

**IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
IN AND FOR ORANGE COUNTY**

**JASON WHEAT; WENDY WILLIAMS;  
COREY WILLIAMS; GREGORY MEEKS;  
ZACHARY SPAHN; ANDREW SANTIAGO;  
ANN-MARGARET PAMPE; AURELIO  
HERNANDEZ; BARBARA DAVIS;  
BRANDON HIGA; CHRISTOPHER  
NEWTON; DANIEL GROVES; DANIEL  
HART; DAVID HALL; DAVID HERNANDEZ;  
DAVID PIETY; DAYMOND BERNARD;  
DILLON COLLINS; ERIC DUDLEY; HERMI  
QUINTO; IAN THURBER; JEFFREY  
JARRELL; JOHN HEIDISCH; JORGE  
HERNANDEZ; JOSE COTTI; JUDITH  
TORO; KELVIN SOUFFRONT; MALCOLM  
WERTZ; MARIA BERNARD; MARY  
GALANTY; MICHAEL JUNGE; MICHAEL  
RHODEN; MIKE HARRISON; RAMIRO  
CIPULLO; RYAN WILSON; SANDRA  
MERKEL; SARA ROANE; SAVANNAH  
MAHONEY; SCOTT HOLBROOK; STEPHEN  
DAVIS; TANIA LOUBRIEL; TERESA  
CAMACHO; TROY FELICIANO**

**Case No. \_\_\_\_\_**

**Plaintiffs,**

**v.**

**ORANGE COUNTY**

**Defendant.**

**COMPLAINT AND PETITION FOR EMERGENCY INJUNCTIVE RELIEF**

COME NOW, Plaintiffs Jason Wheat; Wendy Williams; Corey Williams; Gregory Meeks;  
Zachary Spahn; Andrew Santiago; Ann-Margaret Pampe; Aurelio Hernandez; Barbara Davis;  
Brandon Higa; Christopher Newton; Daniel Groves; Daniel Hart; David Hall; David Hernandez;  
David Piety; Daymond Bernard; Dillon Collins; Eric Dudley; Hermi Quinto; Ian Thurber; Jeffrey

Jarrell; John Heidisch; Jorge Hernandez; Jose Cotti; Judith Toro; Kelvin Souffront; Malcolm Wertz; Maria Bernard; Mary Galanty; Michael Junge; Michael Rhoden; Mike Harrison; Ramiro Cipullo; Ryan Wilson; Sandra Merkel; Sara Roane; Savannah Mahoney; Scott Holbrook; Stephen Davis; Tania Loubriel; Teresa Camacho; Troy Feliciano by and through undersigned counsel and petition this Court grant emergency injunctive relief against Defendant Orange County's unlawful and unconstitutional COVID-19 vaccine requirement, together with such other relief as is herein petitioned, stating as follows:

### **INTRODUCTION**

For nearly two years now that our nation has been rocked by an invisible enemy, Plaintiffs are among those few within our community who have continued faithfully and selflessly to serve and rescue others in need in Orange County through Fire and Rescue ("OCFR"). The Covid-19 pandemic has added strain and anxiety to the inherent stress and demand of Plaintiffs' job caring for those in emergency situations, not the least of which is the concern over contracting Covid-19 even while helping others who have been increasingly anxious and suffering from the disease.

Under state of emergency state-wide from early 2020 to spring of 2021, most county employees were called upon by Defendants to perform their duties remotely since March 23, 2020 in the safety and comfort of their own homes. Plaintiffs, however, continued to serve the community, working 24 to 60 hour shifts to ensure the people of Orange county could rely on emergency and fire fighter services and get to hospitals and medical facilities timely. As a result of Plaintiffs' continued excellent performance of their employment duties, most contracted Covid-19. Notwithstanding the danger to themselves, they recovered and returned to duty, being regarded as heroes.

Now, suddenly, as a result of the mere existence of experimental vaccines hastily developed to combat Covid-19 spread, Plaintiffs are inexplicably no longer appreciated for their sacrifice and admirable efforts for years, and particularly, the last eighteen months. Indeed, county commissioner Nicole H. Wilson for District 1 publicly maligned Plaintiffs this week, at Defendant's weekly Board of County Commissioners ("BCC") meeting, insinuating Plaintiffs serving the public in the line of duty as they have since early 2020 could now make children sick, exposing an "innocent person...to something deadly" and asking whether liability for *wrongful death* could be imposed on Plaintiffs and their colleagues in OCFR. Their service and strength in protecting the community is treated as worthless, if they have not accepted getting experimental medical treatment. Plaintiffs have been subjected to harassment, extreme coercion to obtain the shots, including threat of discipline, up to and including termination, and public maligning for their personal decisions regarding how they can best protect their bodies in order to continue to perform the rigorous requirements of their job as first responders.

Plaintiffs have a fundamental, constitutional right in Florida to privacy and the inviolability of their bodies. Defendant knows this, and thus has not promulgated nor enforced any other bodily integrity demand, including diet or habits that implicate Plaintiffs' ability to pass fitness requirements for their positions, leaving these matters to Plaintiffs to choose according to their personal responsibility. Defendant cannot infringe Plaintiffs' constitutional right to privacy without due process of law, and Defendant under color of law has acted without authority in promulgating and enforcing the unlawful and unconstitutional vaccine requirement.

