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COUNTY OF LOS ANGELES

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES, CENTRAL DISTRICT
11

12 VINCENT TSAI, an individual; OSCAR
13 RODRIGUEZ, an individual; ENRIQUE
IRIBE, an individual; MOHAMED BINA,
14 an individual; SHAYNE LAMONT, an
individual; and PROTECTION FOR THE
15 EDUCATIONAL RIGHTS OF KIDS, a
California non-profit corporation,
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Plaintiffs,
17
v.
18 THE COUNTY OF LOS ANGELES, a
19 municipal entity,
20
Defendant.

Case No. 21STCV36298
Assigned for All Purposes to:
Hon. Gail Killefer, Dep't 37

**NOTICE OF ENTRY OF ORDER ON
MOTION FOR JUDGMENT ON THE
PLEADINGS**

Complaint Filed: October 1, 2021
Trial Date: May 2, 2023

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 37

21STCV36298

**VINCENT TSAI, et al. vs COUNTY OF LOS ANGELES, A
MUNICIPAL ENTITY**

February 7, 2023

8:30 AM

Judge: Honorable Gail Killefer
Judicial Assistant: J. Jones
Courtroom Assistant: E. Avena

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Scott J. Street

For Defendant(s): Valerie Alter

NATURE OF PROCEEDINGS: Hearing on Motion for Judgment on the Pleadings

The Court's tentative ruling is posted online for parties to review.

The matter is called for hearing and argued.

The Court takes the Hearing on Motion for Judgment on the Pleadings under submission.

LATER:

The Court, having taken the matter under submission, now rules as follows:

Defendant's Motion is GRANTED, Without Leave to Amend.

Defendant shall submit a Proposed Judgment.

Order to Show Cause Re: Judgment is scheduled for 02/28/2023 at 08:30 AM in Department 37 at Stanley Mosk Courthouse.

The Court's full ruling is filed this date and incorporated herein by reference.

Defendant is to give notice.

Certificate of Mailing is attached.

SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Stanley Mosk Courthouse 111 North Hill Street, Los Angeles, CA 90012	FILED Superior Court of California County of Los Angeles 02/07/2023
PLAINTIFF/PETITIONER: Vincent Tsai et al	David W. Slayton, Executive Officer / Clerk of Court By: _____ J. Jones Deputy
DEFENDANT/RESPONDENT: County of Los Angeles, a municipal entity	
CERTIFICATE OF MAILING	CASE NUMBER: 21STCV36298

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Minute Order (Hearing on Motion for Judgment on the Pleadings) of 02/07/2023 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Valerie Alter
Sheppard Mullin Richter & Hampton LLP
1901 Avenue of the Stars
Suite 1600
Los Angeles, CA 90067

David W. Slayton, Executive Officer / Clerk of Court

Dated: 02/7/2023

By: J. Jones
Deputy Clerk

Case Number: 21STCV36298 **Hearing Date:** February 7, 2023 **Dept:** 37

HEARING DATE: February 7, 2023

CASE NUMBER: 21STCV36298

CASE NAME: *Vincent Tsai, et al. v. County of Los Angeles, a municipal entity*

MOVING PARTY: Defendant, County of Los Angeles

OPPOSING PARTIES: Plaintiffs, Vincent Tsai, Oscar Rodriguez, Enrique Iribe, Mohamed Bina, Shayne Lamont, and Protection For The Educational Rights of Kids

RELIEF REQUESTED: Defendant’s Motion for Judgment on the Pleadings

TENTATIVE: Defendant’s motion is granted, without leave to amend. Defendant is to give notice.

Background

This is a declaratory and injunctive relief action arising out of the mandate by the County of Los Angeles (“Defendant”) for all of its employees to be vaccinated against COVID-19. Plaintiffs Vincent Tsai (“Tsai”), Oscar Rodriguez (“Rodriguez”), Enrique Iribe (“Iribe”), Mohamed Bina (“Bina”) and Shayne Lamont (“Lamont”) allege that they are employees of Defendant and are required to be vaccinated against COVID-19 or face termination pursuant to an August 4, 2021, mandatory vaccination policy issued by Hilda Solis, chair of the Los Angeles County Board of Supervisors (the “Mandate”) (Complaint, Exhibit A.). The Mandate required that all Defendant’s employees provide “proof of full vaccination by October 1, 2021.” Plaintiff Protection For The Education Rights of Kids (“PERK”) alleges that it joined in this lawsuit because Defendant’s vaccination mandate would have a “devastating effect” on children and families in Los Angeles County.

