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Firefighters and other Employees  
of Los Angeles County Fire  
Department, Listed in Exhibit A*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LA COUNTY FREE  
FOUNDATION, A CALIFORNIA  
NON-PROFIT CORPORATION,  
AS AUTHORIZED AGENT FOR  
683 FIREFIGHTERS AND OTHER  
EMPLOYEES OF THE LOS  
ANGELES COUNTY FIRE  
DEPARTMENT,

Plaintiff,

vs.

COUNTY OF LOS ANGELES,  
Defendant.

Case No. 2:22-cv-00787-MCS-AS

**SECOND AMENDED  
COMPLAINT FOR:**

- (1) Violation of California  
Constitution-Autonomous  
Privacy;**
- (2) Violation of US Constitution-  
Autonomous Privacy;**
- (3) Violation of Fourteenth  
Amendment-Equal  
Protection; and**
- (4) Threatened Deprivation of  
Due Process Rights**

Removal Date: Feb. 4, 2022

1 Pursuant to FRCP Rule 8 and this Court’s Order filed June 1,  
2 2022 [ECF Doc. 36], Plaintiff, as authorized agent for 683 firefighters  
3 and other employees of the Los Angeles County Fire Department,  
4 listed in **Exhibit A** (collectively, “Firefighters”)—*but missing*  
5 *Jonathan Flagler and Steven McCann, both of whom died in the line of*  
6 *duty during the pendency of this action*—alleges on behalf of  
7  
8 Firefighters and against Defendant County of Los Angeles the right to  
9 a declaratory judgment under FRCP Rule 57 and a preliminary and  
10 permanent injunction under FRCP Rule 65 on all causes of action  
11 alleged herein. The Court has original jurisdiction over the Second and  
12 Third Causes of Action pursuant to 28 U.S.C. § 1331, since each arises  
13 under the United States Constitution. The Court has supplemental  
14 jurisdiction over the First and Fourth Causes of Action pursuant to 28  
15 U.S.C. § 1367, since these additional claims are so related to the  
16 Second and Third Cause of Action that they form part of the same case  
17 or controversy under Article III of the United States Constitution.  
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**TABLE OF CONTENTS**

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

**PARTIES ..... 4**

**INTRODUCTION..... 5**

**BACKGROUND..... 12**

**CDC COMMUNITY LEVEL COVID STATISTICS..... 13**

**THE COUNTY VACCINATION POLICY..... 15**

**COUNTY-ISSUED VACCINATION DEMANDS..... 16**

**THE COVID VACCINES..... 18**

**CLINICAL TRIALS ..... 20**

**THE COVID-19 VARIANTS ..... 26**

**REDUCED EFFICACY OF VACCINES ..... 28**

**EVIDENCE AND ADMISSIONS ..... 32**

**UNKNOWN RISKS OF THE COVID VACCINES ..... 37**

**SWINE FLU IN THE UNITED STATES: 1976-77..... 39**

**SCREENING, TESTING AND MASKING ..... 41**

**FIRE DEPARTMENT COVID TESTING..... 42**

**FIRST CAUSE OF ACTION..... 44**

**SECOND CAUSE OF ACTION ..... 49**

**THIRD CAUSE OF ACTION..... 55**

**FOURTH CAUSE OF ACTION..... 58**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
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**PARTIES**

1. Plaintiff LA County Free Foundation (the “Foundation”) is a California non-profit 501(c)(3) corporation whose mission is to support all Los Angeles County Fire Department employees’ freedom of choice in employment and public union related matters, including but not limited to: freedom of speech, religion, assembly, and privacy; and to act on behalf of public employees in this County to secure and protect these rights.

2. Each individual County employee (“Firefighter”) identified in **Exhibit A** has signed an engagement letter appointing undersigned counsel as advisory and/or litigation counsel on his or her behalf, pursuant to California Govt. Code §3502, and authorizing the Foundation to file suit and act as plaintiff in this action on his or her behalf.

3. Defendant County of Los Angeles (“County”) is a municipal organization formed under the laws of the State of California. The governing body authorized to act on behalf of the County is the County Board of Supervisors (“Board of Supervisors”).

## INTRODUCTION

- 1
- 2 4. This action invokes the autonomous constitutional privacy rights of
- 3 Firefighters that are *explicitly* protected under the California
- 4 Constitution, article I, section 1; and *implicitly* protected under a
- 5 penumbra of individual rights that emanate from the First and
- 6 Fourteenth Amendments to the United States Constitution.
- 7
- 8
- 9 5. This action also raises an equal protection challenge under the
- 10 Fourteenth Amendment to the US Constitution based on a recent
- 11 (June 1, 2022) Covid testing policy that applies only to unvaccinated
- 12 Fire Department employees, including Firefighters, while excusing
- 13 vaccinated employees from testing.
- 14
- 15
- 16 6. Defendant County of Los Angeles (“County”) demands that all
- 17 employees of the LA County Fire Department (“Fire Department”)
- 18 receive a Covid-19 vaccine, including boosters (“Covid Vaccine”),
- 19 unless they qualify for a religious or medical exemption.
- 20
- 21
- 22 7. The standard form of the County’s vaccination demand notice (the
- 23 “45-Day Vaccination Demand Notice”) requires each noticed
- 24 Firefighter to receive a Covid Vaccine within 45 days. From and after
- 25 February 11, 2022, two-hundred forty (240) such notices have been
- 26 served on Firefighters, to the best of plaintiff’s current knowledge;
- 27
- 28

1 including those filed with the Court as ECF Doc. 20-3 to Doc. 20-33  
2 and ECF Doc. 30 to Doc. 30-4 and ECF Doc. 38.

3  
4 8. All Firefighters identified in Exhibit A object to the County's  
5 vaccination demands and seek declaratory relief from this Court that  
6 the 45-Day Vaccination Demand Notices, either served or threatened,  
7 violate Firefighters' constitutionally protected privacy rights to  
8 exercise informed consent with respect to the Covid Vaccines.  
9

10  
11 9. Firefighters also seek preliminary and permanent injunctive relief  
12 to prohibit disciplinary action with respect to the 45-Day Vaccination  
13 Demand Notices, and to enjoin the Fire Department from enforcing  
14 its June 1, 2022 Test Policy only against unvaccinated employees,  
15 including Firefighters. Based on reports from several Firefighters to  
16 the undersigned counsel, before the June 1, 2022 Test Policy went  
17 into effect, vaccinated employees were testing positive for Covid at a  
18 higher rate than unvaccinated. In one fire station, for example,  
19 thirteen positive tests were reported: twelve were fully vaccinated  
20 firefighters and one was unvaccinated. This means two things:  
21 vaccines do not prevent positive Covid tests and, as a result, a  
22 "vaccinate-or-test" policy is no longer effective.  
23  
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1 10. As concerns the Vaccination Policy, Firefighters’ constitutional  
2 privacy rights to exercise informed consent must be recognized  
3 because: (a) the Covid Vaccines remain new, novel, and unproven; (b)  
4 an expectation of privacy exists; (c) serious questions about safety  
5 and effectiveness of the Covid Vaccines remain unanswered; and (d)  
6 the balance of interest tips decisively in favor of Firefighters’ privacy  
7 rights.  
8  
9

10  
11 11. The Covid Vaccines are “new.” The first vaccine was  
12 administered in the United States on December 14, 2020<sup>1</sup>—eighteen  
13 months before the date of this pleading. By comparison, the first  
14 smallpox vaccine was administered in 1796 in England and 1800 in  
15 the United States. The first smallpox mandate was issued for school  
16 children in the State of Massachusetts in 1855. (**Exhibit F**)<sup>2</sup>  
17  
18

19  
20 12. The Covid Vaccines are “novel,” since they involve an  
21 experimental mRNA technology that deterministically generates  
22

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23  
24 <sup>1</sup> First Covid Vaccine administered in the United States:  
<https://www.bbc.com/news/av/world-us-canada-55307642>

25  
26 <sup>2</sup> Exhibit F: History of Smallpox  
[https://www.mayoclinic.org/coronavirus-covid-19/history-disease-](https://www.mayoclinic.org/coronavirus-covid-19/history-disease-outbreaks-vaccine-timeline/smallpox)  
27 [outbreaks-vaccine-timeline/smallpox](https://www.mayoclinic.org/coronavirus-covid-19/history-disease-outbreaks-vaccine-timeline/smallpox) [ECF Doc. 20-3, Ex. 56, pp. 431-  
28 435]

1 antibodies to neutralize specific illness-causing proteins on the  
2 receptor binding domain (RBD) of the Covid-19 virus. By contrast,  
3 traditional vaccines (like smallpox vaccines) inject a small bit of a  
4 whole virus to teach the body's immune system how to develop its  
5 own immunity antibodies (and t-cells) that can detect a  
6 comparatively broader scope of viral mutations. **(Exhibit G)**<sup>3</sup>

9 13. Moderna CEO Stephane Bancel acknowledged in a Dec. 21, 2020,  
10 podcast that mRNA vaccines are a “fundamental shift in the world of  
11 drug development.”<sup>4</sup>

14 14. Some researchers see the mRNA approach to treatment used by  
15 the Covid Vaccines as “first generation Covid vaccines” that will soon  
16 give way to more complex drug designs that use artificial  
17 intelligence, such as Google’s Deep Mind AI system that can deliver  
18 more effective Covid drugs using nasal sprays. **(Exhibit H)**<sup>5</sup> By all  
19  
20  
21

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22 <sup>3</sup> Exhibit G: How does a mRNA vaccine compare to a traditional  
23 vaccine? [https://www.vumc.org/viii/infographics/how-does-mrna-](https://www.vumc.org/viii/infographics/how-does-mrna-vaccine-compare-traditional-vaccine)  
24 [vaccine-compare-traditional-vaccine](https://www.vumc.org/viii/infographics/how-does-mrna-vaccine-compare-traditional-vaccine)

25 <sup>4</sup> [https://www.modernatx.com/media-center/all-media/podcasts/the-](https://www.modernatx.com/media-center/all-media/podcasts/the-machine-that-made-the-vaccine-company-platform-innovation)  
26 [machine-that-made-the-vaccine-company-platform-innovation](https://www.modernatx.com/media-center/all-media/podcasts/the-machine-that-made-the-vaccine-company-platform-innovation)

27 <sup>5</sup> Exhibit H: Artificial Proteins Never Seen in the Natural World  
28 Are Becoming New COVID Vaccines and Medicines.  
<https://www.scientificamerican.com/article/artificial-proteins-never->



1 reasonable accounts, development of Covid vaccines is a work in  
2 progress, involving novel scientific experimentation.

3  
4 15. The Covid Vaccines are “unproven.” Of 138 Covid Vaccine-related  
5 clinical trials currently ongoing in the United States, only one has  
6 published results (ClinicalTrials.gov Identifier: NCT04505722).<sup>6</sup> This  
7 study’s results include 97 deaths out of 44,325 initial participants—  
8 and the study is still ongoing. This is far from a ringing endorsement  
9 for vaccine safety.  
10  
11

12 16. Further, the updated VAERS database reports 873,276 adverse  
13 effects from Covid Vaccines in the United States, as of June 2, 2022,  
14 with 14,592 deaths. And while the total number of adverse reports  
15 has increased by 25% from the data reported on December 31, 2021,  
16 the number of deaths has increased by 52%. (Infra at p. 38, ¶72)  
17  
18 These reports of adverse effects and deaths in the US underscore how  
19 unproven the Covid Vaccines really are.  
20  
21

22 17. And it is now undisputed that existing vaccines are unable to  
23 neutralize at least 15 protein mutations on the Omicron virus  
24  
25

26 [seen-in-the-natural-world-are-becoming-new-covid-vaccines-and-](#)  
27 [medicines/](#)

28 <sup>6</sup> Infra, p. 26, ¶52, study no. 1.

