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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

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| VINCENT TSAI, an individual; OSCAR RODRIGUEZ, an individual; ENRIQUE IRIBE, an individual; MOHAMED BINA, an individual; SHAYNE LAMONT, an individual; and PROTECTION FOR THE EDUCATIONAL RIGHTS OF KIDS, a California non-profit corporation,  Plaintiffs,  vs.  THE COUNTY OF LOS ANGELES, a municipal entity,  Defendant. | Case No. 21STCV36298  Assigned for all purposes to the Hon. Richard Burdge  **SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**  Complaint filed: October 1, 2021 |

Plaintiffs Vincent Tsai et al. (“Plaintiffs”) alleges as follows:

**INTRODUCTION**

1. In early 2020, the world discovered a novel coronavirus, Covid-19. Governments responded with the most draconian restrictions in modern history. They closed schools and shut down industries. They banned travel and prosecuted churches. They decided which activities are “essential” and which are not.
2. Government employees have always been considered essential. That should not be a surprise. Society cannot function without them. Nonetheless, as the pandemic has waned, public employees have become pawns in an ongoing (and seemingly never ending) political chess match, ordered by politicians on the Los Angeles County Board of Supervisors to inject themselves with an experimental medical treatment, against their will, or be fired.
3. The County does not have the authority to order thousands of public employees to inject themselves with an experimental medical treatment. It does not have that authority as the sovereign or as an employer.
4. Moreover, on its face, the County’s vaccine mandate—which now also requires that employees get at least one booster shot (and possibly more)—is unconstitutional because it violates public employees’ right to privacy under the California Constitution. The County must also consider and offer reasonable accommodations as a middle ground between individual freedoms and collective rights. It did not do that. Instead, it viewed this sensitive personal issue through the lens of partisan politics.
5. The County also must show that forced medical treatment is the least restrictive way to mitigate the effects of Covid-19. The County cannot show that. The Centers for Disease Control now admits that the Covid-19 vaccines do not prevent a person from being infected with, or transmitting, the coronavirus. The Centers for Medicare and Medicaid Services has also acknowledged this. That is why millions of fully vaccinated people, including vaccinated County employees, contracted the Omicron variant last winter. Thus, the County’s vaccine mandate does not serve its intended purpose.
6. There is also mounting evidence that the Covid-19 shots may not be safe for some people, as hundreds of thousands of adverse reactions have been reported to the Department of Health and Human Services, many in healthy people.
7. Like all Californians, public employees are competent adults who have a right to bodily integrity and a right to refuse medical treatment, both of which the County’s vaccine mandate violates. They also have a right to informational privacy. The County mandate violates that right by forcing public employees to disclose their personal medical information to their employer to keep their jobs. This compelled disclosure heightens the impact of the County’s privacy violations.
8. The County has promised to fire any County employees who refuse to get the Covid shots or to share their confidential medical information with the County. Thousands of County employees have not yet complied. They will risk their jobs rather than violate their conscience and follow a plainly unlawful order.
9. PERK is a non-profit organization that advocates for civil rights, bodily autonomy, medical freedom and other rights, with a particular focus on children and parental rights. PERK joined this lawsuit because of the devastating effect the County’s unlawful mandate would have on children and families in Los Angeles. County residents cannot afford to lose thousands of public employees on a whim. They would be unable to obtain critical public services, including social services that kids and families depend on. Thus, PERK has a beneficial interest in the relief sought in this Complaint.
10. Plaintiffs Tsai, Rodriguez, Iribe, Bina and Lamont are County employees who have been ordered to comply with the vaccine mandate or be terminated. They have not complied and thus are in imminent danger of having their paychecks cut off. Mr. Lamont has already been fired. He did not receive any of the procedural protections he is entitled to under the Due Process Clause and the California Supreme Court’s decision in *Skelly v. State Personnel Board* and he had a pending request for a religious exemption, which his supervisors in the County Department of Health ignored and denied only after they fired him. Plaintiffs seek declaratory and injunctive relief to declare the County’s vaccine mandate unlawful and to enjoin the County from enforcing it against any County employees.

