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15 BERARDINELLI, JR. and PROTECTION FOR THE
16 EDUCATIONAL RIGHTS OF KIDS

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF LOS ANGELES**
19 **CENTRAL DIVISION**

20 JOSH SATTLEY, an individual; ETTORE
21 BERARDINELLI, JR., an individual; and
22 PROTECTION FOR THE
23 EDUCATIONAL RIGHTS OF KIDS, a
24 California 501(c)(3) non-profit corporation,

25 Plaintiffs,

26 vs.

27 MUNTU DAVIS, an individual acting in
28 his official capacity as the Health Officer of
Los Angeles County; COUNTY OF LOS
ANGELES, a municipal entity; CITY OF
BEVERLY HILLS, a municipal entity;
JOHN MIRISCH, an individual; and DOES
1 through 10, inclusive,

Defendants.

Case No.: 21STCV45066

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF AND DAMAGES
BASED ON VIOLATIONS OF CIVIL
RIGHTS**

DEMAND FOR JURY TRIAL

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1 Plaintiffs Josh Sattley, Ettore Berardinelli, Jr., and Protection for the Educational Rights of
2 Kids (“PERK”) allege as follows:

3 **INTRODUCTION**

4 1. In early 2020, the world discovered a novel coronavirus, Covid-19. Governments
5 responded with the most draconian restrictions in modern history. They closed schools and shut
6 down industries. They banned travel and prosecuted churches. They decided which activities were
7 “essential” and which weren’t.

8 2. Over time, life started returning to normal, as everybody expected. In the meantime,
9 several experimental shots were developed to help limit the effects of Covid-19. The shots,
10 developed under the Trump Administration, were so controversial that many Democratic politicians
11 would not commit to taking them. They also promised not to force them on the American people.
12 That was no surprise, as America has not seen broad vaccine mandates for adults since the early
13 twentieth century, when infectious diseases were the world’s leading cause of death.

14 3. But the vaccine debate became increasingly politicized during 2021. Although it was
15 never clear that the shots were doing anything—federal officials admitted that vaccinated people
16 could still contract and transmit Covid-19—some politicians decided that the pandemic would not
17 end until every American got the shot.

18 4. Defendants County of Los Angeles and the City of Beverly Hills joined the chorus.
19 Last August, Muntu Davis, the unelected health officer of Los Angeles County, issued an order
20 requiring that all health care workers in Los Angeles County get the Covid-19 shot (the “County
21 Health Mandate”). The County Health Mandate applies to hundreds of thousands of people in Los
22 Angeles County. Most of them do not work for the government. Many of them are not typically
23 thought of as “health care” workers. For example, because of the licenses they hold, the mandate
24 applies to all first responders, including firefighters. The mandate applies to both government and
25 private employees.

26 5. Some employers chose not to comply with the County Health Mandate. Others said
27 they would comply but were liberal in recognizing requests for religious and medical exemptions, as
28 the mandate envisions. Not the City of Beverly Hills, though. It wants universal vaccination. It

1 subjected firefighters who requested a religious exemption—like Mr. Sattley and Mr. Berardinelli—
2 to cross-examination designed to undermine their credibility and to pressure them, under threat of
3 prosecution, to give up their religious freedom and get the shot. The City was not shy about that.
4 One city official, Defendant John Mirisch, admitted it in a viral social media post that accused
5 firefighters like Mr. Sattley and Mr. Berardinelli of lying and wanting to kill people. Mr. Mirisch’s
6 comments were so controversial that, after he made them, the City relented and granted temporary
7 religious exemptions to some firefighters.

8 6. The City has also punished one Beverly Hills firefighter, Mr. Sattley, who objected to
9 the vaccine mandate by putting him on unpaid leave. Mr. Sattley has not worked or been paid for
10 months. That is not proper. Like all public employees, Beverly Hills firefighters have a property
11 interest in their employment. The City cannot deprive them of that interest without providing them
12 with due process of law as required by the Supreme Court’s decision in *Skelly v. State Personnel*
13 *Board*. The City has failed and refuses to comply with Mr. Sattley’s *Skelly* rights, much less the
14 broader rights he has under the state law Firefighter Bill of Rights.

15 7. These actions are blatantly unlawful. Muntu Davis does not have the authority to
16 order thousands of workers to get a medical treatment. The City does not have that power either.
17 Even if they do, they must offer religious exemptions to the forced treatment to anybody who
18 requests one. The government cannot discriminate among religions and cannot second-guess the
19 sincerity of one’s religious beliefs. Those actions constitute religious discrimination and violate the
20 firefighters’ rights under state and federal law.

21 8. Furthermore, like all Californians, firefighters have a right to bodily integrity and a
22 right to refuse medical treatment, both of which the County Vaccine Mandate and the City’s actions
23 violate. They also have a right to informational privacy. Defendants violated those rights.

24 9. Plaintiffs bring this action to hold Defendants accountable for their unlawful
25 discrimination and invasion of the privacy rights of Beverly Hills firefighters.

26 **PARTIES, JURISDICTION AND VENUE**

27 10. Plaintiff Josh Sattley is an individual who resides and works in Los Angeles County.

28 11. Plaintiff Ettore Berardinelli, Jr., is an individual who resides in Ventura County and

1 works in Los Angeles County.

2 12. Plaintiffs Sattley and Berardinelli are referred to collectively as the “Individual
3 Plaintiffs.”