### **PARTIES**

1. Plaintiffs are current employees in the various sub-departments within Orange County Fire and Rescue, all reporting to the Orange County Fire Chief. The majority of the Plaintiffs are within Field Operations as fire fighters, engineers, lieutenants, paramedics, and emergency

medical technicians. Others are involved in the function of field operations through dispatch or other subdivisions. Plaintiffs have been employed in OCFR from only months as a new recruit in 2021 to over two decades of service for others. All Plaintiffs are subject to Mayor Jerry L. Demings' county-wide vaccine requirement, and all Plaintiffs reject the unlawful requirement to get injections into their body of the Covid-19 vaccines as a condition of their initial hiring or continued employment. None of the Plaintiffs are members of demographic groups at elevated risk of serious illness or death from Covid-19, and in fact, must meet strict physical fitness requirements, particularly for service in Field Operations. Plaintiffs' risk of serious illness or death from Covid-19 is miniscule and is comparable to their risk of serious illness or death from influenza.

2. Defendant Orange County employs Plaintiffs within the county Fire and Rescue department. Its legislative branch is comprised of the County Board of County Commissioners ("BCC"); and county Mayor Jerry L. Demings is both chair of the BCC and also the head of the executive branch of the Orange County government. Pursuant to Fla. Stat. 48.111, Mayor Demings is the agent for service of process against Defendant.

### **JURISDICTION**

3. Plaintiffs in this case seek temporary and permanent injunctive relief and declaratory judgment pursuant to Fla. R. Civ. Pro. 1.610 and Chapter 86, Florida Statutes, based on a facial and as-applied challenge to the constitutionality of Defendant's vaccine requirement. Plaintiffs request an emergency hearing for temporary injunctive relief against Defendant.

4. As this matter involves Orange County government and public employees of Orange County, this matter is properly brought before the Circuit Court in and for Orange County.

5. Under Florida law, a petition for an injunction may be filed before or without a complaint. See 1980 comment to Fla. R. Civ. P. 1.610 (“The requirement that an injunction not be issued until a complaint was filed has been deleted as unnecessary.”).

6. All conditions precedent to this action have occurred, have been performed, or have been waived.

## **BACKGROUND FACTS**

### ***Plaintiffs have served the Orange County community faithfully during the pandemic without Covid-19 vaccination***

7. Orange County Fire and Rescue Department is one of the largest firefighter and emergency services departments in the country, and in the top 5 largest departments in the state of Florida. Annually, OCFR’s over 1300 employees serve over 1,000,000 residents and visitors in the county. According to the OCFR website, “The mission of the Orange County Fire and Rescue Department is to provide fire suppression, emergency medical and community risk reduction services to ensure our community can enjoy a high quality life and property protection delivered with compassion and integrity.” See Department official website at <https://www.ocfl.net/EmergencySafety/FireRescue.aspx>.

8. In the last fiscal year in the height of the Covid-19 pandemic, OCFR emergency personnel responded to 124,000 calls for service, including calls for emergencies for patients with covid-like symptoms. Despite the concerns early in 2020 over the infection rate and results of the viral pandemic, Plaintiffs served faithfully.

9. While Plaintiffs were on the front line caring for sick and vulnerable patients, most employees of Defendant Orange County were directed to work from home, beginning March 23, 2020.

10. Indeed, as a result of the performance of their jobs being around many critically ill patients, including those exhibiting Covid-19 symptoms, the majority of Plaintiffs in this suit, or sixty percent (60%) contracted a verified case of Covid-19, or were sick, exhibiting Covid-19 symptoms. The majority of Plaintiffs thus have robust, natural immunity from Covid-19 and variants thereof.

11. Beginning March 3, 2020, the protocol for the entire OCFR department under Covid-19 risk mitigation procedures required proper post-exposure washing and follow up reporting of the incident according to SOP 23. See March 3, 2020 “Orange County Fire Rescue Department COVID-19 Action Plan *Readiness, Response and Recovery*.” For any employees who developed flu-like symptoms after the exposure incident, individuals were required to isolate themselves, notify the Battalion Chief on duty, and comply with other work exclusions “until deemed no longer infectious to others.” If an employee called out sick due to Covid-19, the procedure to allow employees to return to work did not even require a specific negative Covid-19 test, but quarantine until cleared for return after termination of symptoms.

12. By May 3, 2021, OCFR terminated the Covid-19 policies for shift changes implemented in April 2020, including no longer requiring wellness checks for employees or visitors. See OCFR IB 21-075 and GO 20-014.

13. In the end of December, 2020, Covid-19 vaccines were made available in the United States, and specifically in Florida for seniors; and the OCFR was involved in distributing the shots to the public. As of December 17, 2020, by Informational Bulletin 20-290, the OCFR announced that first responders and firefighters could receive a vaccine between December 26-31 at a designated area. The Bulletin stated clearly “Taking the vaccine is voluntary.” Moreover, the bulletin acknowledged that certain personnel may not be a candidate to take the

vaccine if such employee had been diagnosed with Covid-19 within the last 90 days, were part of a vaccine trial study, had had a severe allergic reaction to a prior dose of the Covid-19 vaccines or had severe allergic reaction to any ingredient in the Covid-19 vaccines. Within a few days, OCFR Informational Bulletin 20-298 provided details regarding registering vaccine status. Unequivocally, the Bulletin reiterates “The vaccination is voluntary; no employee is required to get the vaccine.”

14. Protocol within the department for employees remained the same as through 2020. By Public Health Advisory announcement on March 26, 2021, the State Surgeon General Dr. Scott A. Rivkees declared all adults authorized by the FDA to obtain Covid-19 vaccination eligible to receive vaccination in Florida starting April 5, 2021. Shortly thereafter, Defendant by and through its officials, including Mayor Demings were pushing vaccines very hard on employees, sending out regular emails pertaining to acquiring a vaccine.