**PARTIES, JURISDICTION AND VENUE**

1. PERK is a 501(c)(3) non-profit organization formed under the laws of the State of California that advocates for civil rights issues, bodily autonomy, medical freedom and other rights, with a particular focus on children and parental rights. PERK has dedicated considerable resources to advocating for individual rights during the Covid-19 pandemic and thus has a beneficial interest in the relief sought in this action.
2. Plaintiff Tsai is a County employee who has been ordered to comply with the vaccine mandate or be fired. He works for the Los Angeles County Sheriff's Department.
3. Plaintiff Rodriguez is a County employee who has been ordered to comply with the vaccine mandate or be fired. He works for the Los Angeles County Sheriff's Department.
4. Plaintiff Iribe is a County employee who has been ordered to comply with the vaccine mandate or be fired. He works for the Los Angeles County Probation Department.
5. Plaintiff Bina is a County employee who has been ordered to comply with the vaccine mandate or be fired. He works for the Los Angeles County Department of Sanitation.
6. Plaintiff Shayne Lamont is a County employee who has been ordered to comply with the vaccine mandate or be fired. He works for the Los Angeles County Department of Public Health.
7. Plaintiffs Tsai, Rodriguez, Iribe, Bina and Lamont are referred to collectively as the “Individual Plaintiffs.”
8. The County of Los Angeles is a municipal organization formed under the laws of the State of California. The vaccine mandate was issued by Supervisor Hilda Solis and ratified by a vote of the County Board of Supervisors. Thus it represents an official policy of Los Angeles County.
9. Venue exists in Los Angeles County under sections 393(b) and 394(a) of the Code of Civil Procedure because the Complaint alleges claims against a municipal entity that exists and operates in Los Angeles County and because the mandate’s effects will be felt here.