1 genome. Even Dr. Barbara Ferrer, County Public Health Director,  
2 acknowledges this vaccine inadequacy. (Infra, p. 32, ¶67) Such  
3 vaccine deficiency is additional critical evidence of these unproven  
4 vaccines.  
5

6 18. For the above reasons, the Covid Vaccines are new, novel, and  
7 unproven. On balance, given these serious unresolved questions  
8 about the Covid Vaccines safety and effectiveness, the right to  
9 exercise informed consent becomes paramount.  
10  
11

12 19. Furthermore, the Covid-19 public health risk has significantly  
13 reduced in recent months as the early wild type Covid virus has  
14 mutated into less harmful variants. There is no current public health  
15 crisis that could reasonably justify forced vaccinations at the present  
16 time—even if the Covid Vaccines were proven safe and effective  
17 (which they are not).  
18  
19  
20

21 20. On March 3, 2022, the County relaxed Covid restrictions  
22 countywide based on CDC statistics that placed Los Angeles County  
23 in a “low” category for Covid-19 risk. [ECF Doc. 20-2, ¶2, p. 2] Since  
24 then, the absolute number of reported Covid cases has increased from  
25 111 to 308 per 100,000 population, countywide, as last reported on  
26 June 9, 2022. However, during the same period the percentage of  
27  
28

1 inpatient hospital beds in this county occupied by Covid-19 patients  
2 actually *decreased* from 5.5% to 3.1%. This means that as of June 9,  
3 2022, only 3.1 percent of hospital beds in this county have been  
4 occupied by Covid-19 patients, which is a *46% decrease* in inpatient  
5 hospital beds taken by Covid-19 patients compared to March 3, 2022  
6 (the date Covid restrictions were relaxed). (Infra, p. 14, ¶ 30)  
7

9 21. A reasonable interpretation of this CDC data confirms what has  
10 been widely reported about the Omicron variant—it is more easily  
11 transmissible, but symptoms are far less severe than earlier Covid  
12 variants. Amd. McCullough Decl. [ECF Doc. 20-1, p. 20, ¶34] Many  
13 new Covid cases are asymptomatic or involve flu-like symptoms.  
14  
15

16 22. Reasonable protective measures already in use by the County—  
17 testing and masking—offer an eminently reasonable, and less  
18 intrusive, alternative to Covid Vaccines. With the uncertainties  
19 swirling around vaccine safety and efficacy, nothing shows that  
20 vaccines would be better than masking and testing to prevent  
21 transmission of Covid-19. In fact, the opposite is true: CDC guidance  
22 is that the vaccines are no longer effective at preventing Covid  
23 transmission. (Infra, p. 29, ¶63)  
24  
25  
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28

1 23. With the Covid Vaccines remaining new, novel, and unproven;  
2 with a much-reduced public health threat posed by Omicron; and  
3 with current vaccine deficiencies vis-à-vis Omicron; we are far short  
4 of a public health crisis that could justify the County’s vaccination  
5 demands, when weighted against Firefighters’ constitutionally  
6 protected rights of privacy.  
7  
8

9  
10 **BACKGROUND**

11 24. The Covid pandemic started in this country in March 2020. The  
12 Los Angeles County Board of Supervisors immediately issued a  
13 Proclamation of Local Emergency under the California Emergency  
14 Services Act on March 4, 2020 (the “**Proclamation of Local**  
15 **Emergency**”), a copy of which is attached hereto as **Exhibit B**.  
16  
17

18 25. The Proclamation of Local Emergency was eventually followed by  
19 an executive order on August 4, 2021, mandating that every County  
20 employee receive a Covid vaccination (the “**Vaccination Order**”), a  
21 copy of which is attached hereto as **Exhibit C**.  
22  
23

24 26. The Vaccination Order was followed on October 1, 2021, by the  
25 County’s Vaccination Policy, ordering every County employee to  
26 receive a Covid vaccination within 45 days of written demand to do so  
27  
28

(the “**Vaccination Policy**”), a copy of which is attached hereto as **Exhibit D**.

27. The Vaccination Policy was followed on October 12, 2021 by a notice to Firefighters (the “**Covid Test Notice**,” a copy of which is attached hereto as **Exhibit E**), stating that “all County employees who have not provided proof of full vaccination [“Covid Vaccination”] are required to register in the Fulgent system if they have not done so already and take their first COVID-19 test immediately, and that until proof of full vaccination can be provided, employees must continue testing once each week, unless more frequent testing is required under State or local Health Officer Orders.”

**CDC COMMUNITY LEVEL COVID STATISTICS**

28. As briefly summarized above, on March 3, 2022, CDC produced the following public health statistics concerning Covid-19 in Los Angeles County:

**March 3, 2022, LA County Community Rating**

% hospital beds occupied by Covid patients—last 7 days	5.5%
New hospital admissions per 100,000 population—last 7 days	7.4
New Covid positive tests—per 100,000 population	111
Community Rating based on above	Low

1  
 2 Based on these statistics, CDC assessed, on March 3, 2022, that the  
 3 Covid-19 risk for Los Angeles County was “low.” The County  
 4 immediately responded by relaxing Covid restrictions countywide, as  
 5 per the March 3, 2022,<sup>7</sup> Public Health Order. (**Exhibit I:** CDC  
 6 Statistics Tracker- Los Angeles County)<sup>8</sup>  
 7  
 8

9 29. The latest CDC statistics (June 9, 2022) show a higher number of  
 10 positive cases in Los Angeles County, but *fewer* hospital admissions  
 11 and a *lower* percentage of inpatient (overnight) beds occupied by  
 12 Covid patients.  
 13  
 14

15 30. A comparison of the March 3 and June 9 CDC data shows this:

	March 3	June 9
% hospital beds occupied by Covid patients—last 7 days	5.5%	3.1%
New hospital admissions per 100,000 population—last 7 days	7.4	6.4
New Covid positive tests—per 100,000 population	111	309
Community Rating assessed by CDC	Low	Medium

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 23  
 24 <sup>7</sup> [ECF Doc. 20-2, ¶2, p. 2]

25 <sup>8</sup> CDC looks at the combination of three metrics — new COVID-19  
 26 admissions per 100,000 population in the past 7 days, the percent of  
 27 staffed inpatient beds occupied by COVID-19 patients, and total new  
 28 COVID-19 cases per 100,000 population in the past 7 days — to  
 determine the COVID-19 community level—low, medium or high.

1  
2 So, from March 3, 2022 (when the County relaxed Covid restrictions  
3 countywide based on a lower threat level) to June 9, 2022, the  
4 percentage of inpatient hospital beds in this county occupied by  
5 Covid-19 patients *decreased* from 5.5% to 3.1%. This represents a  
6  
7  
8 46% decrease in inpatient hospital beds taken by Covid-19 patients  
9 as compared to March 3, 2022, the date the County relaxed Covid  
10 restrictions countywide.  
11

### 12 **THE COUNTY VACCINATION POLICY**

13  
14 31. The County Vaccination Policy (Exhibit D) was issued on October  
15  
16 1, 2021. The preamble to the Vaccination Policy states this in  
17 justification for the policy:

18  
19 Guidance provided by the federal Centers for  
20 Disease Control and Prevention (CDC)... and  
21 other local health authorities related to the  
22 SARS-CoV-2 virus (COVID-19) *uniformly cite*  
23  
24 *vaccination as the most effective way to prevent*  
25  
26 *transmission and limit COVID-19...* [emphasis  
27 added].  
28

32. The justification statement in the Vaccination Policy cited immediately above was incorrect as against the Delta variant at the time the Vaccination Policy was issued; and is most certainly incorrect as against the current Omicron variant. According to CDC guidance in July and August 2021, vaccines are no longer effective in stopping transmission of Covid. (Infra, p. 29, ¶63)

**COUNTY-ISSUED VACCINATION DEMANDS**

33. As of the date of the First Amended Complaint in this action (January 7, 2022), no 45-Day Vaccination Demand Notices had been served on any Firefighter.

34. But this all changed on January 11, 2022, the same day this Court issued its Order Granting Motion for Extension of Time to Respond [ECF Doc. 19]. On January 11, 2022, 45-Day Vaccination Demand Notices were served by the County on 32 Firefighters [ECF Doc. 23-2 to 23-33].<sup>9</sup> Inexplicably, each of these 32 Firefighters is employed as a Fire Department lifeguard, who primarily work in open outdoor spaces, on county beaches.

---

<sup>9</sup>Christine Mortazavi was served on January 20, 2022.



1 35. The County thereafter filed its Motion to Dismiss [ECF No. 21],  
2 which was heard by this Court on April 11, 2022 (the April 11, 2022,  
3 Hearing”).  
4

5 36. Following the April 11, 2022, Hearing, while the parties were  
6 waiting for rulings by this Court, the County issued more 45-Day  
7 Vaccination Demand Notices to Firefighters (both lifeguards and  
8 firefighters) on or about May 5, 2022, and May 10, 2022—*two months*  
9 *after* Covid restrictions were relaxed countywide for everyone else  
10 (March 3, 2022). These demand notices were summarily issued,  
11 without notice to plaintiff or the Court.  
12  
13  
14

15 37. As of the date of this pleading (June 14, 2022) the County has  
16 issued 240 such demand notices to Firefighters, to the best of  
17 plaintiff’s current knowledge.  
18

19 38. Each 45-Day Vaccination Demand Notice includes the following  
20 statement:  
21

22 *This notice does not constitute discipline and will not*  
23 *be maintained in your personnel folder. However,*  
24 *failure to comply with this order within the [45- day]*  
25 *timeframe outlined above may result in disciplinary*  
26 *action and continued noncompliance may result in*  
27  
28

*further disciplinary action, up to and including discharge from County service.*

39. To Plaintiff’s knowledge, no disciplinary action has yet been taken against any Firefighter, under any 45-Day Vaccination Demand Notice, as of the date of this pleading (June 14, 2022).

However, the threat of disciplinary action is clearly spelled out in the language noted above (¶38): “*continued noncompliance may result in further disciplinary action, up to and including discharge from County service.*”

40. Given the County’s ongoing issuance of 45-Day Vaccination Demand Notices during pendency of this action, notwithstanding pending motions as of the date of this pleading (June 14, 2022), Firefighters have actual and bona fide fears that the County may accelerate disciplinary actions against them, unless and until this Court issues injunctive relief against further such disciplinary action.

**THE COVID VACCINES**

41. Early in the Covid pandemic, three vaccines were granted emergency use authorization (“EUA”) by the FDA and are currently in use. These vaccines, however, were all designed to attack wild type

1 Covid (not the subsequent strains of Delta or Omicron, which were  
2 then unknown). Amd. McCullough Decl. [ECF Doc. 20-1, p. 13, ¶23]

3  
4 42. One such vaccine currently offered in the United States is  
5 manufactured by Moderna (the “Moderna Vaccine”); a second by  
6 Pfizer BioNTech (the “Pfizer/BioNTech Vaccine”); and a third by  
7 Johnson & Johnson/Janssen (the “J&J Vaccine”). Recently, an  
8 additional variant from Pfizer has been added to the mix: Comirnaty.  
9 Collectively, Comirnaty, the Moderna Vaccine, the Pfizer Vaccine,  
10 and the J&J Vaccine are sometimes herein referred to collectively as  
11 the “Covid Vaccines.” All are administered under EUA authority.

12  
13  
14  
15 43. An EUA represents the FDA’s decision that a product may be  
16 effective against a disease in a public health emergency where there  
17 is no “adequate, approved, and available alternative.” See generally  
18 21 USC §360bbb-3(a)-(c). EUA drugs must include labeling and  
19 package inserts telling patients “of the option to accept or refuse  
20 administration of the product.” Id §360bbb-3(e)(1)(A)(ii)(III).