According to Plaintiffs’ Complaint, the Mandate is unlawful for a variety of reasons, including the fact that that vaccination allegedly does not prevent the spread of COVID-19 and the fact that many employees may have received the COVID-19 vaccination but do not wish to disclose their vaccination status to Defendant, their employer.

Plaintiffs' initial Complaint alleges the following causes of action: (1) declaratory and injunctive relief under California Emergency Services Act, (2) declaratory and injunctive relief under California Emergency Services Act, (3) declaratory and injunctive relief by individual Plaintiffs under California Constitution, and (4) declaratory and injunctive relief re: violation of the Ralph M. Brown Act.

On November 29, 2021, Defendant answered the Complaint. On December 7, 2021, Plaintiffs filed their First Amended Complaint ("FAC") pursuant to stipulation. The FAC also alleges "Violation of Due Process/Skelly" as a fourth cause of action. On February 9, 2022, this court granted Defendant's motion for judgment on the pleadings as to the FAC. On March 7, 2022, Plaintiffs filed their Second Amended Complaint ("SAC") alleging identical causes of action.

On June 14, 2022, Defendant's motion for judgment on the pleadings was granted and Plaintiffs were granted leave to amend ("June 14 Order"). On July 12, 2022, Plaintiffs filed their Third Amended Complaint ("TAC"). Defendant filed another motion for judgment on the pleadings on August 15, 2022. In response, the parties filed a Joint Stipulation to file a Fourth Amended Complaint on October 18, 2022.

On October 28, 2022, Plaintiffs filed their operative Fourth Amended Complaint ("4AC") alleging the following causes of action: (1) declaratory and injunctive relief under California Emergency Services Act, (2) declaratory and injunctive relief under California Emergency Services Act, and (3) declaratory and injunctive relief by individual Plaintiffs under California Constitution.

Defendant now moves for judgment on the pleadings ("MJOP") as to each cause of action of the 4AC. Plaintiffs oppose the motion.

Request for Judicial Notice

Defendant requests judicial notice of the following in support of its motion:

Exhibit A: Los Angeles County Department of Public Health's PowerPoint Presentation, dated August 10, 2021, found at http://file.lacounty.gov/SDSInter/bos/sop/transcripts/1111561_081021.pdf.

Exhibit B: Excerpts from the Meeting Transcript of the Los Angeles County Board of Supervisors, dated August 10, 2021, found at http://file.lacounty.gov/SDSInter/bos/sop/transcripts/1111561_081021.pdf.

Exhibit C: Centers for Disease Control webpage titled Stay Up to Date with COVID-19 Vaccines Including Boosters, updated November 1, 2022.

Exhibit D: California Department of Public Health webpage titled Vaccines, updated November 17, 2022.

Exhibit E: Los Angeles County Department of Public Health Presentation to the County Board of Supervisors meeting titled Set Item 2. Public Health Order, dated November 1, 2022.

Exhibit F: California Governor Gavin Newsom's press release titled Governor Newsom to End the COVID-19 State of Emergency, dated October 17, 2022.

Plaintiffs again object to Defendant's request for judicial notice on the grounds that the facts contained on these documents are not facts and propositions that are not reasonably subject to dispute or capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy as defined in Evid. Code § 452(h). Plaintiffs again further attempt to explain to the court that Defendant "really wants" "for the Court to assume that government statements about the safety and effectiveness of the COVID vaccines are true...." (Opposition to RJN, 2-3.) Plaintiffs' attempts to explain to this court the relevant inquiry for judicial notice or appropriate standard are unconvincing.

As Defendant explains, it "sought judicial notice of materials...merely as to what they said, not the truth of the matter stated therein, because they simply set forth the rationale the County articulated for its COVID-19 mandate" and "to show what public health leaders at the state and federal level said about COVID-19 vaccines," as well as "to show that the Mandate is subject to exemptions or reasonable accommodations for medical conditions or sincerely held religious beliefs." (Response to RJN, 2-4.) While Defendant's documents are not facts and propositions that are not reasonably subject to dispute or capable of immediate and accurate determination, the fact that such statements were made, that such information was published on public platforms, and that such rationale was presented cannot be reasonably subject to dispute.