***Defendant’s employee vaccination requirement threatens termination  
and provides no exemptions***

15. Then, unilaterally, Mayor Demings announced both a local state of emergency due to Covid-19 on July 28, 2021, and also a vaccine “requirement” for the whole of Orange County employees, including Plaintiffs.

16. Purportedly “with the hope of slowing the spread of Covid-19 and reducing the number of related hospitalizations and deaths” in Orange County, “all full-time, part-time and temporary Orange County Government employees (all employees) are required to be fully vaccinated unless otherwise exempt due to medical and religious reasons.” See **Exhibit A** – Mayor Demings’ letter announcement and related notices.

17. The letter from Mayor Demings and announcement from Defendant Orange County admitted the unilateral nature of this change in terms and conditions of employment and expressly stated that “impact bargaining is taking place with the respective collective bargaining unions regarding these requirements.”

18. The timeline provided on July 28, required full vaccination by September 30, with the first of two-dose Pfizer and Moderna shots to be certified by August 31. However, by the end of August, the timeline was changed by Defendant to September 30 deadline for Johnson & Johnson single dose vaccination; September 30, 2021 for first dose of Pfizer or Moderna; and October 31, 2021 for second dose of Pfizer or Moderna. See **Exhibit A**.

19. The manner in which employees of the county are to disclose their vaccinated status is through a “certification process” which is to be completed by October 31, 2021, and in the case of Pfizer and Moderna vaccines, needs to be completed in two phases, showing compliance by September 30 and by October 31.

20. New employees starting employment after August 22 are required to certify Covid-19 vaccination status within six weeks of hire date.

21. Despite Fla. Stat. 381.00315(2)(d)4, providing options for individuals who have reservations “for reasons of health, religion, or conscience” to vaccination for “communicable diseases”, Defendants’ vaccine requirement as announced by Mayor Demings provides no exemptions. These exemptions have been available, and remain available to date, for other manner of vaccination for infectious disease, such as HepatitisA and HepatitisB: “The employee has the right to refuse the immunization series.” See 2021 Exposure Control Plan for OCFR. Ironically, Florida Statutes provide that for these communicable diseases, an employer may

require vaccination for firefighters and first responders related to liability for insurance for employees who contract these diseases. Fl. Stat. 112.18(3).

22. Rather, the Mayor's letter entitles terms for *reasonable accommodations* as "Exemption from Vaccination Requirements" for "religious, disability-related, or other legally covered reasons", which is specious at best, and ignores statutory provisions. Defendant Orange County's announcement of access to request "accommodations" states only that "While on accommodation, employees may be required to: submit to COVID-19 testing and report results on a weekly basis; test on their own time and be personally responsible for the cost." See **Exhibit A.**

23. Not only does Defendant's vaccine mandate issue significant penalties to individuals with reservations regarding the shots, but Defendant also provides discriminatory "incentives" to individuals who waive reservations and comply with the vaccine certification. On September 14, 2021, Mayor Demings proposed incentives "for [non-union] employees who receive the vaccine by August 31: one-time payout of \$250 paid in October 2021...; one day of personal leave." And for both union (if impact bargaining completed) and non-union employees "who receive the vaccine after August 31, but on or prior to September 30: one day of personal leave".

24. On July 29, 2021, after issuance of the vaccination requirement, OCFR Fire Chief issued a General Order No. 21-009 regarding "Mandatory Face Covering and Vaccination Requirement" asserting the terms of Defendant's edict against all county employees, including Plaintiffs. Subsequently, OCFR Fire Chief issued GO 21-012 ordering all Fire Rescue employees to complete "Target Solutions assignment 'Vaccine Mandate and Certification' on their next working shift."

25. Contrary to recent public statements by Mayor Demings regarding the vaccine mandate for Defendant's employees county-wide, termination is a possible penalty for non-compliance with the requirement. Defendant's communications with employees county-wide clarify that failure to certify vaccination status by the September 30, 2021, deadline may subject employees to discipline, up to and including termination.

26. Defendant's county-wide Policy Manual "Corrective Guide" at pp102-104 provides the disciplinary matrix for employee conduct contrary to policy, requirement or law. Disciplinary Actions include verbal or oral warnings, written reprimand, suspension, involuntary reassignment, and termination. Violations that are included in the list subject to these disciplinary measures are "misconduct" and "loss of minimum job qualification or failure to report loss." Defendant has provided no indication that failure to comply with its vaccination requirement of employment would not fall under its disciplinary matrix, up to and including termination.

27. Notwithstanding the intense pressure from Defendant's BCC and Mayor Demings through incessant communications regarding vaccination, deadlines with severe disciplinary penalties, and a public campaign to malign and tarnish the impeccable record of service of Plaintiffs, approximately 52% of OCFR personnel remains unvaccinated in full as of the date of this filing.

***Plaintiffs have medical, religious, and conscience objections  
to vaccination requirement as a condition of employment***

28. Plaintiffs' objections to the Mandate are varied, and often overlapping.

29. Most fundamentally, many of the Plaintiffs in this case voice profound religious objections and objections of conscience to receiving a Covid-19 vaccination.

30. Religious objections range from those of Plaintiffs for whom taking this vaccine would be a violation of the teachings of recognized religious authorities, to those who object on religious grounds to the process by which they believe the vaccine was created (for example, the use of fetal stem cell lines), to those who object on religious grounds to the internal physiological changes the vaccine causes, to name just a few.

31. Plaintiffs also object on both religious and conscience grounds to the loss of autonomy a vaccine requirement involves. Among other things, some plaintiffs hold that submitting to the Defendant's attempt to control their own bodies would itself be an affront to their God-bestowed right of personal autonomy. Others hold that it is a fundamental tenet of their individualist political beliefs (and the political philosophy undergirding the United States, for that matter) that government may not inject itself into their medical decision-making in the way Defendant Orange County seeks to do with the vaccine requirement.

