Natural immunity confers an additional benefit over vaccine immunity.
7 Natural immunity will prevent a virus from being able to replicate and shed in the
8 naturally immune individual. In contrast, COVID-19 vaccines appear to reduce
9 symptoms in some but still permit the vaccinees to become infected with and transmit the
10 virus.¹⁷

11 41. In animal studies, the COVID-19 vaccine candidates could *not* fully block
12 viral infection and replication in the nose of monkeys upon viral challenge. In contrast,
13 natural COVID-19 infection of monkeys completely prevented further re-infection at any
14 site tested – by nasal, throat, and anal swabs.

15 42. Viral carriage by the vaccinated is reflected in the recent outbreak in
16 Barnstable County, Massachusetts, which has a 69% vaccination coverage rate among its
17 eligible residents.¹⁸ A recent CDC investigation found that 74% of those infected in the
18 outbreak were fully vaccinated for COVID-19 and, even more alarming, the vaccinated
19 had on average more virus in their nose than the unvaccinated that were infected. The
20 study reported zero cases of infection among those that previously had COVID-19.

21 43. This forced the Director of the CDC, Rochelle Walensky, to admit that
22 individuals vaccinated for COVID-19, while having less symptoms, can still become
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25 ¹⁷ See [https://www.cdc.gov/vaccines/covid-19/health-departments/breakthrough-cases.ht](https://www.cdc.gov/vaccines/covid-19/health-departments/breakthrough-cases.html)
26 [ml](https://www.cdc.gov/vaccines/covid-19/health-departments/breakthrough-cases.html) (“There is some evidence that vaccination may make illness less severe for those who
27 are vaccinated and still get sick.”).

28 ¹⁸ See <https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm>.

1 infected with and transmit the virus.¹⁹ Dr. Walensky admitted that “**what [the COVID-**
2 **19 vaccines] can’t do anymore is prevent transmission.**”²⁰ After this admission, Wolf
3 Blitzer asks Dr. Walensky if “you get covid, you’re fully vaccinated, but you are totally
4 asymptomatic, you can still pass on the virus to someone else, is that right?” and Dr.
5 Walensky answers “**that is exactly right.**”²¹

6 44. Defendants will nonetheless only allow individuals that have been
7 vaccinated back on campus, despite the unequivocal data that proves that the COVID-19
8 vaccines cannot and do not prevent infection and transmission. On the other hand,
9 Defendants will *not* allow back on campus naturally immune individuals who, based on
10 all available data to date, have a near zero risk of becoming reinfected with and
11 transmitting SARS-CoV-2. As explained by Dr. Marty Makary, a professor at Johns
12 Hopkins School of Medicine, the failure to lift restrictions on naturally immune
13 individuals is “one of the biggest failures of our current medical leadership.”²²

14 **IV. COVID-19 VACCINES ARE NOT RISK-FREE AND THE RISK IS** 15 **GREATER FOR THE PREVIOUSLY INFECTED**

16 45. Studies have also demonstrated legitimate safety concerns regarding the
17 current COVID-19 vaccines, and heightened safety concerns when vaccinating naturally
18 immune individuals.

19 **A. Vaccinating Naturally Immune Individuals Presents an Increased Risk**

20 46. Studies have found that naturally immune individuals have significantly
21 higher rates of adverse reactions when receiving the COVID-19 vaccine. For example,
22 Raw, *et al.* reported that among 974 individuals vaccinated for COVID-19, the vaccinated
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24 ¹⁹ <https://twitter.com/CNNSitRoom/status/1423422301882748929>.

25 ²⁰ <https://twitter.com/CNNSitRoom/status/1423422301882748929>.

26 ²¹ <https://twitter.com/CNNSitRoom/status/1423422301882748929>.

27 ²² <https://summit.news/2021/05/26/johns-hopkins-prof-half-of-americans-have-natural-immunity-dismissing-it-is-biggest-failure-of-medical-leadership/>.