Defendant's request is granted. The existence and legal significance of these documents are proper matters for judicial notice. (Evid. Code § 452(d), (h).) However, the court may not take judicial notice of the truth of the contents of the documents. (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.) Documents are only judicially noticeable to show their existence and what orders were made. The truth of the facts and findings within the documents are not judicially noticeable. (*Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 885.)

Discussion

I. Meet and Confer Efforts

As of January 1, 2018, a party filing a MJOP must meet and confer in person or by telephone with the party who filed the pleading that is subject to the motion, identifying all of the specific allegations that it believes are subject to be stricken and, with legal support, the basis of the deficiencies. (CCP § 439(a)(1).) "The parties shall meet and confer at least five days before the date a motion for judgment on the pleadings is filed. If the parties are unable to meet and confer by that time, the moving party shall be granted an automatic 30-day extension of time within which to file a motion for judgment on the pleadings, by filing and serving, on or before the

date a motion for judgment on the pleadings must be filed, a declaration stating under penalty of perjury that a good faith attempt to meet and confer was made and explaining the reasons why the parties could not meet and confer.” (CCP § 439(a)(2).)

Defendant submits the declaration of its counsel, Zachary J. Golda (“Golda”), to demonstrate compliance with statutory meet and confer requirements. Golda attests that on November 15, 2022, counsel met and conferred telephonically with Plaintiffs’ counsel about the issues addressed in the instant motion but were unable to reach an agreement. (Golda Decl., ¶ 3.) The Golda Declaration is sufficient for purposes of CCP § 439.

II. Legal Authority

A defendant may move for judgment on the pleadings if the complaint does not state facts sufficient to constitute a cause of action against the defendant. (CCP § 438(b)(1) & (c)(1)(B) (ii).) Except as provided by statute, the rules governing demurrers govern motions for judgment on the pleadings. (*Cloud v. Northrup Grumman Corp.* (1998) 67 Cal.App.4th 995, 999.) Therefore, the grounds for a motion for judgment on the pleadings must be apparent from either the face of the complaint or a matter of which the court may take judicial notice. (*Ibid.*) The court accepts the truth of all material facts properly pleaded, but not the truth of “contentions, deductions or conclusions of law.” (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967 (*Aubry*))

III. Analysis

First, and Second Causes of Action: Declaratory and Injunctive Relief

California courts have recognized that “[t]he existence of an ‘actual controversy relating to the legal rights and duties of the respective parties,’ suffices to maintain an action for declaratory relief.” (*Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 605 (*Ludgate*)). “Any person interested under a written instrument, ... or under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property, ... may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action or cross-complaint in the superior court ... for a declaration of his or her rights and duties in the premises, including a determination of any question of construction or validity arising under the instrument or contract.” (*Ibid.*, quoting Code Civ. Proc., § 1060.)

“The ultimate questions on a motion for a preliminary injunction are (1) whether the plaintiff is ‘likely to suffer greater injury from a denial of the injunction than the defendants are likely to suffer from its grant,’ and (2) whether there is ‘a reasonable probability that the plaintiffs will

prevail on the merits.’ ” (*Huong Que, Inc. v. Luau* (2007) 150 Cal.App.4th 400, 408.) The moving party’s likelihood of suffering injury and probability of prevailing are considered on a sliding scale. (*King v. Meese* (1987) 43 Cal.3d 1217. “That is, the more likely it is that plaintiffs will ultimately prevail, the less severe must be the harm that they allege will occur if the injunction does not issue. This is especially true when the requested injunction maintains, rather than alters, the status quo.” (*Id.* at 1227.) “In thus balancing the respective equities of the parties, the court must determine whether, pending a trial on the merits, the defendant should or should not be restrained from exercising the right claimed by it.” (*Tahoe Keys Prop. Owners' Assn. v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1471.)

“ The California Emergency Services Act (“CESA”)(Gov. Code, § 8550 et seq.) confers upon the Governor and the governing bodies of cities and counties the power to declare a state of emergency “in conditions of disaster or ... extreme peril” and confers broad powers on the Governor to deal with such emergencies.” (*Macias v. State of California* (1995) 10 Cal.4th 844, 853.) “[T]he Emergency Services Act makes clear that in situations of “extreme peril” to the public welfare the State may exercise its sovereign authority to the fullest extent possible consistent with individual rights and liberties.” (*Id.* at 853.) “The California Emergency Services Act recognizes and responds to a fundamental role of government to provide broad state services in the event of emergencies resulting from conditions of disaster or of extreme peril to life, property, and the resources of the state.” (*Martin v. Municipal Court* (1983) 148 Cal. App. 3d 693, 696.