4 13. Plaintiff PERK is a 501(c)(3) non-profit organization formed under the laws of the
5 State of California that advocates for civil rights issues, bodily autonomy, medical freedom and other
6 rights. PERK has dedicated considerable resources to advocating for individual rights during the
7 Covid-19 pandemic and thus has a beneficial interest in the relief sought in this action.

8 14. Defendant Muntu Davis is sued in his official capacity as the Health Officer of Los
9 Angeles County. He acted under color of law when engaging in the actions alleged in this
10 Complaint.

11 15. The County of Los Angeles is a municipal organization formed under the laws of the
12 State of California. On information and belief, Defendant Davis issued the County Vaccine Mandate
13 pursuant to powers delegated to him by the County’s Board of Supervisors. Dr. Davis is also a final
14 policymaker with respect to public health policy. Therefore, the Covid Vaccine Mandate represents
15 an official policy of Los Angeles County.

16 16. Defendants Davis and the County are referred to as the “County Defendants.”

17 17. The City of Beverly Hills is a municipal organization formed under the laws of the
18 State of California.

19 18. Defendant John Mirisch is an individual who resides in Los Angeles County. He is
20 sued in his individual capacity. He acted under color of law when engaging in the actions alleged in
21 this Complaint and thus can be held liable under 42 U.S.C. § 1983.

22 19. Defendant DOES 1 through 10 are individuals who at all relevant times were
23 officials, agents or employees of the County or the City and who bear some responsibility for the
24 actions alleged in this Complaint. Their identities are not yet known and thus they are sued
25 fictitiously but Plaintiffs will amend the Complaint after they discover them.

26 20. Venue exists in Los Angeles County under sections 393(b) and 394(a) of the Code of
27 Civil Procedure because the parties both reside here and because the mandate’s effects will be felt
28 here.

FACTUAL ALLEGATIONS

1
2 21. In early 2020, health officials discovered a novel coronavirus circulating in Wuhan,
3 China. They named the virus “Covid-19.”

4 22. Though nobody knew it at the time, the Covid-19 pandemic would lead to the greatest
5 restrictions on liberty in American history. Many of the restrictions started in California, including
6 the first statewide “lockdown” and unprecedented mass closures of businesses and criminalization of
7 ordinary activities that unelected health officials deemed too dangerous.

8 23. During 2020, at the urging of then President Donald Trump, several pharmaceutical
9 companies began developing experimental treatments to mitigate the effects of Covid-19 and,
10 potentially, reduce its spread. Although these treatments were called “vaccines” they do not meet the
11 definition of a vaccine under federal law. They are experimental gene modification therapies,
12 something more akin to a medical treatment than a vaccine.

13 24. The Covid-19 shots were so controversial that then presidential candidate Joe Biden
14 would not commit to receiving one. Then vice presidential candidate Kamala Harris said she would
15 not take them. Governor Gavin Newsom also questioned the treatments, saying he did not trust the
16 Trump Administration and would review the treatments independently.

17 25. Then Mr. Biden won the presidency and the tune changed. Still, President-elect Biden
18 said he would not mandate that Americans get the Covid shots, three of which—developed by
19 Pfizer, Moderna and Johnson & Johnson—had been approved for emergency use by the FDA.

20 26. By the summer of 2021, tens of millions of Americans had chosen to take the Covid-
21 19 therapies, including more than half of adults in California. They did so by choice not by coercion.
22 But Covid-19 had not disappeared. That should not have surprised anyone. Public health officials
23 have repeatedly said that eliminating a respiratory virus is impossible once it begins spreading in the
24 community. According to one prominent epidemiologist, speaking to *Nature* magazine: “Eradicating
25 this virus right now from the world is a lot like trying to plan the construction of a stepping-stone
26 pathway to the Moon. It’s unrealistic.”

27 27. Thus, anyone can still contract and spread the Covid-19 virus. Like the flu, Covid-19
28 is becoming endemic. The world will have to learn to live with it—as we live with many other

1 pathogens.

2 28. That includes people who have received one of the Covid-19 shots. Although the
3 shots have been declared a miracle by many, the Department of Health and Human Services’ Centers
4 for Medicare and Medicaid Services recently admitted that “the duration of vaccine effectiveness in
5 preventing COVID-19, reducing disease severity, reducing the risk of death, and the effectiveness of
6 the vaccine to prevent disease transmission by those vaccinated are not currently known.”

7 29. Despite this evidence, many American politicians have decided that injecting
8 everybody with one of the Covid-19 shots is the only way to end the pandemic.

9 30. To that end, on August 12, 2021, Defendant Davis issued the County Health
10 Mandate. A true and correct copy of it is attached hereto as **Exhibit “A.”**

11 31. Davis issued this mandate pursuant to his authority under sections 101040 and
12 120175 of the California Health and Safety Code. Those statutes give local health officials the power
13 to things that “may be necessary” to control the spread of an infectious disease during a state of
14 emergency.

15 32. The County Health Mandate applies broadly to anybody in the County who provides
16 health related services, including firefighters who work in Beverly Hills. Violating the mandate is a
17 misdemeanor that can be punished by a fine and jail time.