21  
22  
23  
24 44. Under the Biologics License Application (“BLA”) for Comirnaty,  
25 Pfizer may produce Comirnaty, but only at approved locations,  
26 subject to specific manufacturing, packaging, and labelling  
27 requirements.  
28

1 45. In granting the BLA for Comirnaty, FDA says this in a published  
2 FAQ: “While it is hoped [Comirnaty will reduce Covid transmission],  
3 the scientific community does not yet know if Comirnaty will reduce  
4 such transmission.” (Dec.7, 2021) (*reported at*  
5 [https://www.fda.gov/vaccines-blood-biologics/qa-comirnaty-covid-19-](https://www.fda.gov/vaccines-blood-biologics/qa-comirnaty-covid-19-vaccine-mrna)  
6 [vaccine-mrna](https://www.fda.gov/vaccines-blood-biologics/qa-comirnaty-covid-19-vaccine-mrna))  
7  
8

### 9 CLINICAL TRIALS

10  
11 46. According to the website [phrma-docs.phrma.org](http://phrma-docs.phrma.org) (**Exhibit J**)<sup>10</sup>  
12 clinical trials typically take “six to seven years on average” to  
13 complete. “This number incorporates the cost of failures – of the  
14 thousands and sometimes millions of compounds that may be  
15 screened and assessed early in the R&D process, only a few of which  
16 will ultimately receive approval.”  
17  
18  
19

20 47. The typical “six to seven years” for clinical trials was entirely  
21 bypassed by FDA in the rush to bring Covid Vaccines to the market  
22 by December 2020. While emergency use authorization (“EUA”) may  
23 have been justified in addressing the Covid pandemic on an  
24  
25

26  
27 <sup>10</sup> Exhibit J: Biopharmaceutical Research & Development.  
28 [http://phrma-](http://phrma-docs.phrma.org/sites/default/files/pdf/rd_brochure_022307.pdf)  
[docs.phrma.org/sites/default/files/pdf/rd\\_brochure\\_022307.pdf](http://phrma-docs.phrma.org/sites/default/files/pdf/rd_brochure_022307.pdf) at p. 4.

1 emergency basis, the fact remains that long-term clinical trial data  
2 are unavailable for the Covid Vaccines because *no long-term safety*  
3 *studies exist*. This again underscores the “unproven” nature of the  
4 Covid Vaccines and the need for each person to exercise informed  
5 consent—particularly as the Covid pandemic recedes.  
6

7  
8 48. Clinical trials *always* require informed consent of participants.

9 Clinicaltrials.gov says this:

10  
11 Each participant in a clinical trial listed at  
12 <https://clinicaltrials.gov> must be allowed to exercise  
13 informed consent before participating in any clinical  
14 trial listed on clinicaltrials.gov. Informed consent is a  
15 process used by researchers to provide potential and  
16 enrolled participants with information about a clinical  
17 study. This information *helps people decide* whether  
18 they want to enroll or continue to participate in the  
19 study. *The informed consent process is intended to*  
20 *protect participants and should provide enough*  
21 *information for a person to understand the risks of,*  
22 *potential benefits of, and alternatives to the study.*  
23  
24  
25  
26  
27

28 [ECF Doc. 20-3, Ex. 32, p. 146] emphasis added.

49. If clinical trials require informed consent, vaccination policies for Firefighters should do no less; especially under current conditions, vaccinations in the County should be voluntary, not compulsory. The medical community knows virtually nothing about the long-term health effects of the Covid Vaccines, since clinical trials are so far from complete.

50. There are currently twenty clinical trials concerning safety and efficacy of the three primary COVID vaccines manufactured by Janssen, Moderna and Pfizer/BioNTech, with the estimated study completion dates one or more years into the future:

Study No.	Study Title	Estimated Study Completion Date
1	A Study of Ad26.COVS.2 for the Prevention of SARS-CoV-2-Mediated COVID-19 in Adult Participants (ENSEMBLE) <a href="https://clinicaltrials.gov/ct2/show/NCT04505722">https://clinicaltrials.gov/ct2/show/NCT04505722</a>	<b>January 2, 2023</b>
2	A Study of Ad26.COVS.2 for the Prevention of SARS-CoV-2-mediated COVID-19 in Adults (ENSEMBLE 2) <a href="https://clinicaltrials.gov/ct2/show/NCT04614948">https://clinicaltrials.gov/ct2/show/NCT04614948</a>	<b>May 31, 2023</b>
3	A Study of Ad26.COVS.2 in Adults (COVID-19) <a href="https://clinicaltrials.gov/ct2/show/NCT04614948?cond=NCT04614948&amp;draw=2&amp;rank=1">https://clinicaltrials.gov/ct2/show/NCT04614948?cond=NCT04614948&amp;draw=2&amp;rank=1</a>	<b>April 1, 2024</b>
4	A Study of Ad26.COVS.2 in Healthy Pregnant Participants (COVID-19) (HORIZON 1) <a href="https://clinicaltrials.gov/ct2/show/NCT04765384?cond=NCT04765384&amp;draw=2&amp;rank=1">https://clinicaltrials.gov/ct2/show/NCT04765384?cond=NCT04765384&amp;draw=2&amp;rank=1</a>	<b>May 30, 2024</b>

5	A Study to Evaluate Efficacy, Safety, and Immunogenicity of mRNA-1273 Vaccine in Adults Aged 18 Years and Older to Prevent COVID-19 <a href="https://clinicaltrials.gov/ct2/show/NCT04470427">https://clinicaltrials.gov/ct2/show/NCT04470427</a>	<b>December 29, 2022</b>
6	A Study to Evaluate Safety and Immunogenicity of mRNA-1273 Vaccine to Prevent COVID-19 in Adult Organ Transplant Recipients and in Healthy Adult Participants <a href="https://clinicaltrials.gov/ct2/show/NCT04860297?cond=A+Study+to+Evaluate+Safety+and+Immunogenicity+of+mRNA-+1273+Vaccine+to+Prevent+COVID-19+in+Adult&amp;draw=2&amp;rank=1">https://clinicaltrials.gov/ct2/show/NCT04860297?cond=A+Study+to+Evaluate+Safety+and+Immunogenicity+of+mRNA-+1273+Vaccine+to+Prevent+COVID-19+in+Adult&amp;draw=2&amp;rank=1</a>	<b>January 31, 2024</b>
7	A Study to Evaluate Safety, Reactogenicity, and Immunogenicity of mRNA-1283 and mRNA-1273 Vaccines in Healthy Adults Between 18 Years and 55 Years of Age to Prevent COVID-19 <a href="https://clinicaltrials.gov/ct2/show/NCT04813796?cond=A+Study+to+Evaluate+Safety%2C+Reactogenicity%2C+and+Immunogenicity+of+mRNA-1283&amp;draw=2&amp;rank=1">https://clinicaltrials.gov/ct2/show/NCT04813796?cond=A+Study+to+Evaluate+Safety%2C+Reactogenicity%2C+and+Immunogenicity+of+mRNA-1283&amp;draw=2&amp;rank=1</a>	<b>April 13, 2023</b>
8	Dose-Confirmation Study to Evaluate the Safety, Reactogenicity, and Immunogenicity of mRNA-1273 COVID-19 Vaccine in Adults Aged 18 Years and Older <a href="https://clinicaltrials.gov/ct2/show/NCT04405076?cond=Dose-Confirmation+Study+to+Evaluate+the+Safety%2C+Reactogenicity%2C+and+Immunogenicity+of+mRNA-1273+COVID-19+Vaccine+in+Adults+Aged+18+Years+and+Older&amp;draw=2&amp;rank=1">https://clinicaltrials.gov/ct2/show/NCT04405076?cond=Dose-Confirmation+Study+to+Evaluate+the+Safety%2C+Reactogenicity%2C+and+Immunogenicity+of+mRNA-1273+COVID-19+Vaccine+in+Adults+Aged+18+Years+and+Older&amp;draw=2&amp;rank=1</a>	<b>October 26, 2021</b> (remains uncompleted)
9	Study to Describe the Safety, Tolerability, Immunogenicity, and Efficacy of RNA Vaccine Candidates Against COVID-19 in Healthy Individuals <a href="https://clinicaltrials.gov/ct2/show/NCT04368728?cond=Study+to+Describe+the+Safety%2C+Tolerability%2C+Immunogenicity%2C+and+Efficacy+of+RNA+Vaccine+Candidates+Against+COVID-19+in+Healthy+Individuals&amp;draw=2&amp;rank=1">https://clinicaltrials.gov/ct2/show/NCT04368728?cond=Study+to+Describe+the+Safety%2C+Tolerability%2C+Immunogenicity%2C+and+Efficacy+of+RNA+Vaccine+Candidates+Against+COVID-19+in+Healthy+Individuals&amp;draw=2&amp;rank=1</a>	<b>February 8, 2024</b>
10	A Trial Investigating the Safety and Effects of Four BNT162 Vaccines Against COVID-2019 in Healthy and Immunocompromised Adults <a href="https://clinicaltrials.gov/ct2/show/NCT04380701?cond=A+Trial+Investigating+the+Safety+and+Effects+of+Four+BNT162+Vaccines+Against+COVID-2019+in+Healthy+and+Immunocompromised+Adults&amp;draw=2&amp;rank=1">https://clinicaltrials.gov/ct2/show/NCT04380701?cond=A+Trial+Investigating+the+Safety+and+Effects+of+Four+BNT162+Vaccines+Against+COVID-2019+in+Healthy+and+Immunocompromised+Adults&amp;draw=2&amp;rank=1</a>	<b>April 2023</b>