**FACTUAL ALLEGATIONS**

1. In early 2020, health officials discovered a novel coronavirus circulating in Wuhan, China. They named the illness caused by the virus “Covid-19.”
2. Though nobody knew it at the time, the Covid-19 pandemic would lead to unprecedented restrictions on liberty. Many of the restrictions started in California, including the first statewide “lockdown” and unprecedented mass closures of businesses and criminalization of ordinary activities that unelected health officials deemed too dangerous.
3. During 2020, at the urging of then President Donald Trump, several pharmaceutical companies began developing experimental treatments to mitigate the effects of Covid-19 and, potentially, reduce its spread. Although these treatments were called “vaccines” they did not meet the definition of a vaccine under federal law at the time (it has since been changed). They are experimental gene modification therapies, using the novel mRNA technology, something more akin to a medical treatment than a vaccine.
4. The Covid-19 shots were so controversial that many Democratic Party politicians, including then candidates Joe Biden and Kamala Harris, would not commit to taking them. President-elect Biden also said that he would not mandate that Americans get the Covid shots, a recognition of the robust privacy rights that Americans now enjoy under the federal and state constitutions.
5. By the summer of 2021, tens of millions of Americans had taken the Covid-19 therapies, including more than half of adults in California. But Covid-19 had not disappeared. That should not have surprised anybody. Public health officials have repeatedly said that eliminating a respiratory virus is impossible once it starts spreading in the community. According to one prominent epidemiologist, speaking to *Nature*: “Eradicating this virus right now from the world is a lot like trying to plan the construction of a stepping-stone pathway to the Moon. It's unrealistic.”
6. Thus, anyone can still contract and spread the Covid-19 virus. Like the flu, Covid-19 is becoming endemic, and the world will have to learn to live with it, as we live with many other pathogens.
7. That includes people who have received one of the Covid-19 shots. Although the shots have been declared a miracle by many, the Department of Health and Human Services’ Centers for Medicare and Medicaid Services (“CMS”) stated last fall in the *Federal Register* that “the duration of vaccine effectiveness in preventing COVID-19, reducing disease severity, reducing the risk of death, and the effectiveness of the vaccine to prevent disease transmission by those vaccinated are not currently known.”
8. This was not an isolated comment. Moderna and Pfizer executives have both conceded that their shots, unlike others that have helped eradicate diseases like polio and smallpox, have little long-term benefit. The CMS has also said that “major uncertainties remain as to the future course of the pandemic, including but not limited to vaccine effectiveness in preventing ‘breakthrough’ disease transmission from those vaccinated, [and] the long-term effectiveness of vaccination ….” And it has acknowledged the benefits of natural immunity, saying that those who “have recovered from infection … are no longer sources of future infections.”
9. These uncertainties played out last winter as the Omicron variant of Covid-19 spread throughout the world, infecting millions of fully vaccinated people. The CDC finally conceded in February 2022 that “anyone with Omicron infection can spread the virus to others, even if they are vaccinated or don’t have symptoms.”
10. This deficiency seems to extend to the “booster shots” that were developed in response to new Covid variants. As *Fortune* reported in January: “Booster shots with messenger RNA vaccines such as those made by Pfizer Inc. and BioNTech SE failed to block Omicron in a study of some of the first documented breakthrough cases caused by the highly contagious variant.” The same report stated that “[p]reliminary data from an Israeli trial involving 154 health workers … showed that a fourth dose of Pfizer’s shot didn’t prevent infection with Omicron.”
11. Other studies have reached similar findings. For example, according to one investigation, which analyzed data from California and other states: “When the delta strain circulated from mid-November to mid-December of last year, the vaccinated accounted for 21% of all COVID-related deaths in California and Georgia, and 38% in Illinois. After delta was overtaken by the omicron variant, the proportions in California and Georgia rose substantially to over 33% -- a level comparable to Illinois, which remained at its already higher rate.”
12. Studies have also revealed potential serious side effects from the Covid-19 shots. For example, a British report that examined data from more than 42 million people found an increase in myocarditis with mRNA vaccines like the Covid-19 shots that increased with each additional shot, including the booster shots. That report’s authors concluded that “[a]n association between Covid-19 infection and myocarditis was observed in all ages for both sexes.” According to another report, a recent study from Sweden found that the “messenger RNA from Pfizer's COVID-19 vaccine reportedly can enter human liver cells and be converted into DNA, contrary to what the CDC has said.” These disturbing trends—actual evidence that contradicts the CDC’s pro-vaccine narrative—may explain why a CDC panel recently proposed extending the gap between Covid-19 shots. They may also explain why several countries, including Denmark, Finland, Norway, and Sweden, suspended use of the Moderna vaccine for young people last fall.
13. This growing body of evidence confirms what many public health officials have said all along. As former Yale professor Dr. David Gortler put it: “Vaccines are one of the most important inventions in human history, having saved millions of lives. That does not mean every person should get every vaccine. Also, like every drug out there, it is critically important to quickly detect and report safety problems.” Dr. Gortler concluded that the Covid-19 shots are “clearly no longer effective, and [are] potentially causing additional illness and death.” Many other doctors and public health officials agree with him.
14. Those who have touted the effectiveness of the Covid shots have often relied on the CDC’s recommendation and statement that they work. But in a February 20 article, *New York Times* reporter Apoorva Mandavilli wrote that the CDC “has published only a tiny fraction of the data it has collected” regarding the shots’ effectiveness in preventing hospitalizations, much less death. Ms. Mandavilli quoted a government official as saying the CDC was “reluctant” to make this information available because it “might be misinterpreted as the vaccines being ineffective.” The CDC’s credibility is eroding with reports like these and as the public learns about the results of studies (like the Swedish DNA study) that contradict the CDC’s prior statements about the vaccines.
15. Despite this evidence and these statements—and the CDC’s continued flip-flopping and withholding of data—some politicians have decided that universal vaccination is the only way to end the pandemic. To accomplish, they have mandated that people get the Covid-19 shot or lose their jobs. To that end, on August 4, 2021, Hilda Solis, chair of the Los Angeles County Board of Supervisors, issued an executive order to “[e]stablish a mandatory vaccination policy, effective immediately, which requires all County employees to provide proof of full vaccination by October 1, 2021 ….” A true and correct copy of this order is attached as **Exhibit “A.”**
16. The vaccine mandate was unprecedented. The County has never required that employees get a shot to keep their jobs, even during a pandemic. And, on information and belief, the County has never fired an employee for declining a vaccine, or any medical treatment, before now.
