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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

Joshua Williams, an individual, **Jennifer Lewis**, an individual, **David Klaus**, an individual, **Michael Miller**, an individual, **Phillip Kearney**, an individual, **Jay Hicks**, an individual;

Plaintiffs,

v.

Kate Brown, in her official capacity as Governor of **the State of Oregon**; **Patrick Allen** in his official capacity as Director of the **Oregon Health Authority**;

Defendants.

Case No.

COMPLAINT

Violation of Civil Rights;

Demand for Jury Trial

INTRODUCTION

1. Oregon Governor Kate Brown issued Executive Order No. 21-29 August 13, 2021, and the Oregon Health Authority issued two Temporary Rules August 25, 2021. Through these rules, the State requires Plaintiffs, as a condition of continued employment, to accept a vaccine injected into their body without their consent. These rules deprive Plaintiffs of their ability to refuse unwanted medical care in violation of their constitutional right to privacy, bodily autonomy, and personal liberty.

2. Plaintiffs have already contracted COVID-19, and recovered, and have natural immunity to the virus at least as robust, durable, and long-lasting as that artificially achieved through vaccination.¹

3. The State has no compelling interest in coercing Plaintiffs into taking a COVID-19 vaccine, because Oregon has no compelling interest in treating employees with natural immunity any differently from employees who obtained immunity from a vaccine, nor is mandatory vaccination an appropriate least-restrictive means for the State to achieve any compelling interest.

Jurisdiction and Venue

4. This action arises under federal law, including the Federal Civil Rights Act of 1871, 42 U.S.C. § 1983 and 1988, to redress the deprivation, under color of state law, of rights, privileges, and immunities secured to Plaintiff by the Constitution of the United States.

5. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 and 28 U.S.C. § 1343.

¹ See e.g., Jocelyn Solis-Moreira, *Does SARS-CoV-2 natural infection immunity better protect against the Delta variant than vaccination?* August 30 2021, <https://www.news-medical.net/news/20210830/Does-SARS-CoV-2-natural-infection-immunity-better-protect-against-the-Delta-variant-than-vaccination.aspx>.

6. This action is an actual controversy in which Plaintiffs seek a declaration of his rights under the Constitution of the United States. Pursuant to 28 U.S.C. §§ 2201-2202, this Court may declare the rights of Plaintiffs and grant further necessary and proper relief based thereon, including injunctive relief pursuant to Federal Rule of Civil Procedure 65.

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the claims arise in this judicial district and Defendants operate and do business in this judicial district.

8. Because a substantial part of the events giving rise to these claims occurred in counties covered by the Eugene Division, assignment to that Division is proper. L.R. 3-2.

FACTS

The Coronavirus Pandemic and COVID-19 Vaccines

9. The novel coronavirus SARS-CoV-2, which can cause the disease COVID-19, presents a significant risk primarily to individuals aged 70 or older and those with comorbidities such as obesity and diabetes. The World Health Organization (“WHO”) concluded that the survival rate for COVID-19 patients under 70 years of age was 99.95% in a meta-analysis of data worldwide. Centers for Disease Control and Prevention, COVID-19 Pandemic Planning Scenarios, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/planning-scenarios.html>.

10. The Centers for Disease Control (“CDC”) estimates that the survival rate for young adults between 20 and 49 is 99.95% and for people ages 50-64 is 99.4%. *Id.*

11. As of August 23, 2021, the FDA has granted approval for one vaccination for individuals over the age of sixteen, Pfizer-BioNTech (marketed as Comirnaty <https://www.fda.gov/news-events/press-announcements/fda-approves-first-covid-19-vaccine>).

12. The remaining vaccines, the Moderna vaccine and the Johnson and Johnson vaccine are approved for use only under Emergency Use Authorization, meaning they have not gone through the typical six stages: (1) exploratory; (2) preclinical (animal testing); (3) clinical (human trials); (4) regulatory review and approval; (5) manufacturing; and (6) quality control. See Vaccine Testing and the Approval Process, CDC (May 1, 2014), available at <https://bit.ly/3rGkG2s> (last visited September 9, 2021).

13. Recent research indicates that vaccination presents a heightened risk of adverse side effects—including serious ones—to those who have previously contracted and recovered from COVID-19. The heightened risk of adverse effects results from “preexisting immunity to SARSCov-2 [that] may trigger unexpectedly intense, albeit relatively rare, inflammatory and thrombotic reactions in previously immunized and predisposed individuals.” *Angeli et al.*, SARS-CoV-2 Vaccines: Lights and Shadows, 88 EUR. J. INTERNAL MED. 1, 8 (2021).