18 33. Although the County Health Mandate states that “[v]accination against COVID-19 is
19 the most effective means of preventing infection with the COVID-19 virus,” Davis did not base that
20 statement on any evidence or reasoned analysis. Instead, on information and belief, he simply
21 decided to mandate the Covid-19 shot and then went searching for data to support his predetermined
22 decision to mandate it. Davis also made no effort to determine, independently, whether the Covid-19
23 shots prevent infection much less whether they are necessary, especially considering their potential
24 short- and long-term side effects. Indeed, Davis did not consider the costs of the mandate at all.

25 34. The mandate states that an individual “may be exempt from the vaccination
26 requirements under section (1) only upon providing ... a declination form, signed by the individual
27 stating either of the following: (1) the worker is declining vaccination based on Religious Beliefs, or
28 (2) the worker is excused from receiving any COVID-19 vaccine due to Qualifying Medical

1 Reasons.” Individuals who request exemptions must follow certain testing and mask requirements.
2 The mandate does not define “Religious Beliefs” and does not provide any process to test the
3 sincerity of an individual’s religious objection to the Covid-19 shot.

4 35. The mandate requires that employers maintain records of their employees’
5 vaccination and exemption status, as well as their Covid test results (if applicable).

6 36. Although ignoring the County Health Mandate is a misdemeanor, the County has
7 made little, if any, effort to enforce it or to punish anybody for not complying. In fact, on
8 information and belief, numerous health care providers have not complied with the mandate or have
9 freely given religious and medical exemptions to people who seek them.

10 37. Not the City of Beverly Hills. To the contrary, despite having no idea what evidence,
11 if any, the mandate was based on, and claiming that it is only following the mandate because its
12 “hands are tied” by the County order, the City has demanded universal compliance with the County
13 Health Mandate and it has imposed harsh restrictions on people who seek religious exemptions,
14 contrary to the mandate’s terms.

15 38. For example, on or about September 28, 2021, the City implemented an interrogation
16 process for employees who seek religious objections. The Beverly Hills Firefighters’ Association
17 (the “Fire Union”), among others, opposed this decision but the City pressed forward anyway,
18 stating that an exemption request submitted by any individual who did not participate in the
19 interrogation process would be automatically denied.

20 39. Twenty-three interrogations of Beverly Hills firefighters were scheduled. They took
21 place between September 28 and 30. Under pressure, one firefighter withdrew his request and
22 submitted a request for a medical exemption instead. The City denied eight requests for religious
23 objections and granted the rest, but only for a 30-day period which it has extended periodically.
24 After being denied religious exemptions, several firefighters relented and, against their will, got the
25 Covid-19 shot. One firefighter, Mr. Sattley, refused and was immediately put on unpaid leave while
26 the City tries to fire him.

27 40. The City did not give Mr. Sattley notice and an opportunity to challenge his
28 suspension, as required under the Supreme Court’s *Skelly* decision and the Firefighter Bill of Rights.

1 He has not been paid since September 2021 but still has not received notice or a meaningful
2 opportunity to respond.

3 41. Mr. Berardinelli received one of the religious exemptions. But it was only temporary
4 and has been under constant review by the City. Furthermore, the City has retaliated against Mr.
5 Berardinelli for seeking the religious exemption. For example, while extending his religious
6 exemption this fall, the City assigned Mr. Berardinelli (who recovered from a Covid-19 infection
7 and thus has natural immunity) to a different job that receives far fewer calls. He is not allowed to
8 respond to certain calls. He is constantly being discriminated against because of his religious views
9 and deprived of opportunities to advance in his career.

10 42. Why has Beverly Hills taken such an aggressive stance, when other agencies across
11 the County have done otherwise? Defendant Mirisch made that clear on September 30 when he took
12 to social media to criticize the firefighters. Among other things, Councilman Mirisch, who is not a
13 lawyer (he used to be a studio executive), said “[v]accine mandates are legal and they serve to
14 protect both the employees and our Community members.” A true and correct copy of Councilman
15 Mirisch’s missive, which he published on his Twitter page, is attached hereto as **Exhibit “B.”**

16 43. Councilman Mirisch singled out the firefighters who submitted requests for religious
17 exemptions of being “anti-vaxxer[s]” who were trying to “get around the County mandate” He
18 said these firefighters would be subject to cross-examination and he demanded that “if any of them
19 are caught perjuring themselves in their attempt to circumvent the vaccination mandate, then there
20 should be serious consequences.”

21 44. In case that was not clear enough, Mirisch (who created the City’s “Kindness Task
22 Force” last year) added: “In many police departments, there is a well-known axiom: ‘You lie, you
23 die.’”

24 45. Councilman Mirisch’s comments sparked controversy. This was not his first brush
25 with it. In May 2020, Mirisch cast the lone vote against allowing elective surgeries to resume in
26 Beverly Hills, saying it “would be extremely irresponsible of us and it would send a terrible message
27 to the world if the first thing we do is start allowing boob and butt jobs to happen again.” He added:
28 “No one needs Botox in a pandemic.” One councilman said Mirisch’s comments “were destructive

1 to the city and the council and ultimately, reprehensible”

2 46. Sensing the backlash from Mirisch’s attack on firefighters who were exercising their
3 First Amendment right to seek a religious exemption, the City granted the exemptions requested by
4 the individuals it questioned that day.

5 47. These actions were disturbing and are unlawful. The City had to honor any request
6 for a religious exemption from the Covid-19 shot. The First Amendment to the United States
7 Constitution requires that. Even the County Health Mandate requires that. Questioning the sincerity
8 of one’s religious beliefs to deny a request for an exemption to the mandate constitutes religious
9 discrimination and violates federal and state civil rights laws. It also violates the mandate itself.