11	Pfizer-BioNTech COVID-19 BNT162b2 Vaccine Effectiveness Study - Kaiser Permanente Southern California <a href="https://clinicaltrials.gov/ct2/show/NCT04848584?cond=Pfizer-BioNTech+COVID-19+BNT162b2+Vaccine+Effectiveness+Study+-+Kaiser+Permanente+Southern+California&amp;draw=2&amp;rank=1">https://clinicaltrials.gov/ct2/show/NCT04848584?cond=Pfizer-BioNTech+COVID-19+BNT162b2+Vaccine+Effectiveness+Study+-+Kaiser+Permanente+Southern+California&amp;draw=2&amp;rank=1</a>	<b>March 31, 2023</b>
12	Study to Evaluate Safety, Tolerability & Immunogenicity of BNT162b2 in Immunocompromised Participants $\geq$ 2 Years <a href="https://clinicaltrials.gov/ct2/show/NCT04895982?cond=Study+to+Evaluate+Safety%2C+Tolerability+%26+Immunogenicity+of+BNT162b2+in+Immunocompromised+Participants+%E2%89%A52+Years&amp;draw=2&amp;rank=1">https://clinicaltrials.gov/ct2/show/NCT04895982?cond=Study+to+Evaluate+Safety%2C+Tolerability+%26+Immunogenicity+of+BNT162b2+in+Immunocompromised+Participants+%E2%89%A52+Years&amp;draw=2&amp;rank=1</a>	<b>November 1, 2023</b>
13	Study to Evaluate the Safety and Efficacy of a Booster Dose of BNT162b2 in Participants $\geq$ 16 Years of Age <a href="https://clinicaltrials.gov/ct2/show/NCT04955626">https://clinicaltrials.gov/ct2/show/NCT04955626</a>	<b>August 7, 2022</b>
14	Study to Evaluate the Safety, Tolerability, and Immunogenicity of SARS CoV-2 RNA Vaccine Candidate (BNT162b2) Against COVID-19 in Healthy Pregnant Women 18 Years of Age and Older <a href="https://clinicaltrials.gov/ct2/show/NCT04754594?cond=Study+to+Evaluate+the+Safety%2C+Tolerability%2C+and+Immunogenicity+of+SARS+CoV-2+RNA+Vaccine+Candidate+%28BNT162b2%29+Against+COVID-19+in+Healthy+Pregnant+Women+18+Years+of+Age+and+Older&amp;draw=2&amp;rank=1">https://clinicaltrials.gov/ct2/show/NCT04754594?cond=Study+to+Evaluate+the+Safety%2C+Tolerability%2C+and+Immunogenicity+of+SARS+CoV-2+RNA+Vaccine+Candidate+%28BNT162b2%29+Against+COVID-19+in+Healthy+Pregnant+Women+18+Years+of+Age+and+Older&amp;draw=2&amp;rank=1</a>	<b>July 26, 2022</b>
15	Efficacy and Safety of COVID-19 Vaccine in Cancer Patients <a href="https://clinicaltrials.gov/ct2/show/NCT04865133?cond=Efficacy+and+Safety+of+COVID-19+Vaccine+in+Cancer+Patients&amp;draw=2&amp;rank=1">https://clinicaltrials.gov/ct2/show/NCT04865133?cond=Efficacy+and+Safety+of+COVID-19+Vaccine+in+Cancer+Patients&amp;draw=2&amp;rank=1</a>	<b>Dec. 31, 2022</b>
16	A Trial of the Safety and Immunogenicity of the COVID-19 Vaccine (mRNA-1273) in Participants With Hematologic Malignancies and Various Regimens of Immunosuppression, and in Participants With Solid Tumors on PD1/PDL1 Inhibitor Therapy <a href="https://clinicaltrials.gov/ct2/show/NCT04847050?cond=A+Trial+of+the+Safety+and+Immunogenicity+of+the+COVID-19+Vaccine+%28mRNA-1273%29+in+Participants+With+Hematologic+Malignancies+and+Various+Regimens+of+Immunosuppression%2C+and+in+Participants+With+Solid+Tumors+on+PD1%2FPDL1+Inhibitor+Therapy&amp;draw=2&amp;rank=1">https://clinicaltrials.gov/ct2/show/NCT04847050?cond=A+Trial+of+the+Safety+and+Immunogenicity+of+the+COVID-19+Vaccine+%28mRNA-1273%29+in+Participants+With+Hematologic+Malignancies+and+Various+Regimens+of+Immunosuppression%2C+and+in+Participants+With+Solid+Tumors+on+PD1%2FPDL1+Inhibitor+Therapy&amp;draw=2&amp;rank=1</a>	<b>February 25, 2024</b>



17	Post COVID-19 Vaccination Analysis in Healthcare Worker Recipients <a href="https://clinicaltrials.gov/ct2/show/NCT04922944?cond=Post+COVID-19+Vaccination+Analysis+in+Healthcare+Worker+Recipients&amp;draw=2&amp;rank=1">https://clinicaltrials.gov/ct2/show/NCT04922944?cond=Post+COVID-19+Vaccination+Analysis+in+Healthcare+Worker+Recipients&amp;draw=2&amp;rank=1</a>	<b>March 01, 2022</b> (remains uncompleted)
18	The Lymphoma and Leukemia Society COVID-19 Registry <a href="https://clinicaltrials.gov/ct2/results?cond=The+Lymphoma+and+Leukemia+Society+COVID-19+Registry&amp;term=&amp;cntry=&amp;state=&amp;city=&amp;dist=">https://clinicaltrials.gov/ct2/results?cond=The+Lymphoma+and+Leukemia+Society+COVID-19+Registry&amp;term=&amp;cntry=&amp;state=&amp;city=&amp;dist=</a>	<b>February 23, 2031</b>
19	Yale COVID-19 Recovery Study <a href="https://clinicaltrials.gov/ct2/show/NCT04895189?cond=Yale+COVID-19+Recovery+Study&amp;draw=2&amp;rank=1">https://clinicaltrials.gov/ct2/show/NCT04895189?cond=Yale+COVID-19+Recovery+Study&amp;draw=2&amp;rank=1</a>	<b>May 3, 2022</b> (remains uncompleted)
20	Host Immune Response to Novel RNA COVID-19 Vaccination <a href="https://clinicaltrials.gov/ct2/show/NCT04784689?cond=Host+Immune+Response+to+Novel+RNA+COVID-19+Vaccination&amp;draw=2&amp;rank=1">https://clinicaltrials.gov/ct2/show/NCT04784689?cond=Host+Immune+Response+to+Novel+RNA+COVID-19+Vaccination&amp;draw=2&amp;rank=1</a>	<b>January 24, 2024</b>

51. As of the date of this pleading, 138 clinical trials relating to COVID-19 vaccines are underway in the United States alone, as reported at the clinicaltrials.gov website. A list of these each of these 138 clinical trials (which includes the 20 clinical trials listed in ¶50, above), is attached as **Exhibit K**. This means that an enormous amount of information regarding long-term effects of the COVID vaccines is not currently known, and will not be known, until completion of a material number of the clinical trials—particularly the targeted trials identified as items no. 1-20 in ¶50, above.

1 52. Thus far, only one primary clinical trial has published results  
2 (ClinicalTrials.gov Identifier: NCT04505722).<sup>11</sup> This study’s results  
3 include 97 deaths out of 44,325 initial participants—and the study is  
4 still ongoing.  
5

6 53. Regardless of one’s point of view regarding the vaccines, it is  
7 scientifically irrefutable that long term health and safety side effects  
8 are presently unknown. Only vigilant long term human trial  
9 data, accumulated over a statistically significant period, will allow  
10 the medical community to reasonably understand the long-term side  
11 effects of the Covid Vaccines.  
12  
13  
14

### 15 **THE COVID-19 VARIANTS**

16  
17 54. The original Covid-19 strain was identified early in the pandemic  
18 in the first months of 2020. It is sometimes referred to simply as  
19 “Covid-19,” without a qualifying descriptor of a Covid-19 “strain” or  
20 “variant.” It is also referred to as “wild type Covid,” a term that will  
21 be used throughout this pleading. The Covid Vaccines were developed  
22 to target wild type Covid. Amd. McCullough Decl. [ECF Doc. 20-1,  
23 ¶23, p. 13]  
24  
25  
26  
27  
28

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<sup>11</sup> Exhibit K, item no. 1.

1 55. The Delta variant of Covid-19 (the “Delta” variant) was identified  
2 in Summer, 2021. It became the dominant strain during or about  
3 September 2021. Delta evaded the Covid Vaccines (developed to  
4 target wild type Covid) in many cases. In one CDC test conducted in  
5 July 2021, 74% of diagnosed Delta variant cases were found in fully  
6 vaccinated people, compared to 26% in the non-vaccinated. These  
7 became known as “breakthrough cases;” *i.e.*, instances in which  
8 vaccinated people nevertheless contracted the Delta variant of Covid-  
9 19. Amd. McCullough Decl. [ECF Doc. 20-1, ¶42 p. 24; ¶70 p. 42]

10 56. By September 2021, when Delta peaked, *99% of all new Covid*  
11 *cases were identified as the Delta variant.* This was the health  
12 problem the County faced when the original Complaint in this action  
13 was first filed in Superior Court (November 3, 2021). *Id.*

14 57. On information and belief, subject to pending discovery in this  
15 case, a large percentage of breakthrough cases in Los Angeles County  
16 during outbreak of the Delta variant were among fully vaccinated or  
17 partially vaccinated persons.

18 58. During or about December 2021, a new “Omicron” variant began  
19 to spread the world, starting in South Africa (the “Omicron” variant).  
20 As of the date of this pleading (June 14, 2022), it is reported that

1 100% of new Covid-19 cases in the United States are now identified  
2 as Omicron. With months of experience to judge by, it is widely  
3 reported that symptoms of Omicron are relatively mild, but  
4 transmission rates are significantly higher than with the earlier  
5 strains. Amd. McCullough Decl. [ECF 20-1, ¶34, pp. 18-19]  
6  
7

8 59. On information and belief, subject to pending discovery in this  
9 action, a large percentage of positive tests for the Omicron variant in  
10 Los Angeles County are now among fully vaccinated or partially  
11 vaccinated persons.  
12

13  
14 **REDUCED EFFICACY OF VACCINES**  
15 **AS AGAINST OMICRON**  
16

17 60. As of the date of the First Amended Complaint [ECF No. 18-1]  
18 (January 7, 2022), the dominant (95%) strain of Covid-19 in the  
19 United States was the Omicron variant. As of the date of this Second  
20 Amended Complaint (“SAC”), the dominant (100%) strain of Covid-19  
21 remains the Omicron variant.  
22

23  
24 61. Existing Covid Vaccines appear to have much-reduced efficacy as  
25 against Omicron. BioNTech CEO, Ugur Sahin, stated in a December  
26 11, 2021, interview with Le Monde (French newspaper) that “the  
27 COVID-19 vaccine shots won’t be enough to combat the omicron  
28

1 variant...We must be aware that even triple-vaccinated are likely to  
2 transmit the disease.” (Dec 11, 2021) (*reported at*  
3 [https://www.deseret.com/coronavirus/2021/12/26/22848390/covid-  
5 vaccine-booster-shots-omicron-variant](https://www.deseret.com/coronavirus/2021/12/26/22848390/covid-<br/>4 vaccine-booster-shots-omicron-variant))

6 62. Decisions made by the County, and orders of this Court, must  
7 properly account for Omicron and may not be based on stale scientific  
8 evidence that might have applied to wild type Covid-19, but not to  
9 Omicron (or Delta).  
10

11  
12 63. The United States CDC has advised since July 2021 that  
13 vaccines are no longer effective at preventing transmission of Covid  
14 (the Delta variant), and that preventative measures—such as testing,  
15 masking and isolation (for those testing Covid positive)—are needed  
16 to stop transmission, even for fully vaccinated people. CDC guidance  
17 has been released in multiple media statements for the Delta variant  
18 from and after July 29, 2021, including these statements by CDC  
19 Director Rochelle Walensky as against the Delta variant:  
20  
21  
22

- 23  
24 a. "High viral loads suggest an increased risk of transmission  
25 and raised concern that, unlike with other variants,  
26 vaccinated people infected with Delta can transmit the  
27 virus." (July 30, 2021) (*reported at*,  
28

1 [https://www.cdc.gov/media/releases/2021/s0730-mmwr-](https://www.cdc.gov/media/releases/2021/s0730-mmwr-covid-19.html)  
2 [covid-19.html](https://www.cdc.gov/media/releases/2021/s0730-mmwr-covid-19.html))

3 b. “[W]hat they [vaccines] can’t do any more is prevent  
4 transmission. So...I would suggest you wear a mask in  
5 public indoor settings.” (August 6, 2021) (*reported at,*

6 [https://nationalfile.com/cdc-director-rochelle-walensky-](https://nationalfile.com/cdc-director-rochelle-walensky-admitted-covid-19-vaccines-cannot-prevent-transmission/)  
7 [admitted-covid-19-vaccines-cannot-prevent-transmission/](https://nationalfile.com/cdc-director-rochelle-walensky-admitted-covid-19-vaccines-cannot-prevent-transmission/))

8 c. "The masking recommendation was updated to ensure the  
9 vaccinated public would not unknowingly transmit virus to  
10 others." (July 27, 2021) (*reported at,*

11 [https://www.cdc.gov/media/releases/2021/s0730-mmwr-](https://www.cdc.gov/media/releases/2021/s0730-mmwr-covid-19.html)  
12 [covid-19.html](https://www.cdc.gov/media/releases/2021/s0730-mmwr-covid-19.html))

13 64. In July 2021, a CDC study CDC noted 469 cases of Covid-19  
14 where approximately *three quarters* (346; 74%) *of cases* occurred in  
15 fully vaccinated persons; *i.e.*, those who had completed a 2-dose  
16 course of the mRNA vaccine (Pfizer-BioNTech or Moderna) or had  
17 received a single dose of the Janssen (Johnson & Johnson) vaccine.