32. Many Plaintiffs also have concrete, legitimate health concerns regarding how the vaccine will affect their health and ability to do their job. Among other things, some Plaintiffs have a personal or family history of adverse reactions to vaccines or have immunological conditions that put them at high risk for harmful health consequences resulting from the vaccines as required by Defendant. Defendant has demonstrated that it is either unwilling or unable to accommodate all such worries, since most Plaintiffs cannot simultaneously submit an exemption on the basis of medical need and continue to demonstrate physical fitness for the performance of their jobs. Moreover, the concerns Plaintiffs have regarding the medical effects of the Covid-19 vaccines are, though well-documented through VAERS and other reporting agencies, still harms of a potential and varying nature. Defendant cannot guarantee nor protect against such harms,

nor can Plaintiffs determine with certainty the effects experimental vaccines may have on their bodies.

33. Other Plaintiffs believe they have specific health conditions that may be exacerbated by the Covid-19 vaccines. Plaintiffs worry that if they have a negative health reaction from the vaccine, Defendant is not prepared to compensate them for any loss of their ability to perform their physically demanding jobs, and they will lose the ability to support their families. Additionally, there is no “medical retirement” option for any one of Plaintiffs who may be permanently disabled or no longer eligible to perform their jobs based on failure to meet physical standards as a result of vaccine injury.

34. Compounding these legitimate concerns are Plaintiffs’ numerous first-hand observations of patients they have cared for who experienced severe medical symptoms shortly after receiving a dose of a Covid-19 vaccine. Plaintiffs report transporting and caring for patients experiencing sudden heart issues (including cardiac arrest), chest pain, seizures, anxiety, swelling of the limbs, rashes, swelling around the injection site, loss of consciousness, difficulty breathing, tremors, numbness, cramping in the stomach, hands, and arms, blood clots, nausea, vomiting, diarrhea, dizziness, fatigue, cold sweats, and chills among other conditions and symptoms.

35. Sixty percent of Plaintiffs have already had Covid-19, and thus have natural immunity to the virus. As Plaintiffs consider their medical best interest, this natural immunity tilts the risk-benefit analysis even further away from a Covid-19 vaccine.

36. Plaintiffs are hardly alone in their concerns, as a rash of lawsuits have erupted around the country, brought by Plaintiffs who are afraid and angry at the government’s vaccine overreach.

37. To take just a single example, in a case concerning a vaccine mandate similar to the one here, active duty military personnel have recently sued the U.S. Department of Defense (“DoD”)

seeking, among other things, an injunction of a DoD mandate requiring that all members of the U.S. Armed Forces on active duty or in the Ready Reserve be compelled to receive a Covid-19 vaccine. See *Robert et al v. Austin et al*, No. 1:21-cv-02228-RM-STV, U.S. District Court for the District of Colorado. Plaintiffs in that case filed the expert affidavit of Lieutenant Colonel Theresa Long, MD, the Brigade Surgeon for the 1<sup>st</sup> Aviation Brigade Ft. Rucker, Alabama. See *Id.* at Dkt 17, ¶6.

38. Dr. Long is responsible for certifying the health, mental and physical ability, and readiness for nearly 4,000 individuals at Fort Rucker, Alabama. *Id.* at ¶8.

39. In her affidavit, Dr. Long testifies that the service members in her care are in good physical condition and are required to meet stringent medical standards, much like the Plaintiffs in this case. According to Dr. Long's testimony, the survival rate from SARS-CoV-2 in the population of the service members for whom she cares is 99.997%. *Id.*

40. Dr. Long opines in her affidavit that Covid-19 vaccines are *inferior* in the immunity they provide when compared with the immunity of an infection-recovered person; that there are numerous therapeutic agents that can significantly reduce infection and provide protection from the harmful effects of SARS-CoV-2 (See *Id.* at ¶17); that for patients in the age group and fitness level of the patients she treats, all currently available Covid-19 vaccines are riskier and more dangerous than having no vaccine at all, *even for those who have not yet had Covid-19*; that direct evidence exists that all recipients of a Covid-19 vaccine have experienced irreparable cardiovascular damage; and that the Spike protein production resulting from Covid-19 vaccines results in micro clots in recipients' cardiovascular systems that are dangerous to their health and safety. *Id.* at ¶39.

41. Plaintiffs in this matter will submit expert evidence in line with the testimony of Dr. Long.

42. More broadly, the risk-benefit analysis of Covid-19 vaccines remains in doubt, particularly among healthy individuals that are not elderly. Only days ago, in response to Pfizer's application to have the Emergency Use Authorization for its Covid-19 vaccine expanded to include administration of a third dose, or "booster" dose, in individuals 16 years of age and older, the FDA was only willing to revise the EUA as to include certain at-risk populations.

43. During the open meeting on September 17, 2021, held by the FDA's Vaccines and Related Biological Products Advisory Committee to consider the Pfizer application, various witnesses opined on the enormous escalation of adverse events reports in the VAERS<sup>1</sup> database after the administration of Covid-19 vaccines began<sup>2</sup>, the possible increase in viral mutations arising from the Covid-19 vaccine<sup>3</sup>, the low risk of hospitalization and death from Covid-19 in healthy populations<sup>4</sup>, the insufficiency of Covid-19 vaccine study sizes<sup>5</sup>, the understated risk of Myocarditis resulting from Covid-19 vaccines<sup>6</sup>, and the existence of Covid-19 vaccine risks not stated on vaccine labels.<sup>7</sup>

44. Many Plaintiffs believe, quite logically, that the risks of the vaccine in their particular circumstances simply do not justify the risks that accompany it.