Oregon’s Vaccine Mandates

14. The Oregon Health Authority issued a Temporary Administrative Order requiring proof of SARS-CoV-2 (“COVID-19”) vaccination for all individuals who work in healthcare settings, including temporary sites where healthcare is delivered (“provider vaccine mandate”). See Exhibit A, OAR 333-019-1010, dated August 25, 2021.

15. The Oregon Health Authority issued a Temporary Administrative Order requiring proof of SARS-CoV-2 vaccination for all individuals who work in schools (“school vaccine mandate”). See Exhibit B, OAR 333-019-1030, dated August 25, 2021.

16. The vaccine mandates require all employers to ensure that their employees have received a vaccination by October 18, 2021, meaning the employer must have proof of vaccination

of all staff by that time or face civil penalties of \$500 per day per violation. OAR 333-019-1010(5) and (8); OAR 333-019-1030(6) and (15).

17. On August 13, 2021, Governor Kate Brown issued Executive Order No. 21-29 which, after October 18, 2021, prohibits employees from working for Executive Branch Agencies unless fully vaccinated. Executive Order No 21-29 (2). The mandate requires that “On or before October 18, 2021...[all Executive Branch] Employees must provide their employer with either (a) proof of vaccination ... or (b) a written request for exception...” Executive Order No 21-29 (3). Penalties for noncompliance include “personnel consequences up to and including separation from employment.” Executive Order No 21-29 (7). Exhibit C.

18. No exception to these mandates exists for persons who have already achieved immunity to COVID-19 by recovering from the virus. In fact, information provided by OHA indicates “Proof of history of COVID-19 disease as a substitute for vaccination is not allowed under the rule.” See Healthcare Provider and Healthcare Staff Vaccine Rule FAQs (Updated 9-02-2021) available at <https://sharedsystems.dhsoha.state.or.us/DHSForms/Served/1e3879.pdf>.

The Parties

19. Plaintiff **Joshua Williams** resides in Marion County, Oregon. He has been a licensed EMT since 1996. He has served in his current position as station chief at Aurora Fire and Rescue since 2018.

20. Throughout 2020-2021, Mr. Williams provided emergency and rescue services to the greater Aurora community, including emergency care for individuals with COVID-19, including individuals who were not aware at the time that they were positive for COVID-19.

21. At all times, Mr. Williams followed applicable health and safety protocols and safety precautions.

22. Mr. Williams fell ill on or near January 9, 2021, and subsequently tested positive for SARS-CoV-2. He followed protocols for quarantine and testing and is now fully recovered from the virus.

23. Because he has fully recovered from COVID-19, Mr. Williams has acquired robust natural immunity.

24. Based on his naturally acquired immunity, it is medically unnecessary for Mr. Williams to undergo a vaccination procedure at this point (which fact also renders the procedure and any attendant risks medically unethical).

25. Plaintiff **Jennifer Lewis** resides in Klamath County, Oregon. She is currently employed as Office Manager and Treatment Coordinator for Klamath Falls Orthodontics. She has worked at her current position since 2013.

26. From May of 2020, Klamath Falls Orthodontics opened for care for patients. Throughout the remainder of 2020 until the present, Ms. Lewis provided orthodontic care for patients following all applicable health and safety protocols and safety precautions.

27. On December 5, 2020, Ms. Lewis received a positive test for COVID-19 after feeling unwell.

28. Ms. Lewis observed quarantine as required by local health regulations, and fully recovered.

29. On August 18, 2021, Ms. Lewis received a test for SARS-CoV-2 antibodies, which demonstrated that she has acquired robust natural immunity.

30. Based on her naturally acquired immunity, it is medically unnecessary for Ms. Lewis to undergo a vaccination procedure at this point (which fact also renders the procedure and any attendant risks medically unethical).

31. Plaintiff **David Klaus** has worked for the Beaverton School District as a bus driver since 2013.

32. Mr. Klaus received a test for COVID-19 antibodies in January 2021, which indicated he had robust natural immunity to COVID-19.

33. Based on his naturally acquired immunity, it is *medically unnecessary* for Mr. Klaus to undergo a vaccination procedure at this point (which fact also renders the procedure and any attendant risks medically unethical).

34. Mr. Klaus objects to obtaining any COVID-19 vaccination on top of his natural immunity because of the risks inherent in the procedure.

35. Mr. Klaus fears losing his employment because his employer, Beaverton School District, is enforcing the state-wide school vaccination mandate. No exception to this mandate applies for school employees who have natural immunity.

36. Plaintiff **Michael Miller** resides in Canyon County, Idaho. He works for the Oregon Department of Corrections as a Correctional Officer where he has served since January of 2013.