Defendant again moves for judgment on the pleadings as to Plaintiff’s first and second causes of action for declaratory and injunctive relief under the California Emergency Services Act. (Motion, 18-21.) Defendant also cites *Fisher v. City of Berkeley* (1984) 37 Cal. 3d 644, 679 n.31 (*Fisher*) for the argument that it may be awarded a declaration on the merits through a motion for judgment on the pleadings. (Motion, 12.)

Defendant again contends the first two causes of action fail because Defendant was within its authority to enact the Mandate consistent with individual rights and liberties. (Motion, 18-21.) According to Defendant, the CESA is not unconstitutional and Defendant had both the authority and the duty to enact regulations such as the Mandate to protect against the spread of COVID-19. (*Id.*) Defendant again argues CESA uses “broad language” “which gives the County discretion to determine when to terminate a local emergency.” (Motion, 18; citing *Ruegg & Ellsworth v. City of Berkeley* (2021) 63 Cal. App. 5th 277, 299.) Defendant then argues that while Plaintiffs argue the conditions meriting a local emergency no longer exist, “there is still a rational basis for the County’s decision to maintain its emergency declaration to respond to anticipated surges in COVID-19 cases in the winter months.” (Motion, 19; citing 4AC ¶56.) Defendant further contends that Plaintiffs point to decisions made by elected officials outside of the County to assert that the County must terminate the local emergency as well. Defendant argues CESA authorizes the County to use its own decision-making powers to “address emergencies within its jurisdiction.” (Motion, 19.) Defendant further points to existing authority which supports the use of the County’s police power to protect public health. (Motion, 19-20; citing *People ex rel. Deukmejian v. Cnty of Mendocino* (1984) 36 Cal. 3d 476, 204.)

“Maintaining a healthy workforce is rational; both to better serve the public and to lower health insurance costs paid by the County (and funded by taxpayers). Accordingly, it is rational for the County to require employees to be vaccinated despite the CDC’s removal of distinctions between vaccinated and unvaccinated students.

Once again, instead of negating every conceivable basis for the Policy as they must under rational basis review, Plaintiffs attempt to dispute the County’s legislative choice regarding COVID19 vaccines, which the Court cannot second-guess through courtroom factfinding.” (Motion, 21.)

Pursuant to Health and Safety Code § 120175, “[e]ach health officer knowing or having reason to believe that any case of the diseases made reportable by regulation of the department, or any other contagious, infectious or communicable disease exists, or has recently existed, within the territory under his or her jurisdiction, shall take measures as may be necessary to prevent the spread of the disease or occurrence of additional cases.”

In opposition, Plaintiffs again contend that Defendant’s motion must be denied as to the declaratory and injunctive relief causes of action for the following reasons: (1) Defendant exceeded its powers when adopting the Mandate, (2) that Defendant had a duty to terminate the local emergency order under CESA, and (3) at a minimum, an actual controversy exists with regard to whether the Mandate exceeds Defendant’s powers and thus, judgment on the pleadings is not appropriate. (Opposition, 10-14.)

In support, Plaintiffs point to “five reasons the County exceeded its authority in mandating the Covid shots:” (1) the “fact” that Covid vaccines “do not prevent infection or the spread” of Covid-19; (2) the shots merely “potentially reduce the severity of an infected person’s symptoms,” which was not the justification given for requiring them; (3) that the policy “was not narrowly tailored” under CESA; (4) that the County “acted arbitrarily by requiring the original shots, and threatening to fire people who did not get them, but not requiring all the available booster shots;” and (5) that the County acted “arbitrarily by not requiring by not considering [*sic*] evidence of the shots’ ineffectiveness in the first place.” (Motion, 8; 4AC ¶¶ 66-70.)

While Plaintiffs may argue and assert that such statements are not conclusory, simply concluding that the statements are not conclusory does not aid in convincing this court. Plaintiffs cannot simply state that the County acted “arbitrarily,” utilizing the full legal effect of such language in this case, without alleging sufficient facts to show the County did not act reasonably under the guidelines of CESA. Further, neither this Court, nor counsel for any party here, are medical or public health professionals and the pleadings may not take it upon themselves to simply conclude the efficacy of a vaccine, or even explain why any consideration of the vaccine’s effects on the spread of COVID-19 should be considered here. Plaintiffs’ opposition is severely lacking in factual substance which may guide this court to finding an actual controversy exists here.