17. Although characterized as an “executive order,” Ms. Solis is not an executive officer. She chaired the Board of Supervisors last year, an honorary position. On information and belief, Ms. Solis did not consult with the other supervisors before issuing the August 4 order. Her order did not include any scientific explanation for the mandate but relied on generalized assertions and political statements, such as President Biden’s vow to force the shots on federal workers (a mandate that has already been stayed nationwide).
18. Ms. Solis based the August 4 order on section 8634 of the Government Code, part of the California Emergency Services Act, which states: “During a local emergency the governing body of a political subdivision, or officials designated thereby, may promulgate orders and regulations necessary to provide for the protection of life and property, including orders or regulations imposing a curfew within designated boundaries where necessary to preserve the public order and safety. Such orders and regulations and amendments and rescissions thereof shall be in writing and shall be given widespread publicity and notice.”
19. On August 10, 2021, the Board of Supervisors ratified Ms. Solis’ order, making it official County policy. The Board held little debate about the unprecedented mandate, which affects 110,000 people. It did not consider the mounting evidence that the Covid-19 shots do not prevent infection or reduce the virus' spread. It did not consider the benefits of natural immunity. It did not consider the potential side effects from the shots. It did not consider statements from people like Dr. Gortler who, while acknowledging the benefit vaccines have provided during the past century, said there is no need for everybody on earth to get every vaccine.
20. Indeed, the Board did not gather any evidence about the effectiveness or necessity of the shots. The supervisors described the forced medical treatments as a *fait accompli*, with Supervisor Holly Mitchell saying: “While it may be tempting to provide more flexibility for people not to be vaccinated and be tested instead, this would just delay the inevitable.” Ms. Solis couched the decision in political terms, saying that the “unvaccinated” had “refuse[d] to do their part altogether.” This decision-making process was, on its face, arbitrary and capricious, as the Board, like Ms. Solis, failed to engage in any legitimate fact-finding. Instead, the Board had a pre-determined policy position and simply set forth findings to justify it.
21. Moreover, the Board has ignored evidence that shows the ineffectiveness and potential side effects from the Covid-19 shots. Ignoring evidence that undermines the government’s predictions is quintessentially arbitrary and capricious. And the arbitrariness has not abated, with the County recently deciding to require that all County employees get the Covid booster shots, despite widespread evidence of their ineffectiveness against current (and future) Covid variants and their potential side effects.
22. The Board has also not accounted for County employees who have received the Covid-19 shot and simply do not want to be forced to disclose their medical history to their employer. Their concerns have merit, as they have a right under the California Constitution to protect the privacy of this information. Many County employees also have concerns about the Fulgent app, the technology the County and other government agencies in California use to track individuals' medical status. Plaintiffs are informed and believe, and on that basis allege, that the Fulgent app gathers genetic and medical data and cross-references and links the same through blockchain technology to individuals’ assets, property, residence, credit and financial data. It stores the same and shares said data with other data mining companies thus invading, with the imprimatur and contractual assistance of the County, Plaintiffs' right to privacy under the California Constitution.
23. Furthermore, in issuing and ratifying the Covid-19 vaccine mandate, Ms. Solis and the Board failed to consider that County employees have a property interest in their employment. Thus, under *Skelly v. State Personnel Board*, 15 Cal.3d 194 (1975), they have a right to notice of their termination and an opportunity to be heard before a reasonably impartial and uninvolved hearing officer. They also have the right to conduct discovery before the hearing and must be paid during that time. Some public employees, such as law enforcement officers, have even greater rights under state law.
24. Thus, the County cannot just get rid of the “unvaccinated” employees who Ms. Solis chastised for not “do[ing] their part” to end the pandemic. It will have to provide *Skelly* hearings to everybody. It will have to justify each adverse employment action. This will cost an enormous amount of time and money, as thousands of County employees have either chosen not to take the Covid-19 shots or do not wish to comply with the County's forced disclosure requirement and digital surveillance.
25. On information and belief, County employees also have rights under employee handbooks and county policies governing the terms of their employment. These agreements prohibit the County from firing employees *en masse*. They also prohibit the County from firing employees for asserting their constitutional rights and they include express protections for *Skelly* rights. These written agreements and California law bar the County from coercing public employees into waiving those rights.
26. Moreover, the mass termination of thousands of County employees will have a devastating effect on the public. Social services will be cut. Laws will not be enforced. The reduction in services will affect the most vulnerable people in Los Angeles County. The people of Los Angeles will suffer irreparable harm from the mass termination of County employees, including firefighters, law enforcements, EMTs and other first responders.
27. Ironically, although the County framed its vaccine mandate as “necessary,” the policy exempts many of the most influential people in the County from it. For example, on information and belief, the policy does not apply to judges or elected officials, including the Supervisors themselves.
28. Governments must recognize that Covid-19 is no longer an emergency condition that requires draconian restrictions to handle. The virus cannot be eliminated. It is endemic. Furthermore, the County does not have the authority to declare an emergency forever. It must terminate a state of emergency “at the earliest possible date that conditions warrant.” That date has long since passed. The County must end the Covid-19 emergency and return to normal governance. It does not have the constitutional authority to condition a return to normalcy on forced medical treatments and digital surveillance that a large percentage of the County’s workforce does not want.
29. This was true when Plaintiffs filed this case last fall. It has not changed. If anything, the pandemic’s dissipation during the past three months—with a highly contagious but less serious strain—has obviated any need for the County’s state of emergency and vaccine mandate. Even Governor Newsom recognizes that Covid-19 is now endemic. That means that no combination of lockdowns, social distancing and vaccine mandates can stop it. Moreover, we now have evidence that the Covid vaccines do not do what the County said they would do. At most, they may reduce the symptoms of Covid-19. But governments cannot compel competent adults to get a shot they do not want simply because it may reduce their symptoms, just as they cannot force people to eat their fruits and vegetables.
30. This is not a trivial issue. Many of the employees affected by the County’s vaccine mandate have spent decades working for the County. They deserve to be heard, to have their constitutional rights respected and to not be accused of insubordination for asserting their rights.
31. It is also time for courts to exercise meaningful judicial review, to apply the law evenhandedly and to prevent governments from conditioning an end to the pandemic on the livelihoods of public employees who want to control their own bodies. Plaintiffs bring this action to protect those rights and to enjoin enforcement of the County’s unlawful mandate.