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<sup>1</sup> "VAERS" refers to the Vaccine Adverse Events Reporting System co-managed by the Centers for Disease Control and Prevention and the U.S. Food and Drug Administration.

<sup>2</sup> Dr. Jessica Rose, Viral Immunologist and Computational Biologist

<sup>3</sup> Dr. Jessica Rose, Viral Immunologist and Computational Biologist

<sup>4</sup> Dr. Joseph Fraiman, Emergency Medical Physician

<sup>5</sup> Dr. Joseph Fraiman, Emergency Medical Physician

<sup>6</sup> David Wiseman, PhD

<sup>7</sup> David Wiseman, PhD

***Defendant does not have legal authority and violates Florida law  
to require vaccination of Orange County employees***

45. In Florida, the state Department of Health is granted authority by statute to “assess the public health status and needs of the state” and administer and enforce laws and rules pertaining to various matters of public health, including “control of communicable diseases, illnesses, and hazards.” Fl. Stat. 381.0011-12. While local governmental authorities, like Defendant, may promulgate ordinances and orders with respect to their local needs, such regulation and ordinance may not be inconsistent with state public health laws and rules adopted by the state DOH. Fl. Stat. 381.0016.

46. It is the law of Florida that the State Health Officer may declare public health emergencies and order isolation or quarantine, along with other measures aimed and controlling communicable diseases, including, upon a determination of danger to public health and finding of no practical method to isolate or quarantine an individual, mandated vaccination. Fl. Stat. 381.00315. This is not the purview of a local official, much less a local official without specific authority for public health decisions, as provided by the state DOH.

47. Moreover, the DOH has not issued vaccine mandates within the state of Florida. Rather, the legislature has definitively prohibited the demand by any governmental entity from requiring individuals to provide documentation pertaining to their Covid-19 vaccination status in order to “gain access to, entry upon, or service from the governmental entity’s operations in this state.” Fl. Stat. 381.0016. The state has recently confirmed a proper interpretation of this statute to include prohibition on a governmental employer demanding vaccination status documentation – such as Defendant’s required certification – in order to hire and fire public employees. See Amicus Brief filed 9/13/2021 by the Attorney General in *Darris Friend, et al v. City of Gainesville*, Case No. 2021-CA-2412 (8<sup>th</sup> Cir. Ct., Alachua County).

48. Defendant's charter does not grant Mayor Demings the authority to issue the vaccine requirement he ordered under emergency on July 28, 2021. Even under a state of emergency the mayor may establish, the mayor's authority on the substance of such orders is limited to issuing orders on enumerated "Restrictions". None of the restrictions he may impose according to Defendant's charter include coercive medical treatment or forcible vaccination pursuant to a perceived public health concern from communicable disease. See Orange County Code of Ordinances, Chapter 2, Art. IX, Sec. 2-305(b).

49. Additionally, Mayor Demings' county local state of emergency order, including extensions, expired on or around September 7 by operation of statute. Fl. Stat. 252.38(4)(c). Moreover, Florida statute requires that the vaccine requirement issued ostensibly due to the state of emergency order in July "be narrowly tailored to serve a compelling public health or safety purpose. Any such emergency order must be limited in duration, applicability, and scope in order to reduce any infringement on individual rights or liberties to the greatest extent possible." Fl Stat. 252.38(4)(b).

50. Defendant's county-wide employee vaccination requirement is not narrowly tailored to control Covid-19 infection, nor is it limited in anyway. Plaintiffs cannot "un-vaccinate" after a certain period of time, or upon the conclusion of a state of emergency.

51. Defendant's issuance of the vaccine requirement for all public employees throughout Defendant's employ, including Plaintiffs, is contrary to Florida law and an arbitrary and capricious use of government powers.

52. The Florida Constitution, Art 1, Section 23 guarantees to Floridians, including Plaintiffs, the Right of Privacy, stated clearly as "the right to be let alone and free from governmental intrusion into the person's private life...." This right has been interpreted extensively by the

Florida Supreme Court with regard to an individual's bodily autonomy: "a fundamental right to the *sole control* of his or her person." *In re Guardianship of Browning*, 568 So. 2d 4, 10 (Fla. 1990). As a right contained in the Declaration of Rights of the Florida Constitution, the right of privacy is a fundamental right. *State v. J.P.*, 907 So. 2d 1101, 1109 (Fla. 2005). Any governmental action that infringes upon this fundamental right is subject to a "strict scrutiny" standard of review. Defendant must show that its vaccine mandate, which on its face, infringes Plaintiffs' fundamental right of privacy, "is necessary to accomplish a compelling government interest, using the least restrictive means necessary to serve that interest." See *Friend, et al, v. City of Gainesville*, Order granting injunction, Case No. 01-2021-CA-2412, at 3 (8<sup>th</sup> Cir. Ct., Sept, 22, 2021), citing *State v. J.P.*, 907 So. 2d at 1109.

53. This right to control one's person includes right to refuse unwanted medical treatment within "an individual's control over or the autonomy of the intimacies of personal identity" and a "physical and psychological zone within which an individual has the right to be free from intrusion or **coercion**, whether by government or by society at large." *In re Guardianship of Browning*, 568 So. 2d 4, 10-11 (Fla. 1990) (internal quotes, cites omitted). It is well established that "compelled physical intrusion into the human body is an invasion of bodily integrity that implicates significant, constitutionally protected privacy interests." *Friend, et al.*, Order granting injunction, Case No. 01-2021-CA-2412, at 3, citing *Missouri v. McNeely*, 569 U.S. 141, 143 (2013).