18 (*reported at*

19 <https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm>)  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 65. With 95% of new cases since January 1, 2022, being the Omicron  
2 variant, scientific studies with respect to the efficacy of the Covid  
3 Vaccines as against Omicron are outdated and not valid. As alleged  
4 above in ¶7, BioNTech’s CEO has recently stated that “the COVID-19  
5 vaccine shots won’t be enough to combat the omicron variant...We  
6 must be aware that even triple-vaccinated are likely to transmit the  
7 disease.” (Dec. 20, 2021) (*reported at*  
8 [https://nypost.com/2021/12/20/biontech-ceo-says-vaccines-alone-not-](https://nypost.com/2021/12/20/biontech-ceo-says-vaccines-alone-not-enough-to-fight-omicron/)  
9 [enough-to-fight-omicron/](https://nypost.com/2021/12/20/biontech-ceo-says-vaccines-alone-not-enough-to-fight-omicron/))  
10  
11  
12  
13

14 66. A review of scientific literature by Plaintiff’s expert Dr. Peter A.  
15 McCullough, and in his opinion, the following observations about  
16 Omicron may be drawn within a reasonable degree of medical  
17 certainty:  
18

- 19 a. Omicron Covid has broken through all forms of immunity  
20 both natural immunity from the prior variants as well as  
21 through the vaccines.  
22
- 23 b. A natural infection of Omicron develops immunity against  
24 future Omicron infections on the scale of a 14-fold boost in  
25 antibody related immunity.  
26  
27  
28

1 c. A natural infection of Omicron develops only a 4-fold boost  
2 against the Delta variant.

3 d. Omicron is the most heavily mutated form of the virus. It  
4 multiplies in the nose 70 times faster than Delta.  
5

6 e. Symptoms of the Delta variant were more severe including  
7 attacking pulmonary systems in younger people.  
8

9 f. Symptoms of the Omicron variant are mild, typically  
10 including a day or two of fever or warmth.  
11

12 Amd. McCullough Decl. [ECF 20-1, ¶34, pp. 18-19]  
13

14 **EVIDENCE AND ADMISSIONS**  
15 **RE: VACCINES ANDOMICRON**

16 67. On March 21, 2022 [ECF Doc. 22-6] the County filed its Request  
17 for Judicial Notice with respect to certain facts. Included in this  
18 request were official records of several colloquies between Dr. Barbara  
19 Ferrer, the County Public Health Director, and the County Board of  
20 Supervisors, including the following:  
21  
22

23 A. A colloquy between Dr. Ferrer and the Board of Supervisors on  
24 November 30:  
25

26 SUP. HAHN: THANK YOU, MADAM CHAIR, AND THANK YOU, DR.  
27 FERRER. IT IS UNBELIEVABLE. SORT OF LIKE, HERE WE GO AGAIN,  
28 BUT THANK YOU FOR CLOSELY MONITORING THIS OMICRON  
VARIANT. THAT SLIDE THAT YOU PUT UP WHERE THERE'S 50



1 **MUTATIONS OF THE ORIGINAL ONE, AND EACH MUTATION COULD**  
2 **BE MORE DIFFICULT, JUST BECAUSE IT TAKES US A WHILE, I**  
3 **GUESS, TO FIGURE OUT. BUT THAT IS JUST SO CONCERNING.**

4 \*\*\*

5 DO YOU ANTICIPATE ANY CHANGES TO THE HEALTH ORDER,  
6 BASED ON THE LIMITED INFORMATION THAT WE HAVE NOW ABOUT  
7 OMICRON?

8 DR. FERRER: IT IS A GREAT QUESTION, AND THANK YOU SO MUCH,  
9 SUPERVISOR HAHN. IT IS A GREAT QUESTION. AT THIS MOMENT,  
10 NO. AT THIS MOMENT, WE HAVE REALLY, I THINK, SENSIBLE  
11 PRECAUTIONS IN PLACE. I MEAN, **OBVIOUSLY, IF THE VACCINES**  
12 **AREN'T AS EFFECTIVE, THOSE MASKS ARE SUPER IMPORTANT,**  
13 **AND WE ALREADY HAVE A REQUIREMENT ON MASKING...SO, I**  
14 **THINK THAT MASKING IS REALLY IMPORTANT. [ECF Doc. 22-6,**  
15 **pp.1538; emphasis added]**

16 B. And a colloquy between Dr. Ferrer and Supervisor Hahn on  
17 December 21, 2021:

18 SUP. HAHN: THANK YOU, MADAM CHAIR. AND THANK YOU AGAIN  
19 FOR THESE UPDATES. IT IS AMAZING TO ME HOW QUICKLY THE  
20 OMICRON HAS SWEEPED THIS COUNTRY. **SOMETHING LIKE 73% OF**  
21 **ALL THE CASES ARE NOW OMICRON,** WHICH JUST HAPPENED  
22 REALLY FAST, BUT I GUESS THAT VERIFIES THE FACT THAT IT IS  
23 SO CONTAGIOUS.

24 CAN WE MAKE A REQUEST TO THE STATE TO ALLOW CERTAIN  
25 CITIES WHO HAVE A HIGH VACCINATION RATE TO FOLLOW THE  
26 SAME MODEL AS SAN FRANCISCO, AND HOW WOULD THAT EVEN  
27 WORK? THAT'S MY QUESTION.

28 DR. FERRER: I...WANT TO NOTE THAT THOSE WERE HEALTH  
OFFICER ORDERS THAT WERE ISSUED BEFORE OMICRON.  
**OMICRON EVADES VACCINES MORE THAN DELTA.** WEARING THE  
MASK IS-- IT'S NOT EVEN JUST SORT OF, "IF YOU ARE VACCINATED,  
YOU'RE GOING TO KIND OF PUT IT ON, MAYBE, BUT YOU DON'T  
REALLY HAVE TO WORRY." **ALL THE DATA I JUST SHARED SHOWS**  
**THAT YOU STILL HAVE A PRETTY DECENT CHANCE OF PERHAPS**  
**GETTING INFECTED.**

I DON'T THINK THIS IS THE TIME TO BE LIFTING INDOOR MASK  
MANDATES. I THINK THIS IS THE TIME FOR ALL OF US TO BE MORE  
CAUTIOUS, NOT LESS CAUTIOUS. **THOSE MASKS ADD AN**  
**IMPORTANT LAYER OF PROTECTION WHEN THE VACCINES AREN'T**  
**WORKING AS WELL AS THEY USED TO. (emphasis added)**

1 C. And this colloquy between Dr. Ferrer and Supervisor Hahn on  
2  
3 December 21, 2021:

4 I WILL GO AHEAD AND TAKE THE FIRST SLIDE. TO START, THIS NEW  
5 VARIANT, WHICH IS NUMBER B.1.1.529 [OMICRON], WAS FIRST  
6 IDENTIFIED IN SOUTH AFRICA ON NOVEMBER 9TH, WITH A HIGH  
7 NUMBER OF MUTATIONS, **WHICH IS CONCERNING IN PREDICTING  
8 IMMUNE EVASION AND TRANSMISSIBILITY.**

9 THIS NEW VARIANT WAS DESIGNATED A VARIANT OF CONCERN BY  
10 THE WORLD HEALTH ORGANIZATION THIS PAST FRIDAY,  
11 NOVEMBER 26TH, AND THEN IT WAS NAMEDOMICRON. WHAT  
12 MAKESOMICRON DIFFERENT IS THAT IT HAS A VERY UNUSUAL  
13 CONSTELLATION OF MUTATIONS. EARLY ANALYSIS SHOWS THAT  
14 **THERE ARE 50 CHANGES AND DELETIONS, MORE THAN 30 OF  
15 WHICH ARE IN THE SPIKE GENE.** THE MUTATION PROFILE IS  
16 CLEARLY VERY DIFFERENT FROM OTHER CIRCULATING VARIANTS  
17 OF CONCERN AND VARIANTS OF INTEREST, AND IT DOES NOT  
18 APPEAR TO BE DERIVED FROM DELTA OR OTHER VARIANTS OF  
19 CONCERN. OF NOTE, **SOME OF THE MUTATIONS TO THE SPIKE  
20 GENE COULD AFFECT THE STRUCTURE ENOUGH TO INCREASE  
21 INFECTIVITY, EVADE IMMUNITY, AND IMPACT RESPONSE TO  
22 MONOCLONAL ANTIBODIES.**

23 D. And this colloquy between Dr. Ferrer and Supervisor Hahn on  
24  
25 December 21, 2021:

26 SOUTH AFRICAN STUDY DEMONSTRATED THAT TWO DOSES OF  
27 THE PFIZER VACCINE HAD **34% EFFECTIVENESS AT PREVENTING  
28 OMICRON INFECTION,** AND THAT **RECEIVING A BOOSTER RAISED  
VACCINE EFFECTIVENESS TO 75%.**

68. These candid party admissions by Dr. Ferrer closely track  
plaintiff's own evidence proffered in support of its Motion for  
Preliminary Injunction [ECF Doc. 20] and Reply [ECF Doc. 25] on the  
scientific issues underlying this case. A side-by-side comparison of

1 plaintiff's evidence proffered in its Motion for Preliminary Injunction,  
 2 and County admissions is shown in the following chart:

PLTF. PROFFERED EVIDENCE	COUNTY ADMISSIONS
3 "CDC has consistently advised 4 since July 2021 that vaccines are 5 no longer effective at preventing 6 transmission of Covid [ECF Doc. 7 20-2, pp.4,5] 8	"vaccines aren't working as well as they used to" [ECF Doc. 22-6, p.1659]
9 "what [vaccines] can't do anymore 10 is prevent transmission. So...I 11 [Rochelle Walensky] would 12 suggest you wear a mask in public 13 indoor settings." [ECF Doc. 20-2, 14 p.4, ll.12-15.]	"[even with a vaccine] you still have a pretty decent chance of perhaps getting infected." [ECF Doc. 22-6, p.1658]
15 "...testing, masking and isolation 16 (for those testing Covid positive)— 17 are needed to stop transmission, 18 <i>even for fully vaccinated people.</i> " [ECF Doc. 20 p.12, ll.4-9]	"if the vaccines aren't as effective, those masks are super important," [ECF Doc. 22-6, p.1538]
19 'The current variant, Omicron, is 20 characterized by least fifteen 21 genetic mutations in its receptor 22 binding domain (RBD) that are 23 <i>different</i> from those found in 24 original wild type (Wuhan) Covid or in the Delta variant.' [ECF Doc. 20-2 p.12, ll.23-27]	"there's 50 [Omicron] mutations of the original one, and each mutation could be more difficult." [ECF Doc. 22-6, p.1536]
25 "The overriding problem today is 26 that the existing Covid Vaccines 27 were developed as against the 28 original, wild type (Wuhan) Covid- 19 and are incapable of fully neutralizing the Omicron variant	"There are 50 changes and deletions [in the Omicron genome], more than 30 of which are in the spike gene. Some of the mutations to the spike gene could affect the structure enough to increase