**FIRST CAUSE OF ACTION**

**(Declaratory and Injunctive Relief under Cal. Emergency Services Act)**

1. Plaintiffs incorporate the preceding paragraphs of this Complaint as though set forth fully herein.
2. The California Emergency Services Act, which is codified in sections 8550 et seq. of the California Government Code, gives the Governor and local officials certain powers during a state of emergency. Sections 8630 *et seq.* govern the existence of a local emergency. The law requires that local officials “review the need for continuing the local emergency at least once every 60 days until the governing body terminates the local emergency.” Cal. Gov't Code § 8630(c). The emergency cannot last forever, though. “The governing body shall proclaim the termination of the local emergency at the earliest possible date that conditions warrant.” *Id.* § 8630(d).
3. Even during a state of emergency, local officials do not have unlimited authority. They “may promulgate orders and regulations necessary to provide for the protection of life and property,” in the affected area. *Id.* § 8634.
4. Plaintiffs contend that the County's Covid-19 vaccine mandate exceeds the County’s authority under state law. Even if it had such power, the County has a duty under the Emergency Services Act to narrowly tailor any government action to protect individual rights. That requires that any action it takes be necessary to accomplish the government’s interest and the least restrictive means of accomplishing that interest. The County made no attempt to narrowly tailor the vaccine mandate and the mandate is not the least restrictive means of response: in fact, it is the most restrictive. The mandate also fails to accomplish the County’s purpose in adopting it, as people who receive the Covid-19 shot can still contract and transmit the virus.
5. Plaintiffs also contend that the County’s adoption of the Covid-19 vaccine mandate was arbitrary and capricious as the County failed to consider evidence of the Covid-19 shots’ effectiveness and necessity. The Board also refused to consider evidence that undermined their pre-determined judgment to require the shots—and now the booster shots—a quintessentially arbitrary and capricious action.
6. On information and belief, the County contends that it does have the power to issue the Covid-19 vaccine mandate and contends that the mandate does not have to be narrowly tailored. The County also contends, in the alternative, that the vaccine mandate is narrowly tailored to fulfill a compelling government interest and that the Board of Supervisors did not act arbitrarily and capriciously in adopting the order. Furthermore, the County contends that people who have taken the Covid shots cannot contract or transmit the Covid-19 virus.
7. Plaintiffs desire a judicial declaration that the Covid-19 vaccine mandate exceeds the County’s powers under state law. Plaintiffs also seek an order that the County acted arbitrarily and capriciously in adopting the mandate.
8. A judicial determination of these issues is necessary and appropriate because such a declaration will clarify the parties' rights and obligations, permit them to have certainty regarding those rights and potential liability, and avoid a multiplicity of actions.
9. The County’s actions have harmed Plaintiffs and those they represent, as alleged above.
10. Plaintiffs have no adequate remedy at law and will suffer irreparable harm if the Court does not enjoin the County from enforcing the unlawful vaccine mandate. Thus, Plaintiffs seek preliminary and permanent injunctive relief for such an order.
11. This action serves the public interest, justifying an award of attorneys’ fees under section 1021.5 of the California Code of Civil Procedure.