37. He fell ill and tested positive for COVID-19 in November of 2020.

38. After observing the time required for quarantine, Mr. Miller worked as usual during 2020-2021.

39. On September 1, 2021, Mr. Miller received the results of a lab test indicating that he has COVID-19 antibodies providing natural immunity.

40. Mr. Miller objects to obtaining the vaccination because of his natural immunity, and the risks inherent in the vaccine.

41. Mr. Miller fears losing his employment because his employer, the Department of Corrections, is enforcing the Governor's vaccination mandate. No exception to this mandate applies for corrections employees who have natural immunity.

42. Plaintiff **Phillip Kearney** resides in Clackamas County, Oregon. He works for the Oregon Department of Justice as an Assistant Special Agent in Charge of an investigatory unit.

43. Mr. Phillips fell ill and tested positive for COVID-19 in the spring of 2021.

44. After observing the time required for quarantine, Mr. Kearney worked as usual during 2020-2021.

45. Mr. Kearney objects to receiving the COVID-19 vaccination because he has natural immunity. He further has a moral objection to the vaccination for which he has requested an accommodation of his employer. He has received no response from his employer as to their ability to accommodate his moral objection, and fears that with time passing, he may be terminated from his employment.

46. Plaintiff **Jay Hicks** resides in Malheur County, Oregon. He works for the Oregon Department of Corrections as a Correctional Officer where he has served since February of 1999.

47. He fell ill and tested positive for COVID-19 in September of 2020.

48. After observing the time required for quarantine, Mr. Hicks worked as usual during 2020-2021.

49. On August 20, 2021, Mr. Hicks received the results of a lab test indicating that he currently has robust COVID-19 antibodies providing natural immunity.

50. Mr. Hicks objects to obtaining the vaccination because of his natural immunity, and the risks inherent in the vaccine. His doctor has advised him that it is medically unnecessary to

obtain the COVID-19 vaccination, and that his decision not to get the vaccine is medically advisable.

51. Mr. Hicks fears losing his employment because his employer, the Department of Corrections, is enforcing the Governor's vaccination mandate. No exception to this mandate applies for corrections employees who have natural immunity.

52. Defendant **Kate Brown** is the Governor of the State of Oregon and is sued in her official capacity.

53. Defendant **Patrick Allen** is the Director of the Oregon Health Authority and is sued in his official capacity.

54. Defendant the **Oregon Health Authority** whose address is 500 Summer Street, NE, E-20, Salem, OR 97301-1097 is the state agency responsible for issuing the vaccine mandate.

**Studies Show Naturally Acquired Immunity from COVID-19
Prior Infection Is At Least As Robust as Vaccine-Acquired Immunity.**

55. Naturally acquired immunity developed after recovery from COVID-19 provides broad protection against severe disease from subsequent SARS-CoV-2 infection.

56. Just because an individual is vaccinated does not guarantee he is immune and just because he is not vaccinated does not mean he is not immune. Instead of focusing its policy on blanket vaccination, therefore, a reasonably tailored policy would focus on immunity, regardless of how it is obtained.

57. There is an emerging consensus in clinical literature on the protective benefits of natural immunity, and there are elevated risks in indiscriminately vaccinating individuals who have natural immunity. Indeed, the European Union has taken this approach. Julia Buckley, EU Digital Covid Certificate: Everything you need to know, CNN.COM (June 9, 2021), <https://www.cnn.com/travel/article/eu-covid-certificate-travel-explainer/index.html>.

58. Multiple extensive, peer-reviewed studies comparing naturally acquired and vaccine-acquired immunity have concluded overwhelmingly that the former provides equivalent or greater protection against severe infection than immunity generated by mRNA vaccines (Pfizer and Moderna). These studies confirm the efficacy of natural immunity against reinfection of COVID-19 and show that almost all reinfections are less severe than first-time infections and almost never require hospitalization. Even those vaccinated can have reinfections, and those incidents are no less severe than those reinfections for the naturally immune.

59. Given that there is currently more data on the durability of natural immunity than there is for vaccine immunity, researchers rely on the expected durability of natural immunity to predict that of vaccine immunity. Heidi Ledford, *Six months of COVID vaccines: what 1.7 billion doses have taught scientists*, 594 NATURE 164 (June 10, 2021), <https://www.nature.com/articles/d41586-021-01505-x> (study notes that “Six months is not much time to collect data on how durable vaccine responses will be.... In the meantime some researchers are looking to natural immunity as a guide.”).