10 48. This should not be a political issue. There is no need for everybody to get the Covid-
11 19 shot, even if some politicians demand it. Furthermore, the Beverly Hills firefighters have a right
12 to privacy and a right to object to compulsory medical treatment based on their sincere religious
13 beliefs. Lawsuits decided a hundred years ago do not change that.

14 49. It is time for a court to apply the law evenhandedly, to recognize that human rights
15 have evolved since the early twentieth century and that medicine has improved so much that forced
16 medical treatments are no longer necessary or appropriate to protect public health. Moreover, the
17 government should not be in the business of cross-examining people about their religious beliefs.

18 50. Plaintiffs bring this action to protect those rights and to seek damages for the City’s
19 unlawful discrimination against their religious beliefs and for Councilman Mirisch’s retaliatory
20 actions.

21 **FIRST CAUSE OF ACTION**

22 **(Declaratory and Injunctive Relief against County Defendants)**

23 51. Plaintiffs incorporates the preceding paragraphs of this Complaint as though set forth
24 fully herein.

25 52. The California Emergency Services Act, which is codified in sections 8550 *et seq.* of
26 the California Government Code, gives the Governor and local officials certain powers during a state
27 of emergency. Sections 8630 *et seq.* govern the existence of a local emergency. The law requires that
28 local officials “review the need for continuing the local emergency at least once every 60 days until

1 the governing body terminates the local emergency.” Cal. Gov’t Code § 8630(c). The emergency
2 cannot last forever, though. “The governing body shall proclaim the termination of the local
3 emergency at the earliest possible date that conditions warrant.” *Id.* § 8630(d).

4 53. Even during a state of emergency, local officials do not have unlimited authority.
5 They “may promulgate orders and regulations necessary to provide for the protection of life and
6 property,” in the affected area. *Id.* § 8634. The Health and Safety Code contains similar rules that
7 give local health officials authority to take emergency actions that are necessary to respond to the
8 spread of an infectious disease.

9 54. Plaintiffs contend that the County Health Mandate exceeds the authority that the
10 County Defendants have under state law. The County does not have the power as an employer to
11 order that thousands of people across the County—some who work for public employers and some
12 private—take a certain medical treatment against their will. Indeed, although the County interprets
13 its emergency government powers broadly, it has a duty under state law to narrowly tailor any
14 government action to protect individual rights. That requires that any action be necessary to
15 accomplish the government’s interest and the least restrictive means of accomplishing that interest.
16 The County Defendants made no attempt to narrowly tailor the vaccine mandate. Thus, even if the
17 County Defendants have the power to issue such a vaccine mandate, the mandate exceeds their
18 powers because it is not narrowly tailored.

19 55. Plaintiffs also contend that Davis’ adoption of the County Health Mandate was
20 arbitrary and capricious because he failed to consider evidence of the Covid-19 shots’ effectiveness
21 and necessity as well as the costs of the mandate, including the short- and long-term side effects that
22 have been linked to them. Indeed, Davis refused to consider any evidence that undermined his pre-
23 determined judgment to require the shots, a quintessentially arbitrary and capricious action.

24 56. On information and belief, the County Defendants contend that they do have the
25 power to issue the County Health Mandate and contend that the mandate does not have to be
26 narrowly tailored. They also contend, in the alternative, that the vaccine mandate is narrowly tailored
27 to fulfill a compelling government interest and that Defendant Davis did not act arbitrarily and
28 capriciously in issuing it.

1 57. Plaintiffs desire a judicial declaration that the County Health Mandate exceeds the
2 County Defendants' powers under state law or, in the alternative, that the law giving them such
3 power is unconstitutional because granting an unelected health official these powers without
4 sufficient standards to guide his exercise of discretion violates the non-delegation doctrine. Plaintiffs
5 also seek an order that Defendant Davis acted arbitrarily and capriciously in adopting the mandate.

6 58. A judicial determination of these issues is necessary and appropriate because such a
7 declaration will clarify the parties' rights and obligations, permit them to have certainty regarding
8 those rights and potential liability, and avoid a multiplicity of actions.

9 59. The County Defendants' actions have harmed Plaintiffs and those they represent, as
10 alleged above.

11 60. Plaintiffs have no adequate remedy at law and will suffer irreparable harm if the
12 Court does not enjoin the County Defendants from enforcing the unlawful mandate. Thus, Plaintiffs
13 seek preliminary and permanent injunctive relief for such an order.

14 61. This action serves the public interest, justifying an award of attorneys' fees under
15 section 1021.5 of the California Code of Civil Procedure.

16 **SECOND CAUSE OF ACTION**

17 **(Declaratory and Injunctive Relief against City of Beverly Hills)**

18 62. Plaintiffs incorporates the preceding paragraphs of this Complaint as though set forth
19 fully herein.

20 63. Plaintiffs contend that the County Defendants do not have the authority under state
21 law to issue the County Health Mandate. Even if they do have such authority, the County Health
22 Mandate requires that employers recognize any written request for a religious exemption to the
23 Covid-19 shot. The County Health Mandate does not allow employers to question the sincerity of an
24 individual's religious objection to the Covid-19 shot, especially after an examination taken under
25 oath, as such a practice plainly violates the First Amendment.

26 64. On information and belief, the City contends that the County Health Mandate does
27 allow it to cross-examine city employees like the Individual Plaintiffs to question the sincerity of
28 their objection to the Covid-19 shot.