**SECOND CAUSE OF ACTION**

**(Declaratory and Injunctive Relief under Cal. Emergency Services Act)**

1. Plaintiffs incorporate the preceding paragraphs of this Complaint as though set forth fully herein.
2. The County issued the Covid-19 vaccine mandate pursuant to its powers under section 8630 *et. seq* of the Government Code, the California Emergency Services Act.
3. The Emergency Services Act requires that the County “review the need for continuing the local emergency at least once every 60 days until the governing body terminates the local emergency.”
4. The Act also states: “The governing body shall proclaim the termination of the local emergency at the earliest possible date that conditions warrant.” This is a mandatory duty, not a discretionary one.
5. The County issued the local state of emergency in March 2020, when Covid-19 was a novel virus that some predicted would overwhelm the health care system and kill millions. Covid-19 has now been around for two years. It cannot be eliminated. It can be treated.
6. Indeed, Governor Newsom said in June 2021 that Californians had “flattened the curve” and could return to normalcy. Governor Newsom also said during February 2022 that Covid-19 is becoming endemic and that he is ending almost all executive orders related to Covid-19.
7. Plaintiffs contend that the County has a duty to terminate the local emergency related to Covid-19. In the alternative, Plaintiffs contend that the County has acted arbitrarily and capriciously in refusing to terminate the emergency and in extending the emergency indefinitely without conducting a good-faith review of the need for it.
8. On information and belief, the County contends that it does not have a duty to terminate the Covid-19 emergency and that it has not acted arbitrarily and capriciously by refusing to terminate the emergency or by failing to review the need for it every 60 days.
9. Plaintiffs desire a judicial declaration that the County has a duty to terminate the local emergency related to Covid-19 and that the County has acted arbitrarily and capriciously in refusing to terminate the emergency and in extending the emergency indefinitely.
10. A judicial determination of these issues is necessary and appropriate because such a declaration will clarify the parties’ rights and obligations, permit them to have certainty regarding those rights and potential liability, and avoid a multiplicity of actions.
11. The County’s actions have harmed Plaintiffs and those they represent, as alleged above.
12. Plaintiffs have no adequate remedy at law and will suffer irreparable harm if the Court does not order the County to terminate the Covid-19 state of emergency. Thus, they seek preliminary and permanent injunctive relief mandating that action and enjoining the County from issuing any further orders pursuant to the Emergency Services Act.
13. This action serves the public interest, justifying an award of attorneys’ fees under section 1021.5 of the California Code of Civil Procedure.