54. In Alachua County, recently, the circuit court for the eighth judicial circuit applied the law with regard to Florida's constitutional right of privacy to determine a vaccine mandate on public employees by the City of Gainesville, similar to Defendants' vaccine requirement, was "presumptively unconstitutional" and the city employer would have had to demonstrate the

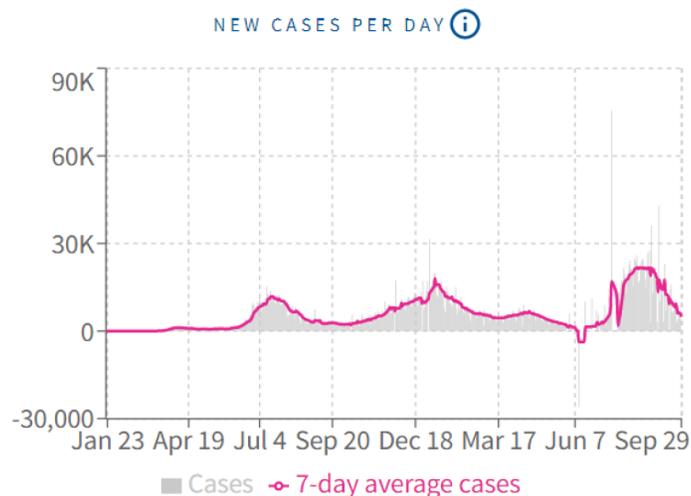
mandate was “the least restrictive means to meet a compelling government interest.” *Friend, et al.*, Order granting injunction, Case No. 01-2021-CA-2412, at 4.

55. Defendant’s vaccine requirement against Plaintiffs and all county employees similarly infringes Plaintiffs’ fundamental, constitutional right and is “presumptively unconstitutional.”

***Defendant’s vaccination requirement is  
not rationally related to its purported purpose***

56. Defendant’s purported purpose in enforcing Mayor Demings’ vaccination requirement is to control “the continued spread of Covid-19” and to “protect our employees, our families, and our residents” from illness and death from Covid-19. See **Exhibit A**.

57. However, Covid-19 infection rates are at all-time lows since the 2020 pandemic. Moreover, Orange County’s 14-day rolling positivity rate for Covid-19 is at 8.39%, down by nearly 100% from the 14-day rolling positivity rate in late July when Mayor Demings announced the vaccination requirement. Florida on the whole reported an increase in Covid-19 cases in July, with a significant decline ongoing since the end of August.



58. On August 6, 2021, CDC Director Rochelle Walensky, in an interview with CNN's Wolf Blitzer, said the vaccines will not prevent the spread of Covid-19:

“Our vaccines are working exceptionally well, they continue to work well for delta with regard to severe illness and death, they prevent it, but what they can't do anymore is prevent transmission.”

59. This sentiment is bolstered by the FDA's refusal to approve general administration for children and adults 16 and older under EUA for Pfizer's proposed “booster” or third vaccine dose. On September 17, the FDA's Vaccines and Related Biological Products Advisory Committee met in open session to consider Pfizer's application. Among other matters, Dr. Jessica Rose, Viral Immunologist and Computational Biologist, observed that data indicates a possible increase in viral mutations arising from the Covid-19 vaccine. Dr. Joseph Fraiman, Emergency Medical Physician, discussed the minimal risk of severe effects or death from Covid-19 to individuals within healthy populations, much like most Plaintiffs in this case, who must meet physical fitness standards within their positions.

60. Additionally, 60% of Plaintiffs have had symptomatic Covid-19 illness and recovered or had asymptomatic Covid-19 positive test results, showing high level of robust, natural immunity among Plaintiffs. As a sign of that immunity, none of the Plaintiffs who have had Covid-19 and recovered reported having a second, verified infection of Covid-19.

61. Before any vaccines were available prior to December 2020, OCFR personnel reported only 152 employees with a positive test for Covid-19. From February of this year until the filing of this case, with vaccination available, only 172 employees reported a positive Covid-19 test. A little less than half of the OCFR department employees report not being fully vaccinated.

62. Because the vaccines do not prevent transmission of Covid-19, Defendant's vaccination requirement is not rationally related to its objective of slowing the spread of Covid-19.

***Defendant's vaccination requirement is not the least restrictive means  
to serve the county's public health interest***

63. Defendant's vaccination requirement is not the least restrictive means to achieve the county's compelling state interest.

64. The vaccination requirement does not take into consideration at all robust, natural immunity, which 60% of Plaintiffs have. Defendant's vaccination requirement irrationally, arbitrarily, and capriciously fails to provide an exception to mandatory vaccination for persons who have recovered from Covid-19 and have acquired durable, long-lasting natural immunity.

65. The vaccination requirement "accommodations" offered as though "an exemption" to the unlawful order require only the unvaccinated employees to test weekly and be subject to corrective measures, should they fail to maintain their obligation under "accommodations," notwithstanding the fact that vaccinated employees get sick and spread Covid-19 as well.

66. Florida has also had great success with its monoclonal antibody treatment centers, which treatment is offered to Floridians at no cost. These treatments have been shown to be highly effective within 24-28 hours of treatment for those suffering symptomatic cases of Covid-19.

67. Other widely-available and safe prescription drugs, while not approved by the FDA specifically for Covid treatment, have been shown in dozens or hundreds of clinical settings globally to have prophylactic and therapeutic benefits for treating Covid-19. Defendant cannot show any rational or science-based reason why these alternative therapies would not produce similar results in a less intrusive manner than its vaccination requirement.