1 65. Plaintiffs desire a judicial declaration that the City’s practice of cross-examining
2 individuals who request a religious exemption to the County Health Mandate violates the County
3 Health Mandate and the First Amendment to the United States Constitution, among other laws that
4 protect religious freedom.

5 66. A judicial determination of these issues is necessary and appropriate because such a
6 declaration will clarify the parties’ rights and obligations, permit them to have certainty regarding
7 those rights and potential liability, and avoid a multiplicity of actions.

8 67. The City’s actions have harmed Plaintiffs and those they represent, as alleged above.

9 68. Plaintiffs have no adequate remedy at law and will suffer irreparable harm if the
10 Court does not enjoin the County from enforcing the unlawful mandate. Thus, Plaintiffs seek
11 preliminary and permanent injunctive relief for such an order.

12 69. This action serves the public interest, justifying an award of attorneys’ fees under
13 section 1021.5 of the California Code of Civil Procedure.

14 **THIRD CAUSE OF ACTION**

15 **(Declaratory and Injunctive Relief, Due Process/Skelly, against City of Beverly Hills)**

16 70. Plaintiffs incorporates the preceding paragraphs of this Complaint as though set forth
17 fully herein.

18 71. Plaintiffs contend that the City of Beverly Hills does not have the power to put city
19 employees who do not follow the County Health Mandate on indefinite, unpaid leave. The City must
20 provide any employee who does not comply with the mandate with his or her *Skelly* rights, including
21 notice and an opportunity to challenge any adverse employment action. This process must be fair. It
22 must include an opportunity to gather evidence. And the City’s review of the any adverse
23 employment action must be done by an impartial third party.

24 72. The City has not provided *Skelly* rights to city employees who have not complied
25 with the County Health Mandate or received an exemption, including Mr. Sattley.

26 73. Plaintiffs also contend that the City cannot take any adverse employment action
27 against city firefighters without providing them with the rights they have under the state law
28 Firefighter Bill of Rights. These rights go beyond the minimum due process rights that all public

1 employees have under *Skelly*.

2 74. On information and belief, the City contends that it does not have to comply with
3 *Skelly* or the Firefighter Bill of Rights before taking adverse employment action against city
4 employees, including firefighters like Mr. Sattley.

5 75. Plaintiffs desire a judicial declaration that the City cannot take any adverse
6 employment action against a city employee without providing that employee with due process under
7 *Skelly*. Plaintiffs also seek a judicial declaration that the City cannot take any adverse employment
8 action against a city firefighter without providing that employee both with his or her *Skelly* rights
9 and by following the procedures outline in the Firefighter Bill of Rights.

10 76. A judicial determination of these issues is necessary and appropriate because such a
11 declaration will clarify the parties' rights and obligations, permit them to have certainty regarding
12 those rights and potential liability, and avoid a multiplicity of actions.

13 77. The City's actions have harmed Plaintiffs and those they represent, including Mr.
14 Sattley, as alleged above.

15 78. Plaintiffs have no adequate remedy at law and will suffer irreparable harm if the
16 Court does not enjoin the County from enforcing the unlawful mandate. Thus, Plaintiffs seek
17 preliminary and permanent injunctive relief for such an order.

18 79. This action serves the public interest, justifying an award of attorneys' fees under
19 section 1021.5 of the California Code of Civil Procedure.

20 **FOURTH CAUSE OF ACTION**

21 **(Violation of Cal. Constitution against City of Beverly Hills and County Defendants)**

22 80. Plaintiffs incorporates the preceding paragraphs of this Complaint as though set forth
23 fully herein.

24 81. The Individual Plaintiffs are employed by the City of Beverly Hills. They have not
25 taken the Covid-19 shot and have not complied with the County Health Mandate. They object to the
26 forced medical treatment and object to being compelled to turn over their private medical
27 information to the City and County as a condition of their employment. They also object to being
28 forced to disclose their confidential medical information to the County and the City.

1 82. Individuals have a right to privacy under the California Constitution. This state law
2 privacy right, which was added by voters in 1972, is far broader than the right to privacy (if any) that
3 exists under the federal Constitution. It is the broadest privacy right in America and has been
4 interpreted by the California Supreme Court to protect both the right to informational privacy and to
5 bodily integrity.

6 83. Individuals have a legally protected privacy interest in their bodily integrity and their
7 private medical information. Their expectation of privacy is reasonable. The County Health Mandate
8 constitutes a serious invasion of those privacy rights, as alleged above.

9 84. Although the City and County may argue that the vaccine mandate serves a
10 compelling interest, there are feasible and effective alternatives that have a lesser impact on privacy
11 interests.

12 85. On information and belief, the City and County contend that the County Health
13 Mandate does not violate the privacy rights of County employees or satisfies scrutiny under the
14 California Constitution.

15 86. The Individual Plaintiffs desire a judicial declaration that the County Health Mandate
16 is facially unconstitutional because it violates their right to privacy under the California Constitution.

17 87. A judicial determination of these issues is necessary and appropriate because such a
18 declaration will clarify the parties' rights and obligations, permit them to have certainty regarding
19 those rights and potential liability, and avoid a multiplicity of actions.

20 88. Defendants' actions have harmed the Individual Plaintiffs and other individuals who
21 work in health care jobs in the County, as alleged above.