**THIRD CAUSE OF ACTION**

**(Declaratory and Injunctive Relief under Cal. Constitution by Individual Plaintiffs)**

1. Plaintiffs incorporate the preceding paragraphs of this Complaint as though set forth fully herein.
2. The Individual Plaintiffs are employed by the County. They are considered to be “not fully vaccinated” because they have either declined to take the original Covid-19 shot or the booster. They object to the forced medical treatment and object to being compelled to turn over their private medical information to the County as a condition of their employment. They also object to being forced to upload their private medical information through the Fulgent app.
3. Individuals have a right to privacy under the California Constitution. This state law privacy right, which was added by voters in 1972, is far broader than the right to privacy that exists under the federal Constitution. It is the broadest privacy right in America and has been interpreted by the California Supreme Court to protect both the right to informational privacy and to bodily integrity.
4. County employees, like all competent adults in California, have a legally protected privacy interest in their bodily integrity, as the California Supreme Court recognized in *Hill v. NCAA*.
5. County employees’ expectation of privacy is reasonable under the circumstances, as the County has never had a vaccination requirement for public employment before now and the County has never disciplined, much less fired, a county employee for declining an injection. The only compulsory vaccination laws adopted in California during the past century concerned certain vaccines that children need to attend school. Those laws do not undermine the expectation of privacy that County employees, as adults, have in their bodily integrity. Moreover, in 2005, the California Court of Appeal identified compulsory vaccination as the type of “invasive and highly personalized medical treatments used in cases where the state sought to override a person’s freedom to choose and where the Supreme Court has recognized a liberty interest in freedom from such unwanted medical treatment.” *Coshow v. City of Escondido*, 132 Cal. App. 4th 687, 710 (2005). Therefore, the County’s vaccine mandate constitutes a serious invasion of County employees’ privacy rights, as alleged above.
6. As the California Supreme Court has explained, the federal “rational basis” test that the County often invokes to justify its vaccine mandate (and which it erroneously believes will be dispositive at the pleading stage) does not apply in a state law privacy case. State law employs a fact-intensive balancing test and while the County may argue that its vaccine mandate serves a compelling interest in reducing the spread of Covid-19, there are feasible and effective alternatives to it that have a lesser impact on privacy interests.
7. Furthermore, evidence now shows that the Covid-19 vaccines do not prevent people from contracting and transmitting Covid-19. That is why millions of vaccinated people, including County employees, fell ill with the Omicron variant last winter. This trend will continue as other Covid variants emerge. Thus, the vaccine mandate does not serve its stated purpose of preventing infection. The most the Covid shots can do now is, potentially, reduce the severity of Covid-19 symptoms but even that has not been scientifically proven and there are other ways to reduce the severity of Covid-19 without compelling people to get a shot they do not want.
8. On information and belief, the County contends that its mandate does not violate the privacy rights of County employees and that it satisfies scrutiny under Article I, section 1 of the California Constitution.
9. Plaintiffs desire a judicial declaration that the County's Covid-19 vaccine mandate is unconstitutional because it violates County employees’ right to privacy under Article I, section 1 of the California Constitution.
10. A judicial determination of these issues is necessary and appropriate because such a declaration will clarify the parties’ rights and obligations, permit them to have certainty regarding those rights and potential liability, and avoid a multiplicity of actions.
11. The County’s actions have harmed the Individual Plaintiffs and other County employees, as alleged above.
12. Plaintiffs have no adequate remedy at law and will suffer irreparable harm if the Court does not declare the vaccine mandate unconstitutional. Thus, they seek preliminary and permanent injunctive relief enjoining the County from enforcing the mandate
13. This action serves the public interest, justifying an award of attorneys' fees under section 1021.5 of the California Code of Civil Procedure.

**FOURTH CAUSE OF ACTION**

**(Violation of Due Process/*Skelly* by Individual Plaintiffs)**

1. Plaintiffs incorporates the preceding paragraphs of this Complaint as though set forth fully herein.
2. The Individual Plaintiffs contend that the County does not have the power to put County employees who do not follow the Covid vaccine mandate on unpaid leave pending termination proceedings. The County must provide any employee who does not comply with the mandate with his or her *Skelly* rights, including notice and an opportunity to challenge any adverse employment action. This process must be fair. It must include an opportunity to gather evidence. And the County’s review of the any adverse employment action must be done by an impartial third party. Furthermore, the Individual Plaintiffs are informed and believe and based thereon allege that the Board of Supervisors has not delegated the authority to discipline County employees for not complying with the Covid vaccine mandate to other officials. Thus, any such discipline must be imposed by the Board of Supervisors in the first instance.
3. The Individual Plaintiffs also contend that the County cannot take any adverse employment action against sworn personnel, such as County sheriffs and firefighters, without providing them with the rights they have under the state law Police Officer and Firefighter Bill of Rights. These rights go beyond the minimum due process rights that all public employees have under *Skelly*.
4. On information and belief, the County contends that it does not have to comply with *Skelly* or the Police Officer or Firefighter Bill of Rights before taking adverse employment action against County employees who choose not to get the Covid-19 shot or who object to turning their confidential medical information over to the County as a condition of employment. The County also contends that the Board of Supervisors has delegated the authority to discipline County employees for not complying with the Covid vaccine mandate to other officials or that such delegation is not required. And it contends that *Skelly*, the Police Officer Bill of Rights and the Firefighter Bill of Rights do not apply during a state of emergency, even a state of emergency that has been in place for two years and which has no end in sight.
5. Plaintiffs desire a judicial declaration that the County cannot take any adverse employment action against an employee without providing that employee with due process under *Skelly*. Plaintiffs also seek a judicial declaration that the County cannot take any adverse employment action against a sworn County employee without providing that employee both with his or her *Skelly* rights and by following the procedures outline in the Police Officer and Firefighter Bill of Rights. And Plaintiffs desire a judicial declaration that the due process rights County employees enjoy under *Skelly*, the Police Officer Bill of Rights and the Firefighter Bill of Rights do apply during a state of emergency and that any discipline must be imposed by the Board of Supervisors in the first instance.
6. A judicial determination of these issues is necessary and appropriate because such a declaration will clarify the parties’ rights and obligations, permit them to have certainty regarding those rights and potential liability, and avoid a multiplicity of actions.
7. The County’s actions have harmed Plaintiffs and those they represent by putting thousands of jobs at risk. Furthermore, the public interest will be severely damaged if the County fires thousands of public employees *en masse*. That action could also expose the County to financial liability, including backpay and legal fees for any due process violations.
8. Plaintiffs have no adequate remedy at law and will suffer irreparable harm if the Court does not enjoin the County from enforcing the unlawful mandate. Thus, Plaintiffs seek preliminary and permanent injunctive relief for such an order.
9. This action serves the public interest, justifying an award of attorneys’ fees under section 1021.5 of the California Code of Civil Procedure.