1 COVID-19 recovered patients had higher rates of vaccine reactions. Mathioudakis, *et al.*
2 found the same result in a study of 2,002 individuals vaccinated for COVID-19.
3 Krammer et al. found the same result in a study of 231 volunteers vaccinated for COVID-
4 19, concluding that, “Vaccine recipients with preexisting immunity experience systemic
5 side effects with a significantly higher frequency than antibody naïve vaccines.” In a
6 paper published by Bruno, *et al.* the authors pose urgent questions on COVID-19 vaccine
7 safety, highlighting the high number of reported serious adverse events and the
8 shortcomings of the clinical trials, including the exclusion of those with prior SARS-
9 CoV-2 infection.

10 **B. The COVID-19 Vaccines Present Certain Risks for Everyone**

11 47. There are also risks to receiving COVID-19 vaccines irrespective of prior
12 infection. The primary system for tracking adverse events after vaccination in the United
13 States is the Vaccine Adverse Events Reporting System (“VAERS”). A three-year
14 federal government funded study by Harvard researchers tracking 715,000 patients found
15 that “fewer than 1% of vaccine adverse events are reported.”

16 48. Reports of serious adverse events from COVID-19 vaccines are similarly
17 underreported to VAERS. For example, according to the CDC, “Anaphylaxis after
18 COVID-19 vaccination is **rare** and occurred in approximately **2 to 5 people per million**
19 vaccinated in the United States based on events reported to VAERS.” This is in stark
20 contrast to a recent study at Mass General Brigham that assessed anaphylaxis in a clinical
21 setting after the administration of COVID-19 vaccines and found “severe reactions
22 consistent with anaphylaxis occurred at a rate of **2.47 per 10,000 vaccinations.**” This is
23 equivalent to 50 to 120 times more cases than what VAERS and the CDC are reporting.
24 And this is for a serious, potentially life-threatening, adverse event that occurs almost
25 immediately after vaccination and which vaccine providers are repeatedly advised to
26 watch for and report.

1 49. If anaphylaxis is being underreported, the level of underreporting for serious
2 adverse events that do not occur immediately after vaccination or are not easily identified
3 is likely far greater. For example, on June 23, 2021, the CDC reported the alarming
4 numbers of reported myocarditis and pericarditis cases occurring after COVID-19
5 vaccination.²³ The long-term effects of myocarditis are not fully understood but can be
6 very serious. Cases of thrombocytopenia have also occurred after COVID-19
7 vaccination, as well as serious and sometimes fatal blood clots.²⁴ These and numerous
8 other serious adverse events are being recognized but the true rate of these serious adverse
9 events is most certainly underreported.²⁵

10 50. Even if the risks from the COVID-19 vaccines are truly small, there is no
11 reason to expose someone to *any* risk when they are already immune to COVID-19.

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14 ²³ <https://www.cdc.gov/vaccines/acip/meetings/downloads/slides-2021-06/03-COVID-Shimabukuro-508.pdf> at page 27.

15
16 ²⁴ See <https://www.fda.gov/news-events/press-announcements/joint-cdc-and-fda-statement-johnson-johnson-covid-19-vaccine>.

17 ²⁵ Research shows that the coronavirus spike protein from COVID-19 vaccines enters the
18 bloodstream and can be found throughout the body in almost all vital organs.
19 <https://academic.oup.com/cid/advance-article/doi/10.1093/cid/ciab465/6279075>. This
20 would help explain the high rate of reported blood clots, heart disease, brain damage and
21 reproductive issues. Dr. Byram Bridle, a viral immunologist and associate professor at
22 the University of Guelph, Ontario, recently stated: “We made a big mistake. We didn’t
23 realize it until now...We thought the spike protein was a great target antigen, we never
24 knew the spike protein itself was a toxin and was a pathogenic protein. So by vaccinating
25 people we are inadvertently inoculating them with a toxin.” <https://omny.fm/shows/on-point-with-alex-pierson/new-peer-reviewed-study-on-covid-19-vaccines-sugge>. Recent
26 data from Japan – data not required by the U.S. – reflects that lipid nano particles from
27 the vaccine encapsulating the spike protein mRNA are being deposited into vital organs
28 after vaccination. Of concern are the data related to lipid nano particles depositing into
the adrenal glands, bone marrow, liver, ovaries, brain, and spleen and increasing in
quantity over time post-vaccination. <https://www.icandecide.org/wp-content/uploads/2021/06/Translation-of-Japanese-data.pdf> at 16-17.