22 89. Plaintiffs have no adequate remedy at law and will suffer irreparable harm if the
23 Court does not declare the vaccine mandate unconstitutional. Thus, they seek preliminary and
24 permanent injunctive relief enjoining the County from enforcing the mandate.

25 90. This action serves the public interest, justifying an award of attorneys' fees under
26 section 1021.5 of the California Code of Civil Procedure.

27 **FIFTH CAUSE OF ACTION**

28 **(Violation of 42 U.S.C. § 1983 by Individual Plaintiffs against Mirisch)**

1 91. Plaintiffs incorporate the preceding paragraphs of this Complaint as though set forth
2 fully herein.

3 92. When seeking a religious exemption to the County Health Mandate, the Individual
4 Plaintiffs were engaging in activity that is protected by the First Amendment.

5 93. Defendant Mirisch retaliated against the Individual Plaintiffs for exercising their First
6 Amendment rights when, as alleged above, he publicly accused them, and other city employees who
7 sought religious exemptions, of lying and of being “anti-vaxxers” who want to circumvent the
8 County Health Mandate. Mirisch acted under color of law when making those comments.

9 94. A person of ordinary firmness would be chilled from continuing to exercise his First
10 Amendment rights if he were publicly accused of lying and of wanting to kill people by a powerful
11 elected official (a former mayor). Defendant Mirisch posted his social media message with the intent
12 of deterring this First Amendment-protected activity and to pressure the Individual Plaintiffs into
13 withdrawing their requests for religious exemptions to the County Health Mandate.

14 95. As a result of Defendant Mirisch’s actions, the Individual Plaintiffs suffered damages
15 in an amount to be proven at trial. This harm includes suffering adverse employment actions as a
16 result of their engaging in First Amendment-protected activity, as alleged above.

17 96. Mirisch’s actions were a proximate and actual cause of these damages.

18 97. This action serves the public interest, justifying an award of attorneys' fees under
19 section 1021.5 of the California Code of Civil Procedure and 42 U.S.C. § 1988.

20 **PRAYER FOR RELIEF**

21 Wherefore, Plaintiffs pray for relief as follows:

22 1. For an order declaring that the County Health Mandate exceeds the Defendants’
23 authority under law or is void because Defendant Davis acted arbitrarily and capriciously in issuing
24 it;

25 2. For an order declaring that the City of Beverly Hills has no authority to question
26 requests for religious exemptions to the County Health Mandate;

27 3. For an order declaring that the City’s refusal to give city employees a right to
28 challenge adverse employment action before it is taken violates their *Skelly* rights and, in the case of

1 firefighters, violates their rights under the Firefighter Bill of Rights;

2 4. For an order declaring that the County Health Mandate and the Defendants' use of
3 Fulgent to store confidential medical information violate individuals' right to privacy under the
4 California Constitution;

5 5. For compensatory damages in an amount to be proven at trial from Defendant
6 Mirisch;

7 6. For costs and attorneys' fees under section 1021.5 of the California Code of Civil
8 Procedure; and

9 7. For such other relief that the Court determines is just and proper.

JW HOWARD/ ATTORNEYS, LTD.

Dated: December 10, 2021

By: /s/

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ETTORE BERARDINELLI, JR., and
PROTECTION FOR THE EDUCATIONAL
RIGHTS OF KIDS

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JURY TRIAL DEMAND

Plaintiffs demand a trial by jury on all claims for which it is available.

Dated: December 10, 2021

JW HOWARD/ ATTORNEYS, LTD.

By: /s/

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EXHIBIT “A”

HEALTH CARE WORKER VACCINATION REQUIREMENT

MANDATING EMPLOYERS OF HEALTH CARE AND HOME CARE WORKERS WHO WORK IN OR ROUTINELY VISIT HIGH-RISK OR RESIDENTIAL CARE SETTINGS TO DOCUMENT THEIR FULLY VACCINATED STATUS; FOR THOSE WITH APPROVED MEDICAL OR RELIGIOUS EXEMPTIONS, DOCUMENT WEEKLY OR TWICE WEEKLY REGULAR TESTING FOR COVID-19

Issue Date: Thursday, August 12, 2021
Effective as of 11:59pm on Thursday, August 12, 2021
Compliance Required by: Thursday, September 30, 2021

Please read this Order carefully.

SUMMARY OF THE ORDER: The spread of Novel Coronavirus (COVID-19) remains a substantial danger to the health of the public. The current high rate of COVID-19 community transmission presents an amplified risk to patients/residents in certain settings who have a greater risk of negative health outcomes from the transmission of COVID-19 (“High-Risk Settings”). High-Risk Settings, as determined by this Order, are health care facilities within the County of Los Angeles public health jurisdiction, including every licensed acute care hospital, skilled nursing facility (SNF), intermediate care facility, dental office, other health care facility types, and emergency medical services provider agency or home care residential settings or individual homes where vulnerable individuals receive care or reside. Patients and residents receiving care at these facilities or in their homes are at an increased risk for severe illness and death from COVID-19 due to age, medical conditions, or weakened immune systems.

The Delta variant has become the dominant strain of the COVID-19 virus in the County. This variant is much more contagious than previous strains of COVID-19. Vaccination against COVID-19 is the most effective means of preventing infection with the COVID-19 virus, with the risk of infection reduced by 70 percent to 95 percent. Vaccination also appears to reduce the chance of transmission by an infected vaccinated person by 40 percent to 60 percent. Unvaccinated persons are more likely to get infected and spread the virus, which is transmitted through the air. Over 90% of current hospitalizations and deaths are among unvaccinated persons.