Plaintiffs point to this dispute over allegations to suggest that since Defendant contradicts Plaintiffs' allegations, that this "is a quintessential claim for declaratory relief." The court disagrees. Defendant points to authorities and proffer a rationale to argue that even if Plaintiffs' factual claims were to be taken as true and established, Plaintiffs' claims would still fail as a matter of law as the law is clear and no actual controversy exists as to the rights of the parties.

In reply, Defendant correctly contends that "the scope of the County's authority under CESA is a matter of statutory interpretation and thus a question of law susceptible to judgment on the pleadings." (Reply, 11-14; citing *DiQuisto v. County of Santa Clara* (2010) 181 Cal.App.4th 236, 256.) As Defendant points out, the CESA provides broad authority for the protection of the public, and Defendant argues Plaintiffs' reliance on depublished and inapposite authorities is unavailing for this court. (*Id.*) Further, Defendant contends that Plaintiffs have muddied the appropriate standard of review, and seek to complicate the question of rational basis review here. (*Id.*) The court agrees.

As defined in *Aubry*, this court must deem all material facts admitted at this motion stage, but not the truth of "contentions, deductions or conclusions of law." (*Aubry, supra*, 967.) The court here again finds, while Plaintiffs have realleged several contentions from earlier pleadings, and have added further allegations of a conclusory nature regarding violations of law, namely CESA, they again do not allege sufficient facts to show how Defendant has violated CESA in its actions. This court has already established that it will not deem admitted Plaintiffs' broad conclusions regarding the abuse of executive and legislative power in this matter, in light of the exceptions and exemptions to the Mandate policy the Defendant has shown. Disregarding such conclusions and repeated allegations of "arbitrary and capricious" conduct by Defendant, Plaintiffs' first two causes of action again do not allege sufficient material facts to support their claims for declarative and injunctive relief.

For these reasons, Defendant's motion is again granted as to the first and second causes of action.

Third Cause of Action: Declaratory and Injunctive Relief in Violation of Plaintiffs' Rights of Privacy

"A person's medical history and information and the right to retain personal control over the integrity of one's body is protected under the right to privacy." (*Love v. State Dept. of Education* (2018) 29 Cal.App.5th 980, 993 (*Love*)). "Actionable invasions of privacy must be sufficiently serious in their nature, scope, and actual or potential impact to constitute an egregious breach of the social norms underlying the privacy right. Thus, the extent and gravity of the invasion is an indispensable consideration in assessing an alleged invasion of privacy." (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 37.)

Defendant again contends that Plaintiffs' third cause of action fails because the Mandate does not constitute a "serious invasion of privacy." (Motion, 13-18.) According to Defendant, case law has long held that compulsory vaccination was permitted and any informational privacy

interests at state are diminished because local officials are permitted to maintain immunization databases pursuant to Health and Safety Code section 120440. (*Id.*) Defendant cites to *Love* and *Jacobson v. Massachusetts* (1905) 197 U.S. 11, 29 (*Jacobson*) for this argument.

In *Love*, parents and their children challenged California immunization requirements for children attending schools in California. (*Love, supra*, 29 Cal.App.5th at 984.) Plaintiffs argued that the vaccination requirement infringed their right to privacy by requiring children to review medical information to attend public school and requiring parents and children to forego integrity over children’s bodies. (*Id.* at 993.) The Court of Appeal held that mandatory vaccination did not violate Plaintiffs’ rights to privacy because ““compulsory immunization has long been recognized as the gold standard for preventing the spread of contagious diseases”” and society has a compelling interest in “fighting the spread of contagious diseases through mandatory vaccination of school-aged children.”” [citation omitted] (*Id.* at 993-994.)

In *Jacobson*, Plaintiff was subject to a criminal complaint for failure to comply with a state policy requiring mandatory vaccination against smallpox (*Jacobson, supra*, 197 U.S. at 13.) The United States Supreme Court held that state’s policy requiring mandatory vaccination was constitutional. Specifically, the Supreme Court held that “vaccination, as a means of protecting a community against smallpox, finds strong support in the experience of this and other countries, no court, much less a jury, is justified in disregarding the action of the legislature simply because in its or their opinion that particular method was—perhaps, or possibly—not the best either for children or adults.” (*Id.* at 35.)