1 **V. THE MANDATE IMPLEMENTED BY UC**

2 51. On July 15, 2021, the UC system released its final COVID-19 Vaccination
3 Program Policy.²⁶ Since that time, the UC system has systemically enforced the policy.
4 The stated purpose of the policy “is to facilitate protection of the health and safety of the
5 University community” by requiring the UC community to “be fully vaccinated against
6 COVID-19 before physically accessing the University’s Locations and Programs.”

7 52. The Mandate is clear that it is a permanent policy and that annual or more
8 frequent boosters will be required: “compliance will require repeat vaccinations or
9 boosters on an annual or recurring basis consistent with FDA-approved labeling and CDC
10 recommendations.”²⁷ The Frequently Asked Questions section of the Mandate
11 specifically addresses naturally immune individuals, stating:

12 *I was recently diagnosed with COVID-19, and/or I had an*
13 *antibody test that shows that I have natural immunity. Does*
14 *this support a Medical Exemption? You may be eligible for a*
15 *temporary Medical Exemption (and, therefore, a temporary*
16 *Exception), for up to 90 days after your diagnosis and certain*
17 *treatments. According to the US Food and Drug*
18 *Administration, however, “a positive result from an antibody*
19 *test does not mean you have a specific amount of immunity or*
20 *protection from SARS-CoV-2 infection ... Currently*
21 *authorized SARS-CoV-2 antibody tests are not validated to*
22 *evaluate specific immunity or protection from SARS-CoV-2*
23 *infection.” For this reason, individuals who have been*

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26 _____
26 ²⁶ See <https://policy.ucop.edu/doc/5000695/SARS-Cov-2>.

27 ²⁷ <https://policy.ucop.edu/doc/5000695/SARS-Cov-2> at pages 4 and 10 of 14.
28

1 diagnosed with COVID-19 or had an antibody test are not
2 permanently exempt from vaccination.²⁸

3 (“**temporary naturally immune exemption**”).

4 53. As discussed above, the immunity achieved following natural infection does
5 not expire after 90 days and is, very likely, lifelong. UC has not shared any data to show
6 that immunity on day 89 following diagnosis differs from immunity on day 91 following
7 diagnosis. Plaintiff recovered from COVID-19 over one year ago and would not be
8 entitled to this temporary naturally immune exemption even though his immunity is
9 superior to an individual who was vaccinated 1 day or 91 days ago. A temporary
10 exemption for a 90-day period from the date of diagnosis is arbitrary and is not grounded
11 in science.

12 54. Plaintiff, along with his students and fellow faculty that have had the virus,
13 will suffer great detriment if prevented from returning to campus. Plaintiff is frustrated
14 and negatively impacted by the prospect of being forced to choose between an invasion
15 of his bodily integrity or continuing his employment at UCI. Plaintiff merely wants the
16 same right privileges afforded to others who are deemed immune through vaccination.
17 Instead, he is being required, under threat of exclusion from UC, to violate his bodily
18 integrity with an injection of a product that presents risks but no benefit to him or to
19 others at UC.

20 55. It is unscientific and lacks a rational basis, let alone a compelling reason, to
21 allow vaccinated individuals to attend or work at UC in person when their immunity is
22 less effective at preventing infection and spread of COVID-19 than those that have had
23 COVID-19 while not allowing the naturally immune.

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²⁸ *Id.* at page 11 of 14, ¶ 9.