60. Studies have demonstrated prolonged immunity for those recovered from COVID-19 with respect to memory T- and B cells, bone marrow plasma cells, spike-specific neutralizing antibodies, and IgG+ memory B-cells following a COVID-19 infection. Dr. Harvey Risch, Yale School of Medicine, interview (“Risch interview”), Laura Ingraham Discusses How Medical Experts Are Increasing Vaccine Hesitancy (July 26, 2021), available at <https://bit.ly/3zOL6Sx> (last visited September 9, 2021).

61. New variants of COVID-19 resulting from the virus's mutation do not escape the natural immunity developed by prior infection from the original strain of the virus, certainly not at any rate greater than for those whose immunity comes from vaccines.²

62. Recent Israeli data found that those who had received the Pfizer Vaccine were 6.72 times more likely to suffer a subsequent infection than those with naturally acquired immunity. David Rosenberg, *Natural Infection vs Vaccination: Which Gives More Protection?* ISRAELNATIONALNEWS.COM (Jul. 13, 2021), available at <https://www.israelnationalnews.com/News/News.aspx/309762> (last visited September 9, 2021).

63. Israeli data also indicates that the protection Pfizer grants against infection is short-lived compared to natural immunity and degrades significantly faster. In fact, as of July 2021, vaccine recipients from January 2021 exhibited only 16% effectiveness against infection and 16% protection against symptomatic infection, increasing linearly until reaching a level of 75% for those vaccinated in April. See Nathan Jeffay, Israeli, UK data offer mixed signals on vaccine's potency against delta strain, THE TIMES OF ISRAEL (July 22, 2021), available at bit.ly/3xg3uCG (last visited September 9, 2021).

² Alison Tarke, A., Sidney, J., Methot, N., Zhang, Y., Dan, J. M., Goodwin, B., Rubiro, P., Sutherland, A., da Silva Antunes, R., Frazier, A., Rawlings, S. A., Smith, D. M., Peters, B., Scheuermann, R. H., Weiskopf, D., Crotty, S., Grifoni, A., & Sette, A., Negligible impact of SARS-CoV-2 variants on CD4 + and CD8 + T cell reactivity in COVID-19 exposed donors and vaccinees, BIORXIV, 2021.02.27.433180 (2021), <https://doi.org/10.1101/2021.02.27.433180>.

33 Wu, K., Werner, A. P., Moliva, J. I., Koch, M., Choi, A., Stewart-Jones, G. B. E., Bennett, H., Boyoglu-Barnum, S., Shi, W., Graham, B. S., Carfi, A., Corbett, K. S., Seder, R. A., & Edwards, D. K., mRNA-1273 vaccine induces neutralizing antibodies against spike mutants from global SARS-CoV-2 variants, BIORXIV : THE PREPRINT SERVER FOR BIOLOGY, 2021.01.25.427948 (2021), <https://doi.org/10.1101/2021.01.25.427948>.

34 Redd, A. D., Nardin, A., Kared, H., Bloch, E. M., Pekosz, A., Laeyendecker, O., Abel, B., Fehlings, M., Quinn, T. C., & Tobian, A. A., CD8+ T cell responses in COVID-19 convalescent individuals target conserved epitopes from multiple prominent SARS-CoV-2 circulating variants, MEDRXIV : THE PREPRINT SERVER FOR HEALTH SCIENCES, 2021.02.11.21251585 (2021), <https://doi.org/10.1101/2021.02.11.21251585>.

64. Those who received a second dose of the Pfizer Vaccine between January and April of this year were determined to have 39% protection against infection and 41% protection against symptomatic infection. This further suggests that the number of breakthrough infections was the result of waning vaccine protection as opposed to the spread of the Delta variant. *See* Carl Zimmer, *Israeli Data Suggests Possible Waning Infection in Effectiveness of Pfizer Vaccine*, THE NEW YORK TIMES (July 23, 2021); Kristen Monaco, *Pfizer Vax Efficacy Dips at 6 Months*, MEDPAGE TODAY (July 29, 2021), *available at* <https://bit.ly/2VheBxw> (last visited September 9, 2021).

65. Early data also suggests that naturally acquired immunity may provide greater protection against both the Delta and Gamma variants than vaccine-induced immunity. A recent analysis of an outbreak among a small group of mine workers in French Guiana found that 60% of fully vaccinated miners suffered breakthrough infections compared to zero among those with natural immunity. Nicolas Vignier, *et al.*, *Breakthrough Infections of SARS-CoV-2 Gamma Variant in Fully Vaccinated Gold Miners, French Guiana, 2021*, 27 EMERG. INFECT. DIS. (Oct. 2021), https://wwwnc.cdc.gov/eid/article/27/10/21-1427_article.