<p>1 of Covid-19.” [ARGUMENT: ECF 2 Doc. 20, p. 21, ll.27-28 – p.22. ln.1] 3</p>	<p>infectivity, evade immunity, and impact response to monoclonal antibodies.” [ECF Doc. 22-6, pp. 1513, 1514]</p>
<p>4 [R]eceipt of 2 doses of COVID-19 5 vaccines was not 6 protective against Omicron 7 infection at any point in time... 8 vaccine efficacy (VE) against 9 Omicron was 37% (95%CI, 19- 10 50%) ≥7 days after receiving an 11 mRNA vaccine for the third Dose.” [ECF Doc. 20-2 p.20, ll.3- 14]</p>	<p>“South African study demonstrated that two doses of the Pfizer vaccine had 34% effectiveness at preventing Omicron infection, and that receiving a booster raised vaccine effectiveness to 75%.” [ECF Doc. 22- 6, p.1611]</p>

12  
13 69. It is readily seen by a comparison of evidence proffered in  
14 support of Plaintiff’s Motion for Preliminary Injunction, evaluated as  
15 against the County’s admissions in its own Request for Judicial  
16 Notice, that the parties’ respective views of the scientific evidence of  
17 Omicron are materially similar. This case does not involve factual  
18 disputes so much as legal disputes: the County claims unfettered  
19 right to impose its judgment on Firefighters on all matters related to  
20 Covid; while Firefighters claim constitutional rights must be taken  
21 into account by the County.  
22  
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**UNKNOWN RISKS OF THE COVID VACCINES**

1  
2 70. As of June 3, 2022, the Vaccine Adverse Effects Reporting  
3 System (“VAERS”), maintained by the US Dept. of Health & Human  
4 Services (<https://VAERS.hhs.gov>)<sup>12</sup>, reports 873,276 adverse effects  
5 following administration of a Covid Vaccine *in the United States*.  
6

7  
8 Recovery rates were listed as follows:

- 9 - Recovered: 265,631
- 10 - Not Recovered: 291,532
- 11 - Unknown: 219,504
- 12 - No Data (assume Unknown): 96,609

13  
14  
15 71. The total reported number of VAERS reports also includes the  
16 following categories of serious health conditions following  
17 administration of a Covid Vaccine:  
18

- 19 - Deaths: 14,592
- 20 - Hospitalizations: 62,398

21  
22  
23  
24  
25 <sup>12</sup> Data pulled from two VAERS datasets:

26 <https://vaers.hhs.gov/eSubDownload/index.jsp?fn=2021VAERSData.zip> and  
27 <https://vaers.hhs.gov/eSubDownload/index.jsp?fn=2022VAERSData.zip>  
28

72. These June 2, 2022, VAERS data show an increase in vaccine adverse effects from the date of the First Amended Complaint (January 7, 2022) to the last reported date (June 2, 2022), as follows:

	Jan. 7, 2022	June 2, 2022	% increase
<b>Reported cases</b>	<b>698,177</b>	<b>873,276</b>	<b>25%</b>
Recovered	226,294	265,631	17%
Not recovered	244,277	291,532	19%
Recovery Unknown	158,897	219,504	38%
No Data	68,709	96,609	41%
<b>Deaths</b>	<b>9,607</b>	<b>14,592</b>	<b>52%</b>
<b>Hospitalizations</b>	<b>45,819</b>	<b>62,398</b>	<b>36%</b>

As shown above, in the five-month period from January to June 2022, adverse reports following a Covid vaccine *increased* by 25%. Deaths *increased by 52%* and hospitalizations *increased by 36%* following a Covid Vaccine.<sup>13</sup> So, even though the number of fully vaccinated people in this country would be expected to level off, and likely have, the number of hospitalizations and deaths associated with Covid Vaccines continues to increase. This is yet another factor that calls into questions the safety of Covid Vaccines.

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<sup>13</sup> VAERS data concerning recoveries has too much statistical noise to allow a reasonable inference.

**SWINE FLU IN THE UNITED STATES: 1976-77**

1  
2 73. VAERS data for Covid vaccines can be compared to similar  
3 vaccine data from the swine flu epidemic in this country in 1976-77,  
4 when the government responded to that epidemic with mass  
5 vaccinations. (**Exhibit L**)<sup>14</sup>  
6

7  
8 74. From Oct. 1 to Dec. 18, 1976, a total of 41.9 million adult citizens  
9 in the United States were vaccinated with a swine flu virus vaccine.  
10 But during the same period more than 500 cases of Guillain-Barre  
11 syndrome occurred among the vaccinated persons, with *25 reported*  
12 *deaths*. As a result of the 500 reported cases of Guillain-Barre  
13 syndrome and 25 deaths—measured against 41.9 million  
14 vaccinations—a vaccination moratorium was declared in the United  
15 States on Dec. 18, 1977. Id.  
16

17  
18  
19 75. In response to the recent Covid public health crisis,  
20 approximately *5 times* more fully vaccinated people are counted today  
21  
22  
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27 <sup>14</sup> Exhibit L: Guillain-Barre syndrome: the swine influenza virus vaccine  
28 incident in the United States of America, 1976-7  
<https://journals.sagepub.com/doi/pdf/10.1177/014107687907200908>

1 than in the 1977 swine flu epidemic<sup>15</sup>, but with *583 times more*  
2 *deaths* than in the 1976-77 epidemic.<sup>16</sup>

3  
4 76. The appropriate public policy for responding to mass deaths  
5 following mass vaccinations in a public health crisis is beyond the  
6 scope of this action. But five times more people have been fully  
7 vaccinated with Covid Vaccines since December 2020 than with  
8 swine flu vaccines in 1977—which has led to *583 times more deaths*  
9 after Covid Vaccines.  
10  
11

12 77. In stark contrast to the government’s vaccination moratorium in  
13 1977, after 25 deaths following swine flu vaccinations, the County  
14 continues to push its vaccination mandate today, even in the face of  
15 14,592 US deaths following Covid vaccinations. This is one more  
16 evidentiary factor that something is seriously wrong with the Covid  
17 Vaccines, from virtually every angle of examination. And to any  
18 person who wishes to exercise informed consent regarding the Covid  
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26 <sup>15</sup> 221 million vaccinated people (Covid) ÷ 41.9 million vaccinated  
27 people (swine flu) = 5.26 multiple increase.

28 <sup>16</sup> 14,592 Covid vaccine deaths ÷ 25 swine flu vaccine deaths =  
583.68 multiple increase.



1 Vaccines, the County’s continued demand for Covid vaccination is not  
2 a reasonable governmental response to a (waning) epidemic.

3  
4 **SCREENING, TESTING AND MASKING**

5 78. From at least October 1, 2021, to May 31, 2022, the Fire  
6 Department and County implemented policies of screening, testing  
7 and masking for all Fire Department employees. The first line of  
8 defense was screening; if a person felt ill or showed a high  
9 temperature, he or she quarantined and tested to minimize the risk  
10 of Covid transmission to others. This procedure worked reasonably  
11 well and was supported by Firefighters.  
12  
13  
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16 79. But in the early months of 2022, vaccine breakthrough became a  
17 serious challenge for the Fire Department, as fully vaccinated  
18 firefighters and lifeguards began to test positive for Covid—many of  
19 whom were asymptomatic. Vaccinated employees were testing  
20 positive for Covid at a higher rate than unvaccinated. Based on  
21 reports from multiple Firefighters to the undersigned counsel, in one  
22 fire station, for example, thirteen positive tests were reported: twelve  
23 were fully vaccinated firefighters and one was unvaccinated. This  
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1 means two things: vaccines do not prevent positive Covid tests and,  
2 as a result, a “vaccinate-or-test” policy is no longer effective.

3 80. The Fire Department’s response to positive Covid tests from fully  
4 vaccinated firefighters was exactly the opposite of expected—fully  
5 vaccinated firefighters were excused from testing, even though they  
6 reflected the higher number of positive tests.  
7  
8

9  
10 **FIRE DEPARTMENT COVID TESTING**

11 81. Until June 1, 2022, the Fire Department policy was to test all  
12 employees weekly, or more often if required, under the County’s  
13 Covid Test Notice. Firefighters accepted this policy; in that it was  
14 applied equally to vaccinated and unvaccinated Fire Department  
15 employees.  
16  
17

18 82. On June 1, 2022, the Fire Department issued a new testing  
19 policy (the “June 1, 2022 Test Policy”) that requires only  
20 *unvaccinated* employees to weekly test. This is a flawed policy, since  
21 vaccines are unable to prevent Covid transmission. On information  
22 and belief, the June 1, 2022 Test Policy was adopted to deflect  
23 attention from a large number of positive tests that embarrassed the  
24 Fire Department and County, and their Vaccination Policy—the  
25  
26  
27  
28

1 County and Fire Department did not want a record of more  
2 vaccinated employees testing positive—so they eliminated the  
3 possibility of embarrassing records by instructing vaccinated  
4 employees not to test.  
5

6 83. Not only is the June 1, 2022 Test Policy flawed from a public  
7 health standpoint (vaccinated firefighters might be spreading Covid  
8 unknowingly, since they are not required to test) it is also  
9 discriminatory against Firefighters, who are unvaccinated.  
10

11 84. Furthermore, the implementation of the June 1, 2022 Test Policy  
12 is materially flawed, with the likelihood that false results will result,  
13 since the specimen delivery processes are random and uncontrolled.  
14 Plaintiff has put the County on notice with these concerns, with no  
15 response. (Exhibit M)<sup>17</sup>  
16

17 85. With fully vaccinated employees becoming asymptomatic  
18 transmitters of Covid-19, all Fire Department personnel should be  
19 subject to the same testing and protective policies.  
20

21 86. The County's new policy to test only unvaccinated employees  
22 violates Firefighters explicit right to equal protection under the  
23

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<sup>17</sup> McBride Letter dated May 24, 2022

1 Fourteenth Amendment to the US Constitution; and Firefighters’  
2 implicit right to privacy emanating from the Fourteenth Amendment.  
3

4 **FIRST CAUSE OF ACTION**

5 **(Violation of California Constitution— Autonomous Privacy**  
6 **Rights in Bodily Integrity and Personal Health)**  
7

8 87. Plaintiff re-alleges Paragraphs 1-86, above as though fully set  
9 forth herein.  
10

11 88. Article I, section 1 of the California Constitution is an  
12 enumeration of the inalienable rights of all Californians. Privacy is  
13 declared to be among those rights.  
14

15 89. At issue here are Firefighters’ constitutional rights to privacy in  
16 bodily integrity and personal health that are implicated by the  
17 County’s Vaccination Policy because the Covid Vaccines are new,  
18 novel, and unproven.  
19  
20

21 90. Firefighters have a reasonable expectation of privacy with  
22 respect to the Vaccination Order and Vaccination Policy since, *inter*  
23 *alia*, the Covid Vaccines would be administered by force—not  
24 consent; Covid vaccination has never been a condition of employment  
25 for Firefighters; CDC guidance is that the Covid Vaccines are no  
26 longer effective in preventing transmission Covid; and the Covid  
27  
28

1 Vaccines have not been proven safe through clinical trials or  
2 otherwise.

3  
4 91. The Vaccination Order and Vaccination Policy constitute a  
5 serious invasion of Firefighters’ privacy since, *inter alia*, (a) the Covid  
6 Vaccines present potentially serious adverse effects, as documented  
7 in VAERS Data; (b) clinical trials do not yet demonstrate safety of  
8 the vaccines and (c) there is no scientific consensus that the Covid  
9 Vaccines, or boosters, are effective as against the Omicron variant—  
10 as even the County Public Health Director, Dr. Barbara Ferrer, has  
11 alerted the Board of Supervisors as to known deficiencies of the Covid  
12 Vaccines as against the Omicron variant. (Supra, p. 32, ¶67) With  
13 ongoing questions about safety and efficacy of the Covid Vaccines, the  
14 invasion of Firefighters’ privacy rights becomes increasingly and  
15 correspondingly serious.  
16  
17  
18  
19  
20

21 92. In a balance of interest test of Firefighters’ constitutional privacy  
22 interests as against the County’s interest in maintaining public  
23 health, Firefighters’ interests must prevail, for at least the following  
24 reasons:  
25  
26  
27  
28