***Plaintiffs are suffering irreparable harms and have no adequate remedy at law***

68. Both federal courts and Florida district courts of appeal have presumed irreparable harm when fundamental rights are violated. *See, e.g., Gainesville Woman Care*, 210 So.3d at 1263-64

(holding that given the likelihood of the law’s unconstitutional impingement on privacy, there could be no adequate remedy at law for its enforcement; the law’s mere “enactment would lead to irreparable harm”; and enjoining the enforcement of a law encroaching a fundamental constitutional right would serve the public interest); *Baker v. Buckeye Cellulose Corp.*, 856 F.2d 167, 169 (11th Cir. 1988) (irreparable harm presumed in Title VII cases); *Cunningham v. Adams*, 808 F.2d 815, 822 (11th Cir. 1987) (stating that the injury suffered by the plaintiff is irreparable only if cannot be undone through monetary remedies); *Cate v. Oldham*, 707 F.2d 1176, 1188 (11th Cir. 1983) (irreparable injury presumed from violation of First Amendment rights “for even minimal periods of time”).

69. “The deprivation of personal rights is often equated with irreparable injury and serves as an appropriate predicate for injunctive relief.” *See, e.g., Branti v. Finkle*, 445 U.S. 507, 100 S.Ct. 1287, 63 L.Ed.2d 574 (1980) (injunctive relief to prevent dismissal from public employment because of political beliefs); *Robins v. Pruneyard Shopping Ctr.*, 23 Cal.3d 899, 153 Cal.Rptr. 854, 592 P.2d 341 (1979), *aff’d*, 447 U.S. 74, 100 S.Ct. 2035, 64 L.Ed.2d 741 (1980) (injunctive relief to permit solicitation in shopping center); *Bright v. Pittsburgh Musical Soc’y*, 379 Pa. 335, 108 A.2d 810 (1954) (injunctive relief to prevent blacklisting of entertainer); 17 Fla.Jur. Injunctions § 30; 43A C.J.S. Injunctions § 149; 14 C.J.S. Civil Rights Supp. § 94.” *Hitt v. N. Broward Hosp. Dist.*, 387 So. 2d 482 n. 3 (Fla. 4th DCA 1980); *Green v. Alachua County*, 2021 WL 2387983 (Fla. 1st DCA 2021) (mask mandates are presumptively unconstitutional); *Friend, et al, v. City of Gainesville*, Order granting injunction, Case No. 01-2021-CA-2412, at 4 (8<sup>th</sup> Cir. Ct., Sept, 22, 2021) (“The City’s Vaccine Mandate...is ‘presumptively unconstitutional.’”).

70. Courts have also found that no adequate remedy at law exists when constitutional rights are infringed. *See Tucker v. Resha*, 634 So.2d 756, 759 (Fla. 1st DCA 1994) (finding no legislative

waiver of sovereign immunity as to the privacy provision of the Florida Constitution and therefore concluding that money damages are not available for violations of that right); *Thompson v. Planning Comm'n of Jacksonville*, 464 So.2d 1231, 1237 (Fla. 1st DCA 1985) (where calculation of damages is speculative, legal remedy is inadequate); *Gainesville Woman Care, LLC v. State*, 210 So. 3d 1243, 1263–64 (Fla. 2017).

71. Defendant has violated and continues to violate many statutory laws, its own ordinances, and constitutional law with utter disregard for its lawlessness. While impact bargaining is ongoing, the resulting proposal from the county does not rescind the unlawful mandate but seeks to impose on Plaintiffs a voluntary agreement to discriminatory action based on vaccination status. Moreover, proceedings before the Public Employees Relations Commission have not requested an injunction pending the outcome of the local union's petition, and September 30 is the deadline imposed by Defendant.

72. The Plaintiffs are suffering irreparable harms for which there is no adequate remedy at law.

***Plaintiffs have substantial likelihood of success on the merits***

73. Plaintiffs are substantially likely to prevail on the merits because Defendant cannot even show that its vaccination requirement meets rational basis. The mandatory employment condition violates multiple Florida statutes. It certainly cannot meet its burden to show the vaccination requirement satisfies the higher strict scrutiny standard, which it is required to do because the requirement invades the Plaintiffs' fundamental rights of privacy and bodily autonomy.

74. In the Circuit Court of the 8<sup>th</sup> Judicial District in and for Alachua county, the court issued an injunction against the City of Gainesville for a vaccine mandate substantially similar to Defendant's imposed vaccination requirement. See *Friend, et al, v. City of Gainesville*, Order

granting injunction, Case No. 01-2021-CA-2412, at 4. The court found the vaccine mandate in that case “facially interferes with its employees’ right to refuse unwanted medical treatments and/or procedures, implicated Plaintiffs’ fundamental right to privacy, and is ‘presumptively unconstitutional.’” *Id.* The city did not put forward any evidence to meet its burden of proof under strict scrutiny.

75. Defendant here is unlikely to meet its burden regarding the vaccination requirement, and Plaintiffs are substantially likely to prevail on the merits of their claims.

***Public Interest would be served by enjoining the vaccine requirement***

76. The public has an interest in an operational County government that is not catastrophically impaired.

77. The public interest favors protection of citizens’ constitutional rights and liberties.

78. There would be no legitimate cognizable harm to Defendant Orange County if the vaccination requirement were enjoined.

79. On the other hand, Plaintiffs would experience devastating, irreparable harm if the vaccination requirement is not enjoined.

80. Given the relative balancing of harms between the Plaintiffs and the county, the public interest favors preserving the status quo while the issue is determined.