1 **VI. DEFENDANTS’ RESTRICTIONS VIOLATE PLAINTIFF’S**
2 **CONSTITUTIONAL RIGHTS**

3 **A. Plaintiff’s Right to Equal Protection of the Laws Has Been Violated**

4 56. Plaintiff is naturally immune to SARS-CoV-2. Therefore, Plaintiff is at least
5 as equally situated as those who are fully vaccinated with a COVID-19 vaccine, yet
6 Defendants deny Plaintiff equal treatment and seek to burden Plaintiff with an
7 unnecessary violation of bodily integrity to which Plaintiff does not consent in order to
8 be allowed to continue to work at UCI. Naturally Immune Individuals are Similarly
9 Situated to Vaccinated Individuals

10 57. The Mandate’s express purpose is to protect members of the UCI
11 community from COVID-19.²⁹ Defendants seek to achieve this by ensuring that only
12 people who theoretically have immunity to the virus return to campus.³⁰ Both individuals
13 with natural immunity, like Plaintiff, and individuals who are vaccinated are alike in that
14 they have immunity to the virus that causes COVID-19. As the foregoing shows naturally
15 immune individuals have at least as good, and in fact superior, immunity when compared
16 to vaccinated individuals.

17 58. Nevertheless, the Mandate fails to treat these two groups of immune
18 individuals similarly. Individuals who have vaccine created immunity will be permitted
19 to return to campus.³¹ However, with the exception of the temporary naturally immune
20 exception, individuals who have natural immunity will not be allowed to return to
21 campus.³²

22 _____
23 ²⁹ See <https://policy.ucop.edu/doc/5000695/SARS-Cov-2> (“The purpose of this policy is
to facilitate protection of the health and safety of the University community.”).

24 ³⁰ *Id.* (“[T]his policy provides for a COVID-19 Vaccination Program under which any
25 Covered Individual is required ... to be fully vaccinated against COVID-19 before
26 physically accessing the University’s Locations and Programs.”).

27 ³¹ See <https://policy.ucop.edu/doc/5000695/SARS-Cov-2>.

28 ³² *Id.* at 11.

1 **VII. PLAINTIFF IS SUFFERING AND WILL SUFFER IRREPARABLE**
2 **HARM**

3 59. Plaintiff will continue to suffer irreparable harm if the preliminary
4 injunction requested is not granted. It has long been established that the loss of
5 constitutional freedoms constitute irreparable harm. *Am. Trucking Ass'ns v. City of Los*
6 *Angeles*, 559 F.3d 1046, 1059 (9th Cir. 2012); *Monterey Mech. Co. v. Wilson*, 125 F.3d
7 702, 715 (9th Cir. 1997).

8 60. Moreover, without a preliminary injunction preserving the status quo,
9 Plaintiff will suffer an impending loss of employment and of his professional reputation.
10 Indeed, “the loss of one’s job does not carry merely monetary consequences; it carries
11 emotional damages and stress, which cannot be compensated by mere back payment of
12 wages.” *Nelson v. Nat’l Aeronautics and Space Admin.*, 530 F.3d 865, 877-78 (9th Cir.
13 2008), *rev’d on other grounds*, *Nat’l Aeronautics and Space Admin. v. Nelson*, 131 S. Ct.
14 746 (2011).

15 61. If Plaintiff is not permitted on campus as a result of this mandate, his practice
16 and roles at UC will be drastically and adversely affected, including in the following
17 ways:

- 18 a. He will not be able to attend in-person meetings with his team or with
19 patients and families in the hospital and so his role as ethics committee chair
20 and director of the ethics consult service will be impacted;
 - 21 b. He will not be able to hold Monday and Tuesday afternoon Resident Clinic;
 - 22 c. He will not be able to see his own patients from his practice as his faculty
23 practice is located at the Department of Psychiatry clinic;
 - 24 d. He will not be able to do his Resident in-person teaching;
 - 25 e. He will not be able to do on-site ethics consultations in the hospital; and
 - 26 f. He will not be able to teach the Ethics and Behavioral Science course for
27 first-year students.
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1 of personal autonomy and bodily integrity, see, e.g., *Griswold v. Connecticut*, 381 U.S.
2 479 (1965); *Roe v. Wade*, 410 U.S. 113 (1973); *Planned Parenthood v. Casey*, 505 U.S.
3 833 (1992); *Rochin v. California*, 342 U.S. 165 (1952); *Obergefell v. Hodges*, 576 U.S.
4 644 (2015); and the right to reject medical treatment, *Cruzan v. Director, Missouri Dep’t*
5 *Health*, 497 U.S. 261 (1990) and *Riggins v. Nevada*, 504 U.S. 127 (1992).

6 68. In modern jurisprudence, burdens upon fundamental rights require strict
7 scrutiny. *Washington v. Glucksberg*, 521 U.S. 702 (1997) (“narrowly tailored to serve a
8 compelling state interest”).

9 69. As mandated vaccinations are a substantial burden, Defendants must prove
10 narrow tailoring to a compelling interest that justifies mandatory vaccinations, not any
11 more general interest. But while government may have a general interest in mitigating
12 COVID, the following problems reveal no narrow tailoring to any compelling interest
13 exists.

14 70. Critically, naturally acquired immunity from COVID is as robust as vaccine-
15 acquired immunity, so there is no compelling interest (nor any rational basis) in
16 vaccinating or requiring the vaccination of those who have already had COVID.

17 71. Further, given natural and vaccine immunity, California has COVID herd
18 immunity. The California Department of Public Health estimates that as of June 2021,
19 85.9% of adults age 18 and older in California have antibodies to SARS-CoV-2.³³ So
20 Defendants have no compelling interest in mandating COVID vaccination.

21 72. The same evidence establishes that, assuming a compelling interest in
22 preventing the spread of COVID-19, Defendants’ Mandate is not narrowly tailored to
23 such an interest since his immunity and that of the naturally immune is more protective
24 than vaccine immunity.

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27 ³³ [https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Sero-prevalence-
COVID-19-Data.aspx](https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Sero-prevalence-COVID-19-Data.aspx).

1 protects a person's rights to be free from unjustified intrusions to the body”). “This notion
2 of bodily integrity has been embodied in the requirement that informed consent is
3 generally required for medical treatment.” *Cruzan*, 497 U.S. 261, 277–78 (1990). See
4 also *Benson*, 304 F.3d at 884 (a person has a right “to refuse unwanted medical treatment
5 and to receive sufficient information to exercise these rights intelligently”). This means
6 that the right to bodily integrity includes the concept that a “competent person has a
7 constitutionally protected liberty interest in refusing unwanted medical
8 treatment.” *Galvan v Duffie*, 807 Fed. Appx. 696, 697 (9th Cir 2020) (quoting *Cruzan*,
9 497 U.S. at 277–78).

10 79. The United States Constitution guarantees that state governments shall not
11 “deprive any person of life, liberty, or property without due process of law,” U.S.
12 CONST. amend. XIV § 1, and “forbids the government to infringe certain ‘fundamental’
13 liberty interests at all, no matter what process is provided, unless the infringement is
14 narrowly tailored to serve a compelling state interest.” *Reno v. Flores*, 507 U.S. 292, 301-
15 302 (1993). Defendants lack a compelling interest to impinge on Plaintiff’s fundamental
16 rights.

17 80. Plaintiff has constitutional and fundamental liberty interests in bodily
18 integrity and informed consent, and the substantive due process rights to liberty and to
19 life.

20 81. Plaintiff also has a constitutional and fundamental liberty interest in not
21 being compelled to provide private medication information to the state, which is also
22 being infringed by the mandates at issue.