- 1 a. The County relaxed its Covid restrictions countywide on  
2 March 3, 2022, reflecting the diminished public risk posed  
3 by the Omicron variant. (Supra, p. 10, ¶20)  
4
- 5 b. The Board has known since at least a December 21, 2021  
6 briefing from Dr. Ferrer that “vaccines aren’t working as  
7 well as they used to,” and even with vaccines, people “still  
8 have a pretty decent chance of being infected” with Covid.  
9 (Supra, p. 33, ¶67.B)  
10
- 11 c. The Covid Vaccines have not been shown to be safe or  
12 effective in long-term clinical trials (all of which remain  
13 unfinished). (Supra, pp. 22, 26; ¶¶ 50, 51)  
14
- 15 d. CDC guidance as early as July 2021 was that Covid  
16 Vaccines no longer stopped transmission. (Supra, p. 30,  
17 ¶63)  
18
- 19 e. Deaths and hospitalizations following a Covid Vaccine  
20 continue to rise, as reported by June 2, 2022 VAERS data.  
21 (Supra, pp. 37, 38; ¶¶ 70-72)  
22
- 23 f. Inpatient hospital beds occupied by Covid-19 patients in the  
24 county decreased from 5.5% on March 3, 2022 (the date the  
25  
26  
27  
28

1 County relaxed its Covid restrictions) to 3.1% on June 9,  
2 2022. (Supra, p. 10, ¶ 20)

3 g. The County’s policy effective June 1, 2022 to only test non-  
4 vaccinated Fire Department employees demonstrates  
5 arbitrary and discriminatory behavior designed to deprive  
6 Firefighters of equal protection under law. (Infra, p. 55,  
7 Third Cause of Action) In addition to the June 1, 2022 Test  
8 Policy and its implementation an independent legal  
9 violation (the Third Cause of Action), it also weighs against  
10 the County in a balancing of interests under constitutional  
11 privacy.  
12  
13  
14  
15

16  
17 93. Further, a reasonable alternative exists—screening, testing and  
18 masking for *all* Fire Department employees under a uniform policy  
19 similar to that employed by the Fire Department prior to the June 1,  
20 2022 Test Policy implementation. Screening, testing, and wearing  
21 proactive gear are the only demonstrated effective ways to prevent  
22 transmission of Covid.  
23  
24

25  
26 94. Firefighters are entitled to reasonable accommodations that allow  
27 them to continue employment without being forced to take a Covid  
28 Vaccine.

1 95. An existing justiciable controversy exists under California  
2 Constitution, article I, section 1, between Firefighters and the County  
3 with respect to the County Vaccination Order and Vaccination Policy,  
4 and Firefighters' objections to the said order and policy.  
5

6 96. Pursuant to FRCP Rule 57 and at common law, Firefighters are  
7 entitled to a declaratory judgment that:  
8

9 a. the County Vaccination Order and Vaccination Policy  
10 violate Firefighters' constitutionally protected autonomous  
11 privacy rights under the California Constitution, article I, section  
12 1, to make intimate personal decisions involving bodily integrity  
13 and personal health; and  
14

15 b. accommodations are reasonably available to the County  
16 that would allow continued employment without requiring a  
17 Covid Vaccination.  
18  
19  
20

21 97. Pursuant to FRCP Rule 65, Firefighters are entitled to  
22 preliminary and permanent injunctive relief:  
23

24 a. prohibiting the County from enforcing the County  
25 Vaccination Order and Vaccination Policy as a condition of  
26 continued employment;  
27  
28



- b. requiring the County to offer reasonable accommodations to Firefighters to allow continued employment without a Covid vaccination requirement; and
- c. prohibiting further discrimination or retaliation.

98. Pursuant to FRCP Rule 65, Firefighters are also entitled to a temporary restraining order prohibiting the County Vaccination Order and Vaccine Policy from being enforced against any Firefighter until a preliminary injunction hearing in this matter and further order of this Court.

99. Firefighters are entitled to costs and attorneys’ fees in this action pursuant to California Code of Civil Procedure §1021.5.

**SECOND CAUSE OF ACTION**

**(Violation of US Constitution—  
Privacy Rights in Bodily Integrity)**

100. Plaintiff realleges paragraphs 1 through 99, above, as though fully set forth herein.

101. A penumbra of rights emanating from the First and Fourteenth Amendments to United States Constitution, taken together, provide an *implicit right to privacy* in bodily integrity, personal choice, and

1 liberty that protect Firefighters from being forced by the County to  
2 take a Covid Vaccine against their will.

3 102. Although the Constitution does not explicitly mention a right of  
4 privacy, the Supreme Court has recognized that one aspect of the  
5 "liberty" implicitly protected by the Due Process Clause of the  
6 Fourteenth Amendment is "a right of personal privacy, or a  
7 guarantee of certain areas or zones of privacy" that includes the  
8 autonomous privacy right to bodily integrity. *Roe v. Wade*, 410 U.S.  
9 113, 152, 93 S.Ct. 705, 726, 35 L.Ed.2d 147 (1973).

10 103. This right of personal privacy also includes "the interest in  
11 independence in making certain kinds of important decisions."  
12 *Whalen v. Roe*, 429 U.S. 589, 599-600, 97S.Ct. 869, 876, 51 L.Ed.2d  
13 64 (1977).

14 104. Several Penumbrae of constitutional privacy have been identified  
15 by the Ninth Circuit Court of Appeals in *Fleisher v. City of Signal*  
16 *Hill*, 829 F.2d 1491 (9th Cir. 1987).

17 105. The privacy right emanating from the guarantee of freedom of  
18 speech and expression under the First Amendment is the right to  
19 dissent, through words and actions, in the face of overwhelming  
20 institutional opposition from the County, the Board of Supervisors,  
21  
22  
23  
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1 the Fire Department, together with various agencies of the this State  
2 and the United States Government, including the FDA and CDC, and  
3 together with large corporate interests that include pharmaceutical  
4 drug manufacturers, driven by an obvious profit motive to push  
5 vaccination on the public.  
6

7  
8 106. The overwhelming weight of public pressure to be vaccinated, in  
9 spite of many questions about efficacy and safety of the Covid  
10 Vaccines, implicitly undermines the long-standing right in this  
11 country to express and abide by a minority point of view, irrespective  
12 of public pressure, subject to a reasonable balancing of interests  
13 under the Constitution. This privacy right emanates from the First  
14 Amendment.  
15  
16

17  
18 107. The privacy right emanating from the Fourteenth Amendment is  
19 based in the prohibition for any State to deprive a person of life,  
20 liberty, or property, without due process; or deny equal protection of  
21 laws. Due process and equal protection—and implicitly privacy—are  
22 implicated by the County’s threats and coercive behavior against  
23 Firefighters designed to deprive them of the right to exercise  
24 informed consent with respect to the Covid vaccines, and by the Fire  
25 Department’s preferential treatment of vaccinated firefighters and  
26  
27  
28

1 other employees over the unvaccinated. This is most visibly seen in  
2 the Covid test requirements imposed by the County on June 1, 2022  
3 that requires only weekly testing of vaccinated employees,  
4 notwithstanding the fact that fully vaccinated employees regularly  
5 test positive for Covid.  
6

7  
8 108. Taken together, the penumbra privacy emanating from the First  
9 and Fourteenth Amendments extend to the claims in this action:  
10 protecting Firefighters rights in bodily integrity (Fourteenth  
11 Amendment); protecting against institutional pressure to abandon  
12 the right to informed consent (First Amendment); protecting against  
13 property right in employment guaranteed to firefighters under  
14 California law (Fourteenth Amendment); and providing equal  
15 protection between vaccinated and unvaccinated employees in Fire  
16 Department testing procedures under the June 1, 2022 Test Policy  
17 (Fourteenth Amendment).  
18  
19  
20  
21

22 109. This penumbra of constitutional privacy should be extended to  
23 new, novel and unproven vaccines, such as the Covid Vaccines since  
24 the County's Vaccination policy is the government edict at the root of,  
25 and inextricably intertwined with, the entirety of violations by the  
26  
27  
28

1 County of the penumbra of Constitutional rights expressed in ¶105 -  
2 ¶108, above.

3  
4 110. Additionally, the Covid Vaccines are materially different from  
5 smallpox vaccines that were addressed by the US Supreme Court in  
6 *Jacobsen v. Massachusetts*, 197 U.S. 11 (1905). Because the Covid  
7 Vaccines are, in fact, new, novel, and unproven; whereas the  
8 smallpox vaccines in *Jacobsen* were established and proven. The first  
9 smallpox vaccine was administered in England in 1796. The first  
10 smallpox vaccine was administered in the United States in 1800; and  
11 the first vaccine mandate for smallpox was implemented by  
12 Massachusetts in 1855. By the time the *Jacobsen* case was decided  
13 by the United States Supreme Court in 1905, the smallpox vaccines  
14 had 100 years of prior history, with known long-term effects. By that  
15 time, the smallpox vaccine was neither new nor novel—an  
16 established history existed and there was no guesswork involved in  
17 recommending, or requiring, a smallpox vaccine. (Exhibit F)

18  
19  
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21  
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24 111. Claims of individual rights under the US Constitution as against  
25 government commands have been subject to a judicial balancing of  
26 interests since at least the 1940s. The same type of balancing test  
27 typically applied to constitutional questions by federal courts should  
28

1 apply here. The Court should recognize Firefighters’ privacy claims  
2 under the penumbra of the First and Fourteenth Amendments,  
3 subject to a balancing test against the County’s interests in  
4 protecting public health.  
5

6 112. The balance of interests in this case decisively favors Firefighters  
7 for the same reasons that apply in analysis under the California  
8 Constitution as set forth in the First Cause of Action, (supra, pp. 45,  
9 46; ¶¶91, 92) which plaintiff incorporates herein by reference.  
10

11  
12 113. Pursuant to FRCP Rule 57, and at common law, Firefighters are  
13 entitled to a declaratory judgment that:  
14

15 a. the County Vaccination Order and Vaccination Policy violate  
16 Firefighters’ privacy rights under the penumbra of rights  
17 expressly granted under the First and Fourteenth  
18 Amendments to the US Constitution to make intimate  
19 personal decisions involving bodily integrity and personal  
20 health, and to do so without undue institutional pressure  
21 that would effectively render privacy rights moot; and  
22

23  
24 b. accommodations are reasonably available to the County that  
25 would allow continued employment without requiring a  
26 Covid Vaccination.  
27  
28

1 114. Pursuant to FRCP Rule 65, Firefighters are entitled to  
2 preliminary and permanent injunctive relief:

3 a. prohibiting the County from enforcing the County  
4 Vaccination Order and Vaccination Policy as a condition of  
5 continued employment;  
6

7  
8 b. requiring the County to offer reasonable accommodations to  
9 Firefighters to allow continued employment without the  
10 Covid vaccination requirement; and  
11

12 c. prohibiting discrimination or retaliation.  
13

14 115. Pursuant to FRCP Rule 65, Firefighters are also entitled to a  
15 temporary restraining order prohibiting the County Vaccination Order  
16 and Vaccine Policy from being enforced against any Firefighter until a  
17 preliminary injunction hearing in this matter and further order of this  
18 Court.  
19  
20

21 116. Firefighters are entitled to costs and attorneys' fees in this action.  
22

23 **THIRD CAUSE OF ACTION**

24 **(Violation of Equal Protection)**  
25

26 117. Plaintiff re-alleges Paragraphs 1-116, above as though fully  
27 set forth herein.  
28