In opposition, Plaintiffs contend that Defendant’s motion must be denied because a state law privacy claim cannot be determined on the pleadings. (Opposition, 14-19.) Plaintiffs cite *Mathews v. Becerra*, (2019) 8 Cal.5th 756 (*Mathews*) for this argument. Additionally, Plaintiffs cite *Coshow v. City of Escondido*, (2005) 132 Cal. App. 4th 687, 709 (*Coshow*) for the argument that the COVID-19 vaccines may be refused because they are medical treatments and a competent adult has the right to refuse treatment. (Opposition, 16-7.) Plaintiffs also again contend that Defendant’s reliance on *Love* and *Jacobson* are misplaced because they were decided well before the Mandate.

In *Mathews*, Plaintiffs, licensed counselors and therapists, brought an action challenging the mandatory reporter requirements under the Child Abuse and Neglect Reporting Act, arguing that mandatory reporting requirements violated their clients’ rights to privacy. (*Mathews, supra*, 8 Cal.5th at 760.) In response, Defendants filed demurrers contending that Plaintiffs failed to assert a valid privacy claim. (*Id.* at 765.) The California Supreme Court concluded that portions of CANRA impinges upon a legally protected privacy interest, and that mandatory reporting of Plaintiffs’ patients statements about child pornography constitutes a serious violation of their rights to privacy in seeking therapy on the same subject. (*Id.* at 769-782.)

In *Coshow*, residents sued the Department of Health Services for declaratory relief, alleging that the city’s plan to fluoridate its drinking water violated their constitutional rights. (*Coshow, supra*, 132 Cal.App.4th at 687.) The Court of Appeal held that Plaintiffs could not state a cause of action for declaratory or injunctive relief based on violation of a constitutional right because

the statutory schemes allowed fluoridating agents so long as those administering the agents comply with certain limits. (*Id.* at 703-707.) In reaching this holding, the *Coshow* court reasoned that “[n]either the state nor federal Constitution guarantees a right to a healthful or contaminant-free environment.” (*Id.* at 709.)

In reply, Defendant correctly points out that the cases Plaintiffs have relied upon are either inapposite for considering completely different circumstances, or for analyzing a different inquiry than the one before this court now. (Reply, 7-10.) Defendant again further contend that as defined by *Hill*, Plaintiffs have not alleged sufficient facts to show a serious invasion of their privacy interests. (Reply, 9-10.) Since *Conservatorship of Wendland* (2001) 26 Cal. 4th 519, 530 dealt with the rights of a conservatee to refuse medical treatment, *Mathews* dealt with the privacy rights of conversations with therapists and child pornography, and *Coshow* is further not instructive as explained by *Cnty of L.A. Dept of Pub. Health v. Sup. Ct.* (2021) 61 Cal.App.5th 478, 487-490, the court agrees with Defendant.

Again, pursuant to *Aubry*, the court accepts the truth of all material facts pled for a motion for judgment on the pleadings in the same manner as if for a demurrer. As discussed above, the 4AC again alleges that the individual Plaintiffs did not comply with the Mandate and that the Mandate is allegedly a “serious invasion” of privacy rights.

However, the court cannot accept the truth of these contentions as to what is deemed a “serious invasion” of a privacy right. Although *Love* and *Jacobson* both do not stand for the proposition that mandatory vaccination is appropriate in all circumstances, Plaintiffs must rely on further alleged material facts to show how such mandatory vaccination is a serious invasion of a privacy right. As the court does not delve into factfinding missions at this stage, the validity of Plaintiffs’ allegations are not decided at this junction.

For these reasons, Defendant’s motion is again granted as to the third cause of action.

Conclusion

Defendant’s motion is granted, without leave to amend. Defendant is to give notice.

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PROOF OF SERVICE

Vincent Tsai v. The County of Los Angeles
Case No. 21STCV36298

STATE OF CALIFORNIA, COUNTY OF ORANGE

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Orange, State of California. My business address is 1901 Avenue of the Stars, Suite 1600, Los Angeles, CA 90067.

On February 7, 2023, I served true copies of the following document(s) described as **NOTICE OF ENTRY OF ORDER ON MOTION FOR JUDGMENT ON THE PLEADINGS** on the interested parties in this action as follows:

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address lchu@sheppardmullin.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

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

Executed on February 7, 2023, at Los Angeles, California.

Lily Young Chu

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