66. The CDC reported that “new scientific data” indicated that vaccinated people who experienced breakthrough infections carried similar viral loads to the unvaccinated (but not naturally immune), leading the CDC to infer that vaccinated people transmit the virus at concerning levels. *See* CDC reversal on indoor masking prompts experts to ask, “*Where’s the data?*”, WASHINGTON POST (July 28, 2021), *available at* wapo.st/2THpmIQ (last visited September 9, 2021).

67. There is no legitimate public health rationale for requiring proof of vaccination to participate in activities that do not involve care for high-risk individuals because there has already

been a successful vaccination campaign that already protects the vulnerable population. Thus, the unvaccinated — especially recovered COVID patients – pose a vanishingly small threat to the vaccinated. See Martin Kulldorff and Jay Bhattacharya, *Vaccine Passports Prolong Lockdowns*, WALL STREET JOURNAL (Apr. 6, 2021), <https://www.wsj.com/articles/vaccine-passports-prolong-lockdowns-11617726629>. Martin Kulldorff and Jay Bhattacharya, *The ill-advised push to vaccinate the young*, THEHILL.COM (June 17, 2021), <https://thehill.com/opinion/healthcare/558757-the-ill-advised-push-to-vaccinate-the-young?rl=1>.

All Vaccines, including COVID-19 Vaccines, Can Cause Side Effects and Involve Risks.

68. It is a fundamental principle of immunology that “vaccinating a person who is recently or concurrently infected can reactivate, or exacerbate, a harmful inflammatory response to a virus.” This applies to SARS-CoV-2 just as it does to viruses such as shingles. Homman Noorchashm, *The Recently Infected and Already Immune DO NOT Benefit from COVID-19 Vaccination*, MEDIUM.COM (Jun 1, 2021), <https://noorchashm.medium.com/the-recently-infected-and-already-immune-do-not-benefit-from-covid-19-infection-7453886e8c89>.

69. Though the COVID-19 vaccines appear to be relatively safe at a population level, like all medical interventions, they carry a risk of side effects. Those include common, temporary reactions such as pain and swelling at the vaccination site, fatigue, headache, muscle pain, fever, and nausea. More rarely, they can cause serious side effects that result in hospitalization or death. See Centers for Disease Control, *Possible Side Effects After Getting a COVID-19 Vaccine* (June 24, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/expect/after.html>.

70. The vaccines could cause other side effects that remain unknown at this time given the stage of the vaccines’ approval process.

71. As a matter of simple logic, one cannot be certain about the long-term effects of a vaccine that has existed only for approximately a year, and thus cannot have been studied over a substantial period of time.

72. Medical necessity is a fundamental tenet of medical ethics. This principle requires that public health agents utilize “the least intrusive” means possible to achieve a given end, because every medical procedure carries some risk. James F. Childress, et al., *Public Health Ethics: Mapping the Terrain*, 30(2) J. LAW & MED. ETHICS 170 (2002).

73. Further, there may be greater risks of side effects for individuals who have had COVID-19 and then get the vaccination. Noam Barda, M.D., et al., *Safety of the BNT162b2 mRNA Covid-19 Vaccine in a Nationwide Setting*, New England Journal of Medicine, August 25, 2021, <https://www.nejm.org/doi/full/10.1056/NEJMoa2110475> (“The risk of this potentially serious adverse event and of many other serious adverse events was substantially increased after SARS-CoV-2 infection.”)

Plaintiffs have Robust, Naturally Acquired Immunity to Covid-19.

74. Plaintiffs have studied the available information, and have each been tested for antibodies. Based on their individual antibody tests, they each have determined that to undergo a full-course vaccination procedure would involve more risks than benefits. Such a course is unnecessary to protect any of the Plaintiffs or their communities from infection. Rather, a full-course vaccination procedure would expose Plaintiffs to a heightened risk of adverse side effects that would exceed any speculative benefit the vaccine could confer on someone already protected with antibodies. See N. Kojima, et al., *Incidence of Severe Acute Respiratory Syndrome Coronavirus-2 infection among previously infected or vaccinated employees*, <https://www.medrxiv.org/content/10.1101/2021.07.03.21259976v2> (July 8, 2021).