Although the County’s health care system is currently able to manage the recent and substantial increase in cases and hospitalizations, because of the contagiousness of the Delta variant, additional measures are needed to protect particularly vulnerable populations, and ensure a sufficient, consistent supply of workers in health care settings and home health care settings

Health care facilities and home care residential settings identified by this Order, are particularly high-risk settings where COVID-19 outbreaks can have severe consequences for vulnerable populations, including hospitalizations, severe illness, and death. These consequences also exist in home health care settings. Moreover, the settings identified in this Order share the following features: frequent exposure to staff and highly vulnerable patients, including elderly, chronically ill, critically ill, medically fragile, and disabled patients.

Recent outbreaks in health care, SNFs, and other congregate settings have often been traced to unvaccinated staff members. We have also noted increasing numbers of health care workers as new positive cases, despite vaccinations being prioritized for this group when vaccines initially became available. Current requirements for unvaccinated staff in health care settings, appear to be insufficient to prevent transmission of the Delta variant, which is more transmissible and may cause more severe illness. As vaccination against COVID-19 is the most effective means of preventing infection with the virus that causes COVID-19 (including the Delta variant) and subsequent transmission and outbreaks, this Order seeks to require staff and essential visitors in health care, prehospital care, and home health care settings to be vaccinated against the COVID-19 virus to reduce the chance of transmission to vulnerable populations and to reduce the risk for staff in these settings.

For these reasons, COVID-19 remains a threat to public health, and to prevent its further spread in vulnerable populations of patients and residents and to reduce the risk for health care workers, these public health requirements are necessary at this time.

NOW, THEREFORE, I, as the Health Officer of the County of Los Angeles, order:

1. All workers who provide services or work in facilities described in subdivision (a) and home care settings under home care organizations described in subdivision (b) have their first dose of a one-dose regimen or their second dose of a two-dose regimen by September 30, 2021:
 - a. Health Care Facilities:
 - i. General Acute Care Hospitals
 - ii. Skilled Nursing Facilities (including Subacute Facilities)
 - iii. Intermediate Care Facilities
 - iv. Emergency Medical Services Provider Agencies
 - v. Acute Psychiatric Hospitals
 - vi. Adult Day Health Care Centers
 - vii. Program of All-Inclusive Care for the Elderly (PACE) and PACE Centers
 - viii. Ambulatory Surgery Centers
 - ix. Chemical Dependency Recovery Hospitals
 - x. Clinics & Doctor Offices (including behavioral health, surgical, dental)
 - xi. Congregate Living Health Facilities
 - xii. Dialysis Centers
 - xiii. Hospice Facilities
 - xiv. Pediatric Day Health and Respite Care Facilities
 - xv. Residential Substance Use Treatment and Mental Health Treatment Facilities

- b. Home Care Settings
 - i. Home Care Organization
 - ii. Home Health Agency
 - c. Two-dose vaccines include: Pfizer-BioNTech or Moderna or vaccine authorized by the World Health Organization. The one-dose vaccine is: Johnson and Johnson [J&J]/Janssen. All COVID-19 vaccines that are currently authorized for emergency use can be found at the following links:
 - i. By the U.S. Food and Drug Administration (FDA), are listed at the [FDA COVID-19 Vaccines webpage](#).
 - ii. By the World Health Organization (WHO), are listed at the [WHO COVID-19 Vaccines webpage](#).
 - d. For the purposes of this Order, "Worker" refers to all paid and unpaid employees, contractors, students, and volunteers who work in indoor or other settings where (1) care is provided to patients, (2) patients have access for any purpose, leading to direct patient contact, or (3) home care or daily living assistance is provided to residents. This includes workers serving in health care, prehospital care, patient transport, dental offices, other health care settings or home health care settings who have the potential for direct or indirect exposure to patients, residents, or SARS-CoV-2 airborne aerosols. Workers include, but are not limited to, nurses, nursing assistants, medical assistants, physicians, dental assistants, dentists, technicians, therapists, phlebotomists, pharmacists, emergency medical technicians (EMTs), EMT—paramedics, prehospital care personnel, affiliated home care aides, registered home care aides, independent home care aides, home health aides, students and trainees, contractual staff not employed by the health care facility, and persons not directly involved in patient care, but who could be exposed to infectious agents that can be transmitted in the health care setting (e.g., clerical, dietary, environmental services, laundry, security, engineering and facilities management, administrative, billing, and volunteer personnel).
2. Workers may be exempt from the vaccination requirements under section (1) only upon providing the operator of the facility, their employer, or their employing home health care organization or home health agency, a declination form, signed by the individual stating either of the following: (1) the worker is declining vaccination based on Religious Beliefs, or (2) the worker is excused from receiving any COVID-19 vaccine due to Qualifying Medical Reasons.
- a. To be eligible for a Qualified Medical Reasons exemption the worker must also provide to their employer a written statement signed by a physician, nurse practitioner, or other licensed medical professional practicing under the license of a physician stating that the individual qualifies for the exemption (but the statement should not describe the underlying medical condition or disability) and indicating the probable duration of the worker's inability to receive the vaccine (or if the duration is unknown or permanent,

so indicate). See the most updated version of the Center for Disease Control and Prevention's Interim Clinical Considerations for Use of COVID-19 Vaccines guidance.