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**PRAYER FOR RELIEF**

Wherefore, Plaintiffs pray for relief as follows:

1. For an order declaring the County’s Covid-19 vaccine mandate as invalid because it exceeds the County’s power under the Emergency Services Act;
2. For an order declaring that the County has a duty to terminate the local emergency related to Covid-19 and that the County acted arbitrarily and capriciously by extending the Covid-19 emergency for more than a year and a half without conducting the reviews required by the Emergency Services Act to determine whether the extensions were necessary;
3. For an order declaring the County’s vaccine mandate unconstitutional because it violates the privacy rights that public employees have under the California Constitution;
4. For an order declaring that the County cannot terminate or take other adverse employment action for County employees without first providing them with their due process rights as set forth in *Skelly* and state law Bill of Rights for sworn employees;
5. For an order declaring that *Skelly* and state law Police Officer/Firefighter Bill of Rights do apply during a state of emergency;
6. For preliminary and permanent injunctive relief requiring that the County terminate the Covid-19 state of emergency;
7. For preliminary and permanent injunctive relief enjoining the County from enforcing the Covid-19 vaccine mandate;
8. For costs and attorneys’ fees under section 1021.5 of the Code of Civil Procedure; and
9. For such other relief that the Court determines is just and proper.

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| --- | --- |
| Dated: March 7, 2022 | JW HOWARD/ ATTORNEYS, LTD.  A picture containing linedrawing  Description automatically generated |
| By: |  |
|  | Scott J. Street  Attorneys for Plaintiffs Vincent Tsai et al. |

**PROOF OF SERVICE**

I, the undersigned, do declare that I am employed in the county aforesaid, that I am over the age of [18] years and not a party to the within entitled action; and that I am executing this proof at the direction of the member of the bar of the above entitled Court. The business address is:

JW Howard Attorneys LTD

701 B Street, Ste. 1725

San Diego, California 92101

□ MAIL. I am readily familiar with the business’ practice for collection and processing of correspondence for mailing via the United States Postal Service and that the correspondence would be deposited with the United States Postal Service for collections that same day.

■ ELECTRONIC. I am readily familiar with the business’ practice for collection and processing of documents via electronic system and said documents were successfully transmitted via One Legal that same day.

□ PERSONAL. The below described documents were personally served on date below via Knox Services.

On the date indicated below, I served the within:

**SECOND AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Via One Legal To:

**SheppardMullin**1901 Avenue of the Stars, Suite 1600  
Los Angeles, CA 90067-6017  
**Kent Raygor**

[**KRaygor@sheppardmullin.com**](mailto:KRaygor@sheppardmullin.com)

**Valerie Alter**

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I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct and was ***EXECUTED*** on March 7, 2022, at San Diego, CA.

\_\_\_\_\_\_\_\_\_\_/s/ Dayna Dang\_\_\_\_\_\_\_\_\_\_\_\_

Dayna Dang, Paralegal

[dayna@jwhowardattorneys.com](mailto:dayna@jwhowardattorneys.com)