75. Existing clinical reports and studies indicate that individuals with a prior infection and naturally acquired immunity face an elevated risk of adverse effects from the vaccine, compared to those who have never contracted COVID-19. Alexander G. Mathioudakis, et al., *Self-Reported Real-World Safety and Reactogenicity of COVID-19 Vaccines: A Vaccine Recipient Survey*, 11 LIFE 249 (Mar. 2021). Cristina Menni, *Vaccine side-effects and SARS-CoV-2 infection after vaccination in users of the COVID symptom study app in the UK: a prospective observational study*, 21 LANCET INFECTIOUS DISEASES 939-49 (July 2021); *See Multisystem Inflammatory Syndrome after SARS-CoV-2 Infection and COVID-19 Vaccination*, 27 (Number 7) EMERGING INFECTIOUS DISEASE (July 2021) (Centers for Disease Control and Prevention Dispatch); *see also* Hooman Noorchashm, *CDC Knows Vaccine Associated Critical Illness and Myocarditis are Linked to Prior COVID-19 Infections*, MEDIUM.COM (Jun 2, 2021), <https://noorchashm.medium.com/cdc-knows-vaccine-associated-critical-illness-and-myocarditis-are-linked-to-prior-covid-19-62942c39c5ca>.

76. This is consistent with understandings of immunology generally, which recognize that “vaccinating a person who is recently or concurrently infected [with any virus] can reactivate, or exacerbate, a harmful inflammatory response to the virus.” Homman Noorchashm, *The Recently Infected and Already Immune DO NOT Benefit from COVID-19 Vaccination*, MEDIUM.COM (Jun 1, 2021), <https://noorchashm.medium.com/the-recently-infected-and-already-immune-do-not-benefit-from-covid-19-infection-7453886e8c89>.

77. Given these potential side effects, and the fact that plaintiffs possess naturally acquired immunity that makes the vaccine medically unnecessary, compelling Plaintiffs to receive a full vaccine course would pose a risk of undue harm and thereby violate a fundamental tenet of medical ethics.

78. Plaintiffs have real, substantial, and legitimate concerns about taking the vaccines in light of their naturally acquired immunity and the potential for short- and long- term side effects from the vaccines themselves.

79. The immunological evidence to date suggests that natural immunity against disease will last for years, and uncertainty over the longevity of immunity after recovery is a specious reason for not exempting COVID-19 recovered patients from vaccination mandates, since the same can be said about vaccine mediated immunity. Patel N (2021) *Covid-19 Immunity Likely Lasts for Years*. MIT Technology Review. January 6, 2021. <https://www.technologyreview.com/2021/01/06/1015822/covid-19-immunity-likely-lasts-for-years/>.

80. For example, the United States requires everyone, including its citizens, to provide proof of a negative COVID-19 test before returning to the country from abroad. Documentation of recovery suffices as a substitute, although proof of vaccination does not. See Requirement of Proof of Negative COVID-19 Test or Recovery from COVID-19 for All Air Passengers Arriving in the United States, CDC (July 6, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/travelers/testing-international-air-travelers.html> (last visited September 9, 2021).

81. Oregon has no compelling interest in preventing these Plaintiffs from spreading COVID-19, as compared to its interest in vaccinating those without antibodies to prevent them from spreading COVID-19.

Plaintiffs have Experienced, and Will Continue to Experience, Concrete and Particularized Harm, As a Result of the Vaccine Mandates.

82. Plaintiffs expect that they will lose their jobs if they do not obtain the COVID-19 vaccination since both vaccination mandates threaten employers with a \$500/incident fine for noncompliance.

83. Given that naturally acquired immunity confers equal or greater protection than that provided by the vaccines, the vaccine mandates are arbitrary and irrational as applied to those who possess natural immunity. There is no indication that either mandate is tailored to account for its impact on those who have acquired natural immunity.

84. Nor is mandatory vaccination for those with naturally acquired immunity reasonably tailored to any asserted legitimate government interest.

85. Plaintiffs require relief on a tight timeline because the Oregon Health Authority did not issue its current rule regarding mandatory vaccinations for healthcare providers and school personnel until August 25, 2021, and the deadline for full vaccination is October 18, 2021.

CLAIMS FOR RELIEF

COUNT I: VIOLATION OF THE NINTH AND FOURTEENTH AMENDMENT RIGHT TO REFUSE UNWANTED MEDICAL TREATMENT.

86. Plaintiff re-alleges and incorporates by reference the information contained in the paragraphs set forth above.

87. Oregon's vaccine mandates require Plaintiffs to take a vaccine without their consent—and against medical advice—as a condition of employment, thereby depriving Plaintiffs of their ability to refuse unwanted medical care.

88. The Supreme Court has recognized that the Ninth and Fourteenth Amendments protect an individual's right to privacy. A “forcible injection ... into a nonconsenting person's body represents a substantial interference with that person's liberty[.]” *Washington v. Harper*, 494 U.S. 210, 229 (1990).