3. If an operator of a facility, organization or agency listed above under section (1) deems a worker to have met the requirements of an exemption pursuant to section (2), the unvaccinated exempt worker must meet the following requirements when entering or working in such facility:
 - a. Test for COVID-19 with either polymerase chain reaction (PCR) or antigen test that either has Emergency Use Authorization (EUA) by the U.S. Food and Drug Administration or be operating per the Laboratory Developed Test requirements by the U.S. Centers for Medicare and Medicaid Services. Testing must occur twice weekly for unvaccinated exempt workers in acute health care and long-term care settings, and once weekly for such workers in other health care or home care settings.
 - b. Wear a surgical mask or higher-level respirator approved by the National Institute of Occupational Safety and Health (NIOSH), such as an N95 filtering facepiece respirator, at all times while in the facility or inside the residence.
4. Consistent with applicable privacy laws and regulations, the operator of the facility, organization or agency must maintain records of workers' vaccination or exemption status. If the worker is exempt pursuant to section (2), the operator of the facility, organization or agency then also must maintain records of the workers' testing results pursuant to section (3).
 - a. The facility must provide such records to the County Department of Public Health or their designee promptly upon request, and in any event no later than the next business day after receiving the request.
 - b. Operators of the facilities subject to the requirement under section (1) must maintain records pursuant to the CDPH Guidance for Vaccine Record Guidelines & Standards with the following information: (1) full name and date of birth; (2) vaccine manufacturer; and (3) date of vaccine administration (for first dose and, if applicable, second dose).
 - c. For unvaccinated workers: signed declination forms with written health care provider's statement where applicable, as described in section (2) above. Testing records pursuant to section (3) must be maintained.
5. Nothing in this Order limits otherwise applicable requirements related to Personal Protective Equipment, personnel training, and infection control policies and practices.

**COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC HEALTH
ORDER OF THE HEALTH OFFICER**



6. Facilities, organizations, and agencies covered by this Order are encouraged to provide onsite vaccinations, easy access to nearby vaccinations, and education and outreach on vaccinations, including:
 - a. Access to epidemiologists, physicians, and other counselors who can answer questions or concerns related to vaccinations and provide culturally sensitive advice; and
 - b. Access to online resources providing up to date information on COVID-19 science and research.
7. This Order is issued pursuant to Health and Safety Code sections 101040, 120175, and 120295.
8. This Order shall become effective at 11:59pm on Thursday, August 12, 2021 and will continue until it is revised, rescinded, superseded, or amended in writing by the Health Officer.

IT IS SO ORDERED:

A handwritten signature in blue ink, appearing to read 'Muntu Davis, M.D., M.P.H.', is written over a horizontal line.

Muntu Davis, M.D., M.P.H.

Health Officer,
County of Los Angeles

8/12/2021

Issue Date

EXHIBIT “B”

"Beverly Hills Vaccine Mandates"

One month ago I sent the Beverly Hills Firefighters Association (BHFA) a letter expressing my surprise and disappointment that the union asked for the City Council's help in allowing their members to circumvent the County's vaccine mandate.

I wrote: "Vaccine mandates are legal and they serve to protect both the employees and our Community members. While employers can make decisions for themselves, they cannot and should not be allowed to make a decision which would unnecessarily expose a Community member to Covid-19 as a matter of both policy and ethics."

While the Council rejected the BHFA's overtures and was and is unwilling to help the firefighters get around the County mandate, it seems that a large number of anti-vaxxer Beverly Hills firefighters are trying to take things into their own hands.

This morning we received word from our Chief that 25 firefighters – close to 30% of the entire force – have submitted exemption requests to the City's Human Relations department. Two of the applications cited medical exemptions, while 23 of the firefighters want to be granted "religious exemptions" from the vaccination mandate.

This seems to be nothing short of an attempt to manipulate the system on a massive scale. Religious exemptions are meant for deeply held and sincere religious convictions, they are not hall passes for those who don't want to take the vaccine, however strong those feelings are or whatever conspiracy theories they may believe.

As I stated in my Aug. 30 letter, I felt the BHFA's request for the Council's complicity in avoiding the vaccination requirement was both surprising and disappointing. If any of the firefighters who applied for exemptions on an unprecedented scale are gaming the system – and it seems highly likely that many, if not most of them are – it is nothing short of outrageous.

The firefighters applying for an exemption will be interviewed under penalty of perjury to ascertain whether their refusal to get vaccinated is medically necessary or rises to the level of a bona fide religious conviction. That they would go to such an extent to avoid taking an action which protects our entire Community is bad enough, if any of them are caught perjuring themselves in their attempt to circumvent the vaccination mandate, then there should be serious consequences.

In many police departments, there is a well-known axiom "You lie, you die."

The average total compensation of a Beverly Hills firefighter is \$344,000 annually. Our firefighters are not only paid extremely well, they have also always been treated extremely well by our entire Community. It is so terribly sad that some 30% of them are unwilling to reciprocate this treatment by taking the safe, sane and simple measure of getting a Covid-19 vaccination to protect the Community, not to mention themselves and the other em-

ployees.

It feels like a sacred trust has been broken. From my perspective, any firefighter caught lying under oath trying to avoid this protective measure should be terminated for cause, as beyond showing a willingness to expose our Community to unnecessary risk, they would be unfit in my eyes to represent Beverly Hills.

John Mirisch
Beverly Hills City Councilmember