23 82. Defendants cannot show that the Mandate serves a compelling state interest.
24 While prior court decisions have found that a compelling state interest to control the
25 spread of infection from person-to-person can trump certain constitutional rights in
26 certain situations, see generally *Whitlow v. Cal. Dep’t of Educ.*, 203 F. Supp. 3d 1079,
27 1089 (S.D. Cal. 2016), this interest is non-existent with respect to the COVID-19 vaccine
28

1 since this vaccine does not prevent vaccinated individuals from becoming infected and
2 transmitting COVID-19.

3 83. Professor Sir Andrew Pollard, director of the Oxford Vaccine Group, has
4 explained: “Herd immunity is not a possibility because [the Delta variant] still infects
5 vaccinated individuals.”³⁴ The vaccinated, when infected, can transmit the virus to
6 others, and are more likely to do so because they have less symptoms and hence are more
7 likely to interact with others not knowing they are contagious. On the other hand, those
8 who have had the COVID-19 virus and recovered have not been shown to become re-
9 infected and transmit the virus to others. Therefore, there is no compelling interest in
10 requiring the COVID-19 vaccine.

11 84. Hence, excluding individuals from the UC locations as a means to compel
12 such individuals to receive an injection of a COVID-19 vaccine does not pass strict
13 scrutiny.

14 85. There is not even a rational basis to exclude the unvaccinated, recovered
15 individuals from UC since those vaccinated are at least as likely to spread COVID-19
16 and, in reality, are more likely.

17 86. Plaintiff hereby seeks declaratory and injunctive relief to prevent
18 Defendants from depriving Plaintiff of the protections afforded to him under the
19 Fourteenth Amendment of the U.S. Constitution. (U.S. Const., amend. XIV, § 1.) These
20 Counts I and II are also brought pursuant to 42 U.S.C. §1983 and §1988(b), as well as for
21 declaratory relief under 28 U.S.C. 2201.

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23 ³⁴ <https://twitter.com/Channel4News/status/1425086490002997248>. Professor Pollard
24 also stated that, “And what I suspect the virus will throw up next is a variant which is
25 perhaps even better at transmitting in vaccinated populations. And so that’s even **more**
26 **of a reason not to be making a vaccine program around herd immunity**...We have
27 now over four billion doses deployed of the vaccine globally and that is now enough
28 doses to have prevented almost all of those [65,000 deaths expected this week globally
from COVID-19] deaths and yet they are continuing.” (emphasis added).

1 87. Defendants’ enforcement of the Mandate as announced will cause Plaintiff
2 to suffer irreparable harm for which he has no adequate remedy at law. The Mandate
3 denies Plaintiff his rights under the Fourteenth Amendment and Plaintiff seeks a
4 permanent injunction preventing Defendants from implementing and enforcing the
5 Mandate against the naturally immune.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff requests the following relief:

- 8 1. Declare the Mandate unconstitutional as applied to the naturally immune;
- 9 2. Enjoin Defendants from enforcing the Mandate as against the naturally
10 immune;
- 11 3. Grant Plaintiff his costs and attorneys’ fees under 42 U.S.C. § 1988, and any
12 other applicable authority; and
- 13 4. For such and other and further relief as this Court deems just and proper.

14
15 Dated: August 18, 2021

16 SIRI & GLIMSTAD LLP

17
18 By: /s/ Caroline Tucker

19 Aaron Siri (Pro Hac Vice to be filed)
20 Elizabeth Brehm (Pro Hac Vice to be filed)
21 Caroline Tucker

22 CHRIS WIEST ATTORNEY AT LAW, PLLC

23 Chris Wiest (Pro Hac Vice to be Filed)

24 Attorneys for Plaintiff
25 AARON KHERIATY, M.D.
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VERIFICATION

I, AARON KHERIATY M.D., declare and state as follows:

I am a citizen of the United States and of California. I have read the foregoing Complaint and know the contents thereof as to myself, that the same is true to my own knowledge, and as to all other matters on information and belief and I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Executed on this 13 day of August 2021 in San Juan Capistrano, California.



AARON KHERIATY M.D.