1 118. On June 1, 2022, the Fire Department issued a new testing  
2 policy (the “June 1, 2022 Test Policy”) that requires only  
3 *unvaccinated* employees to weekly test. Inexplicably, vaccinated Fire  
4 Department personnel are not required to test. Yet, on information  
5 and belief, results of Covid testing in the Fire Department before  
6 June 1, 2022, showed a materially high rate of positive tests for fully  
7 vaccinated personnel.  
8  
9  
10

11 119. Further, the implementation of the June 1, 2022 Test Policy is  
12 materially flawed, with the likelihood that false results will result,  
13 since the specimen delivery processes are random and uncontrolled.  
14 Plaintiff has put the County on notice with these concerns. (Exhibit  
15 M)  
16  
17

18 120. On information and belief, the June 1, 2022 Test Policy was  
19 adopted to deflect attention from a large number of positive tests that  
20 embarrassed the Fire Department and County, and their Vaccination  
21 Policy—the County and Fire Department did not want a record of  
22 more vaccinated employees testing positive—so they simply  
23 eliminated the possibility of embarrassing test records by  
24 instructing vaccinated employees not to test.  
25  
26  
27  
28



1 121. The County's new policy to test only unvaccinated employees  
2 violates Firefighters right to equal protection under the Fourteenth  
3 Amendment in the following ways:  
4

- 5 a. Vaccinated employees with asymptomatic Covid are  
6 foreseeably likely to transmit the disease to Firefighters,  
7 since no precautionary measures will be in place to prevent  
8 that from happening.  
9  
10 b. Flawed test procedures and/or specimen maintenance are  
11 likely to occur that will adversely affect Firefighters'  
12 employment opportunities vis-à-vis vaccinated employees.  
13  
14 c. Testing of only unvaccinated Firefighters is likely to create  
15 an inequitable division of work assignments leading to an  
16 increase in work-related stress and employee tension.  
17  
18

19 122. Firefighters are entitled to declaratory relief from this Court that  
20 the June 1, 2022 Test Policy violates their respective rights to equal  
21 protection under the Fourteenth Amendment  
22  
23

24 123. Firefighters are also entitled to injunctive relief requiring the  
25 Fire Department to implement Covid testing policies equally, for  
26 unvaccinated and vaccinated personnel.  
27  
28

**FOURTH CAUSE OF ACTION**

**(Threatened Deprivation of Due Process Rights)**

1  
2  
3 124. Plaintiff re-alleges Paragraphs 1-123, above as though fully set  
4  
5 forth herein.

6 125. The County’s Vaccination Policy was issued on Oct. 1, 2021,  
7  
8 pursuant to the County Vaccination Order.

9 126. Among other things, the Vaccination Policy requires  
10  
11 unvaccinated employees to receive a Covid vaccination within 45  
12  
13 days of receiving a written Notice of Vaccination Requirement. Non-  
14  
15 compliant employees will face staged disciplinary action, up to and  
16  
17 including discharge from employment. (Exhibit D)

18 127. From and after February 11, 2022, two-hundred forty (240)  
19  
20 Firefighters have received a 45-day Vaccination Demand Notice  
21  
22 under the Vaccination Policy, to the best of plaintiff’s knowledge, and  
23  
24 the threat exists for the remaining Firefighters to also receive such a  
25  
26 notice.

27 128. Each 45-Day Vaccination Demand Notice includes the following  
28  
29 statement:

*This notice does not constitute discipline and will not  
be maintained in your personnel folder. However,*

1            *failure to comply with this order within the [45- day]*  
2            *timeframe outlined above may result in disciplinary*  
3            *action and continued noncompliance may result in*  
4            *further disciplinary action, up to and including*  
5            *discharge from County service.*  
6

7  
8 129. To Plaintiff’s knowledge, no disciplinary action has yet been  
9 taken against any Firefighter, under any 45-Day Vaccination  
10 Demand Notice, as of the date of this pleading (June 14, 2022).

11  
12 However, the threat of disciplinary action is clearly spelled out in the  
13 language noted above (¶124): “*continued noncompliance may result in*  
14 *further disciplinary action, up to and including discharge from*  
15 *County service.*”  
16

17  
18 130. Under the holding of *Skelly v. State Personnel Bd.*, 124 Cal.Rptr.  
19 14 (Cal. 1975) (“*Skelly*”), the County is required to provide full  
20 administrative due process rights, including a hearing, to any  
21 Firefighter threatened with discharge from employment.  
22

23  
24 131. The Firefighter Procedural Bill of Rights Act (Govt. Code §3250  
25 *et seq.*) (“FIBOR”) provides additional administrative due process  
26 protections for Firefighters.  
27  
28

1 132. The Vaccination Policy does not specify whether full *Skelly* rights  
2 and other due process rights under FIBOR will be recognized and  
3 granted in the event a Firefighter is discharged from employment. A  
4 justiciable controversy therefore exists between Plaintiff /  
5 Firefighters and the County to determine application of the  
6 Vaccination Policy under *Skelly* and FIBOR.  
7  
8

9 133. Based on actions of the County since this action was removed  
10 (supra, ¶¶33-39) there is a material likelihood that it may initiate  
11 disciplinary action against the 240 Firefighters, and others, before  
12 this Court addresses Plaintiff's pending Motion for Preliminary  
13 Injunction.  
14  
15

16 134. This Fourth Cause of Action provides necessary protection for  
17 Firefighters, in the event disciplinary action proceeds before further  
18 rulings by this Court and should be allowed to provisionally proceed  
19 on that basis.  
20  
21

22 135. Pursuant to FRCP Rule 57 and under California law,  
23 Firefighters are entitled to declaratory relief that:  
24  
25  
26  
27  
28

1 a. Each Firefighter is entitled to full *Skelly* due process rights,  
2 including a hearing, prior to being discharged from County  
3 employment;

4  
5 b. Each Firefighter is also entitled to full administrative due  
6 process rights under FIBOR prior to being discharged from  
7 County employment; and

8  
9 c. If any Firefighter is placed on administrative leave or  
10 otherwise separated from employment pending completion of  
11 *Skelly* and FIBOR due process rights, he or she is entitled to full  
12 pay and benefits pending the outcome of administrative  
13 proceedings and appeals.  
14  
15

16  
17 136. Firefighters are also entitled to preliminary and permanent  
18 injunctive relief that no Firefighter be separated from employment or  
19 be subjected to adverse employment actions without full  
20 administrative due process rights specified under *Skelly* and FIBOR,  
21 including full pay during any period of separation of employment.  
22  
23

24 137. Firefighters are entitled to a temporary restraining order  
25 preventing any adverse employment action pursuant to the County  
26 Vaccination Order or Vaccination Policy pending a hearing on a  
27 preliminary injunction and further orders of this Court.  
28

1 138. Firefighters are entitled to costs and attorneys' fees in this action  
2 pursuant to California Code of Civil Procedure §1021.5.  
3

4 **WHEREFORE**, Plaintiff prays for relief from this Court as follows:

5 **On the First Cause of Action:**  
6

7 1. Pursuant to FRCP Rule 57 and California Constitution, article I,  
8 section 1, for a judicial declaration that:  
9

10 a. the County Vaccination Order and Vaccination Policy violate  
11 Firefighters' autonomous privacy rights protected under the  
12 California Constitution to make intimate personal decisions  
13 involving bodily integrity and personal health; and  
14

15 b. accommodations are reasonably available to the County that  
16 would allow continued employment without requiring a  
17 Covid Vaccination.  
18

19  
20 2. Pursuant to FRCP Rule 65, for preliminary and permanent  
21 injunctive relief:  
22

23 a. prohibiting the County from enforcing the County  
24 Vaccination Order and Vaccination Policy as a condition of  
25 continued employment;  
26  
27  
28

- b. requiring the County to offer reasonable accommodations to Firefighters to allow continued employment without the Covid vaccination requirement; and
- c. prohibiting discrimination or retaliation.

- 3. For a temporary restraining order prohibiting the County Vaccination Order and Vaccination Policy from being enforced until a preliminary injunction hearing in this matter and further order of this Court; and
- 4. For costs and attorneys' fees in this action pursuant to CCP §1021.5, together with all other relief deemed just and proper by this Court.

**On the Second Cause of Action:**

- 5. Pursuant to FRCP Rule 57 and at common law, a judicial declaration that:
  - a. the County Vaccination Order and Vaccination Policy violate Firefighters' autonomous privacy rights protected under the penumbra of rights emanating from the First and Fourteenth Amendments to the United States Constitution to make intimate personal decisions involving bodily

1 integrity, and to do so without undue institutional pressure  
2 that would effectively render privacy rights moot; and

3 b. reasonable accommodations are available that would allow  
4 continued employment without requiring a Covid  
5 Vaccination.  
6

7  
8 6. Pursuant to FRCP Rule 65, for preliminary and permanent  
9 injunctive relief:

10  
11 a. prohibiting the County from enforcing the County  
12 Vaccination Order and Vaccination Policy as a condition of  
13 continued employment;

14  
15 b. requiring the County to offer reasonable accommodations  
16 without requiring a Covid vaccination; and

17  
18 c. prohibiting further discrimination or retaliation.  
19

20 7. For a temporary restraining order prohibiting the County  
21 Vaccination Order and Vaccination Policy from being enforced  
22 against any Firefighter, pending a preliminary injunction hearing  
23 in this matter and further order of this Court.  
24

25 8. For costs and attorneys' fees in this action.  
26

27 **On the Third Cause of Action:**

28 9. Pursuant to FRCP Rule 57, a declaratory declaration that:



1 a. that the June 1, 2022 Test Policy and implementation of  
2 that policy, violate Firefighters equal protection rights  
3 under the Fourteenth Amendment to the US Constitution;  
4 and  
5

6 b. that reasonable accommodations are available without  
7 requiring a Covid vaccination.  
8

9 10. Pursuant to FRCP Rule 65, preliminary and permanent  
10 injunctive relief enjoining the Fire Department from enforcing the  
11 June 1, 2022 Test Policy as against Firefighters.  
12

13 11. Cost and attorneys' fees in this action.  
14

15 **On the Fourth Cause of Action:**  
16

17 12. A judicial declaration that:  
18

19 a. each Firefighter is entitled to full *Skelly* due process rights,  
20 including a hearing, prior to being discharged from County  
21 employment;  
22

23 b. each Firefighter is also entitled to full administrative due  
24 process rights under FIBOR prior to being discharged from  
25 County employment; and  
26

27 c. if any Firefighter is placed on administrative leave or  
28 otherwise separated from employment pending completion

1 of *Skelly* and FIBOR due process rights, he or she is  
2 entitled to full pay and benefits pending the outcome of  
3 administrative proceedings and appeals.  
4

5 13. For Preliminary and permanent injunctive relief enjoining  
6 County from enforcing the County Vaccination Order and  
7 Vaccination Policy against any Firefighter without full *Skelly* due  
8 process rights, FIBOR rights, and full pay in the event any  
9 Firefighter is placed on administrative leave or temporarily  
10 separated from employment pending completion of these due process  
11 rights.  
12  
13  
14

15 14. For a temporary restraining order prohibiting the County's  
16 vaccination mandate from going into effect until (a) *Skelly* and  
17 FIBOR due process is afforded each Firefighter and (b) a preliminary  
18 injunction hearing in this matter and further order of this Court; and  
19  
20

21 15. For costs and attorneys' fees in this action together with all other  
22 relief deemed just and proper by this Court.  
23  
24  
25  
26  
27  
28

1 DATED: June 14, 2022

2  
3 McBRIDE LAW PC

4 /s/Kevin McBride

5  
6 By: Kevin McBride

7 *Attorneys for Plaintiff*  
8 *LA COUNTY FREE FOUNDATION and*  
9 *683 Firefighters and other Employees*  
10 *of the Los Angeles County*  
11 *Fire Department, Listed in Exhibit A*