89. The common law baseline is also a relevant touchstone out of which grew the relevant constitutional law. *See, e.g., Cruzan v. Dir., Mo. Dep't of Public Health*, 497 U.S. 261, 278 (1990) (“At common law, even the touching of one person by another without consent and

without legal justification was a battery’). *See* W. Keeton, D. Dobbs, R. Keeton, & D. Owen, *PROSSER AND KEETON ON LAW OF TORTS* § 9, pp. 39-42 (5th ed. 1984).); *Schloendorff v. Society of N.Y. Hosp.*, 211 N.Y. 125, 129-130, 105 N.E. 92, 93 (1914) (Cardozo, J.) (‘Every human being of adult years and sound mind has a right to determine what shall be done with his own body; and a surgeon who performs an operation without his patient’s consent commits an assault, for which he is liable in damages.’).

90. Subsequent Supreme Court decisions have made explicit that the Constitution protects a person’s right to “refus[e] unwanted medical care.” *Cruzan*, 497 U.S. at 278; *King v. Rubenstein*, 825 F.3d 206, 222 (4th Cir. 2016) (recognizing same).

91. This right is “so rooted in our history, tradition, and practice as to require special protection under the Fourteenth Amendment.” *Washington v. Glucksberg*, 521 U.S. 702, 722 n.17 (1997).

92. The Supreme Court has explained that the right to refuse medical care derives from the “well established, traditional rights to bodily integrity and freedom from unwanted touching.” *Vacco v. Quill*, 521 U.S. 793, 807 (1997).

93. Coercing employees to receive a vaccine for a virus that presents a near-zero risk of illness or death to them and which they are exceedingly unlikely to pass on to others, because those employees already possess natural immunity to the virus, violates Plaintiffs’ liberty and privacy interests that the Ninth and Fourteenth Amendments protect.

94. When a state policy implicates a fundamental right, through coercion or otherwise, the strict scrutiny standard applies, and law will not be upheld unless the government demonstrates that the law is necessary to further a compelling governmental interest and has been narrowly tailored to achieve that interest.

95. Defendants cannot show that they have a compelling interest in coercing Plaintiffs into receiving a COVID-19 vaccine, because Oregon has no compelling interest in treating employees with natural immunity any differently from employees who obtained immunity from a vaccine. In particular, Oregon has no compelling interest in protecting these Plaintiffs from COVID-19.

96. As above, substantial research establishes that a COVID-19 infection creates immunity to the virus at least as robust, durable, and long-lasting as that achieved through vaccination.

97. There is no question that Plaintiffs have natural immunity, given their recent antibody screening tests which demonstrate ongoing and robust immune protection.

98. In addition to Oregon's lack of interest in requiring that already immune employees get vaccinated, Defendants cannot show that the rule is narrowly tailored to any compelling governmental interest. Any interest Oregon may have in promoting immunity for healthcare workers and school employees does not extend to those employees who already have natural immunity—particularly those who can demonstrate such immunity through antibody screenings.

99. By failing to tailor its vaccine mandates to only those employees who lack immunity, Oregon's rule forces employees such as Plaintiffs, who have robust natural immunity, to choose between their health, their personal autonomy, and their careers.

100. Plaintiffs have suffered and will continue to suffer damage from Defendants' conduct. Plaintiffs will lose their jobs because of the vaccine mandates unless they submit to the invasion of their bodies through a vaccination which carries inherent risks of serious side effects (when compared to those receiving a vaccination who have not previously contracted Covid-19)

without a commensurate benefit. Any commensurate benefit is erased because of Plaintiffs already possess immunity.

101. There is no adequate remedy at law, as there are no damages that could compensate Plaintiffs for the deprivation of their constitutional rights. They will suffer irreparable harm unless this Court enjoins Defendants from enforcing their vaccine mandate.

102. Plaintiffs are entitled to a judgment declaring that the vaccine mandates violate their constitutional right to refuse medical treatment, and Plaintiffs are entitled to an injunction restraining Defendants' enforcement of the vaccination mandates against those who have naturally acquired immunity by recovering from COVID-19.

COUNT II: VIOLATION OF THE FOURTEENTH AMENDMENT'S RIGHT TO DUE PROCESS

103. Plaintiff re-alleges and incorporates by reference the facts contained in the paragraphs set forth above.

104. The Due Process Clause of the Fourteenth Amendment provides: "nor shall any state deprive any person of life, liberty, or property, without due process of law" U.S. Const., amend. XIV, sec. 1.

105. Plaintiffs possess both a liberty interest in their bodily integrity and a property interest in their chosen careers.

106. Oregon's vaccine mandates amount to coercion because they impose punitive fines on employers who are found to be out of compliance, and therefore each of Plaintiffs' employers has been forced to direct Plaintiffs to obtain the vaccination.