***The Bond Requirement Should be Waived***

81. No bond is necessary here, and the public interest lies in dispensing with the bond. Fla. R. Civ. Pro. 1.610(b).

**COUNT I**  
**Temporary Injunctive Relief**

82. Paragraphs 1 - 81 are incorporated by reference herein.

83. As stated herein, Plaintiffs will be irreparably harmed absent injunctive relief, Plaintiffs lack any adequate remedy at law, there is a substantial likelihood that Plaintiffs will prevail on the merits, and an injunction will not disserve any public interest.

WHEREFORE, Plaintiffs request that this Court enter a temporary injunction prohibiting the Defendant Orange County from enforcing its vaccination requirement; including all related disciplinary proceedings and discriminatory “accommodations”; reverse any disciplinary effect up to and including termination that may be implemented by Defendant under its vaccination requirement up to the date of the Court’s injunction order; award Plaintiffs their attorney’s fees and costs; and order all such further relief as the Court deems necessary and just.

**COUNT II**  
**Permanent Injunctive Relief**

84. Paragraphs 1 - 83 are incorporated by reference herein.

85. As stated herein, Plaintiffs will be irreparably harmed absent injunctive relief, Plaintiffs lack any adequate remedy at law, there is a substantial likelihood that Plaintiffs will prevail on the merits, and an injunction will not disserve any public interest.

WHEREFORE, Plaintiffs request that this Court enter a temporary injunction prohibiting the Defendant Orange County from enforcing its vaccination requirement; including all related disciplinary proceedings and discriminatory “accommodations”; reverse any disciplinary effect up to and including termination that may be implemented by Defendant under its vaccination requirement up to the date of the Court’s injunction order; award Plaintiffs their attorney’s fees and costs; and order all such further relief as the Court deems necessary and just.

**COUNT III**  
**Declaratory Judgment – Right to Privacy**

86. Paragraphs 1 - 85 are incorporated by reference herein.

87. Defendant's vaccination requirement violates the Plaintiffs' constitutional right to privacy and bodily autonomy guaranteed by the Florida Constitution, Article I, Section 23.

88. There is a *bona fide*, actual, present and practical need for the declaration.

89. The declaration deals with a present, ascertained or ascertainable state of facts or present controversy as to whether the Defendant's vaccination requirement violates the Plaintiffs' constitutional liberties.

90. An immunity, power, privilege or right of Plaintiffs is dependent on the facts or the law applicable to the facts.

91. Plaintiffs and Defendant have, or reasonably may have, an actual, present, adverse and antagonistic interest in the subject matter, either in law or in fact.

92. The antagonistic and adverse interests are all properly before the Court.

93. The relief sought is not merely the giving of legal advice or the answer to questions propounded from curiosity.

WHEREFORE, Plaintiffs seek a declaratory judgment stating that the Defendant Orange County's vaccination requirement violates Plaintiffs' fundamental rights to privacy; award Plaintiffs their attorney's fees and costs; and order all such further relief as the Court deems necessary and just.

**COUNT IV**  
**Declaratory judgment – Defendant's vaccine requirement**  
**Violates Due Process and Equal Protection**

94. Paragraphs 1 - 93 are incorporated by reference herein.

95. Defendant's vaccination requirement violates the Plaintiffs' constitutional rights to due process and equal protection.

96. "Under traditional equal protection analysis, a legislative classification must be sustained, if the classification itself is rationally related to a legitimate governmental interest." *U. S. Dept. of Agric. v. Moreno*, 413 U.S. 528, 533 (1973) (emphasis added).

97. The Florida Constitution's Declaration of Rights, Article 1, is the primary source of Florida's equal protection inhibition. It provides that "all men are equal before the law . . . ,". *Ga. So. & Fla. Ry. v. Seven-up Bottling Co.*, 175 So.2d 39, 40 (Fla. 1965), *quoting from Davis v. Fla. Power Co.*, 64 Fla. 246, 60 So. 759 (1913). Our Florida Charter requires there be "some just relation to, or reasonable basis in, essential difference of conditions and circumstances with reference to the subject regulated, and [the statute] should not merely be arbitrary . . . ." *Eslin v. Collins*, 108 So.2d 889, 891 (Fla. 1959).

98. Because the vaccination requirement (a) does not control the spread of Covid-19, (b) does not reduce Plaintiffs' morbidity or mortality in any significant way, and (c) discriminates unfairly against persons who have recovered from the virus and have natural immunities, it is not rationally related to a legitimate governmental interest, but rather is arbitrary and capricious.

99. Therefore, Defendant's vaccination requirement illegally intrudes upon Plaintiffs' fundamental constitutional rights of due process and equal protection.

WHEREFORE, Plaintiffs seek a declaratory judgment stating that the Defendant Orange County's vaccination requirement violates Plaintiffs' fundamental rights of due process and equal protection; award Plaintiffs their attorney's fees and costs; and order all such further relief as the Court deems necessary and just.

## DEMAND FOR JURY TRIAL

Plaintiffs demand a jury trial on all issues so triable.

## CONCLUSION

Plaintiffs have served and sacrificed personally for their community within Orange County. Even when a global pandemic of a highly communicable virus, Sars-CoV-2, or “Covid-19” threatened illness and even death last year, Plaintiffs continued to serve with distinction. And yet, now they are faced with an unlawful, unconstitutional, and highly invasive requirement to maintain their employment, together with relentless vitriolic rhetoric by Defendant’s lawless authorities. This lawlessness must end immediately.

Dated this 30th day of September, 2021.

Respectfully submitted,

    /s/ Rachel Rodriguez      
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