107. Further, Oregon's vaccination mandates burden a constitutional right by imposing undue pressure on an otherwise voluntary choice with a nexus to the exercise of a constitutional right.

108. Each of the Plaintiffs holds a protected liberty interest in freedom from unconsented-to bodily intrusions and medical interventions. Oregon has not and cannot show that forcing Plaintiffs to take the vaccine reduces any risk that they will become infected with and spread the virus others. *See also Lawrence v. Texas*, 539 U.S. 558, 562 (2003) (The Due Process Clause protects “liberty of the person both in its spatial and in its more transcendent dimensions”).

109. The process Oregon has established in relation to taking COVID-19 vaccines poses dangers to Plaintiffs’ health (and thus to their liberty interests) as well as threatening them with various forms of penalties and other detriments, including loss of employment.

110. The State of Oregon similarly possesses no compelling interest that could justify its vaccine mandates as applied to Plaintiffs who have had COVID-19 that will inevitably result in at unwarranted medical intrusions into Plaintiffs’ bodies or loss of their employment.

111. Oregon’s vaccination mandates offer no justifications for why the penalties and other restrictions it establishes are appropriate and tailored to members of the community that have acquired robust natural immunity. Whatever Oregon is trying to decree, Plaintiffs remain community members with natural immunity, and the existence of such immunity fully serves the supposed purposes of the public-health protection that Oregon says that it is pursuing. *See Exhibits A, B and C.*

112. The proportionality of the vaccination mandates is also deficient because the mandates do not seek to assess the current antibody levels of their targets, something that is now feasible for medical science to test.

113. The mandates are not mere presumptions that vaccination is superior to natural immunity (a contention that would have to be borne out by the science in any event or else Oregon had no business adopting its mandates) that Plaintiffs can try to overcome. No, the mandates are,

in essence, a conclusive presumption that vaccination are required. But what if Plaintiffs and others with natural immunity possess higher levels of antibodies than at least many of those who took one or more of the various inferior vaccines? And why has Oregon deemed all vaccines to be equally protective in the fictitious presumption it has established?

114. Finally, is there any scientific basis for the presumptions Oregon has built into its mandates? The mandates answer none of these questions. They do not even try.

115. For these reasons, the de facto presumptions the vaccine mandates establish also become another part of Oregon's procedural due process violations. In short, allocating burden of proof responsibility to those with natural immunity like Plaintiffs, coupled with Oregon's stacking the process with presumptions Plaintiffs will show are scientifically unwarranted, contravene the Due Process Clause. *See Perry v. Sinderman*, 408 U.S. 592, 597 (1972) (holding that the government "may not deny a benefit to a person on a basis that infringes his constitutionally protected interests"); *Wieman v. Updegraff*, 344 U.S. 183, 192 (1952) ("We need not pause to consider whether an abstract right to public employment exists. It is sufficient to say that constitutional protection does extend to the public servant whose exclusion pursuant to a statute is patently arbitrary or discriminatory").

ADDITIONAL LEGAL CLAIMS

116. Plaintiffs have suffered and will continue to suffer damage from Defendants' conduct. There is no adequate remedy at law, as there are no damages that could compensate Plaintiffs for the deprivation of their constitutional rights. They will suffer irreparable harm unless this Court enjoins Defendants from enforcing the vaccine mandates.

117. There is no compelling government interest that that justifies the mandate, that could not be served through a less-invasive policy. For example, the State could allow those with

natural immunity the option to demonstrate their antibody levels as an alternative to receiving a vaccination.

118. Further, the State has not even demonstrated a rational basis for requiring vaccinations of employees who have natural immunity which is more protective than the vaccinations themselves.

119. 42 U.S.C. § 1983 provides a civil right of action for deprivations of constitutional protections taken under color of law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court find the Defendants have committed the violations alleged and described above, and issue in response the following

A. A declaratory judgment that Oregon Health Authority's vaccine mandates infringe upon Plaintiffs' constitutionally protected rights to protect their bodily integrity and to refuse unnecessary medical treatment.

B. A declaratory judgment that Oregon Health Authority's vaccine mandate represents an unconstitutional condition, especially in light of a set of explicit and implicit procedures established in the mandate that violates the Due Process Clause of the Fourteenth Amendment.

C. An injunction against the Governor of the State of Oregon and any of her agents or employees, including but not limited to the Oregon Health Authority, from enforcing Oregon's vaccination mandates as applied to anyone who has recovered from COVID-19 and has natural immunity confirmed by an antibody test.

Date: September 9, 2021

By: /s/Rebekah Millard

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