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26 **UNITED STATES DISTRICT COURT**
27 **CENTRAL DISTRICT OF CALIFORNIA**
28 **SOUTHERN DIVISION**

AARON KHERIATY, M.D.,

Plaintiff,

v.

Case No. 8:21-cv-01367 JVS (KESx)

**PLAINTIFF'S
MEMORANDUM OF LAW
IN SUPPORT OF**

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THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA, a corporation, et al.,

Defendants.

**MOTION FOR
PRELIMINARY
INJUNCTION**

Date: September 27, 2021
Time: 1:30 pm
Place: Courtroom 10C
Judge: Hon. James V. Selna

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Constitutional Provisions

U.S. CONST. amend. XIV § 1 21

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2 Plaintiff AARON KHERIATY, M.D., by and through his attorneys, respectfully
3 submits this memorandum of law in support of his motion for preliminary injunction
4 against Defendants, THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, and
5 MICHAEL V. DRAKE, in his official capacity as President of the University of
6 California (collectively, “**Defendants**”).

7 **I. PRELIMINARY STATEMENT**

8 As confirmed by recent data and studies, the Director of the Centers for Disease
9 Control and Prevention (“**CDC**”) recently explained that individuals vaccinated for
10 COVID-19, while having less symptoms, can still become infected with and transmit the
11 virus, and that the amount of virus in those individuals’ noses is the same as the
12 unvaccinated who have COVID-19. In contrast, those that have had COVID-19, upon
13 reexposure to the virus, have neutralizing immunity, that not only prevents symptoms but
14 also reinfection and transmission.

15 The Plaintiff, Aaron Kheriaty, M.D., Professor of Psychiatry and Human Behavior
16 at the University of California Irvine School of Medicine (the “**Plaintiff**”), who has had
17 COVID-19 and hence is immune to this virus, brings this action because the University
18 of California Irving (“**UCI**”) will soon refuse to allow him back on campus, while
19 permitting those with vaccine immunity back on campus and is thereby violating his
20 liberty interests and treating him differently from other similarly situated individuals who
21 are permitted back on campus. The Equal Protection Clause of the Fourteenth
22 Amendment to the U.S. Constitution requires a state to treat an individual in the same
23 manner as others in similar conditions and circumstances, and Plaintiff has at least as
24 good immunity to COVID-19 as his vaccinated peers but yet will be excluded from
25 campus.

26 Over the eons of human development, our bodies have created a remarkable
27 immune system capable of protecting us against a wide variety of pathogenic viruses.

1 This system includes an enormously diverse repertoire of cells with a nearly unlimited
2 capacity to recognize and ‘adapt’ to previously unseen viruses. Rather than having to re-
3 create the same immunological response every time a virus attacks the body, our immune
4 systems have an innate form of memory which prevents reinfection with the same virus.
5 This memory system creates T cells and memory B-cells which in the future are capable
6 of making antibodies to all antigens of a given virus thereby providing previously infected
7 individuals with neutralizing immunity to a previously encountered virus (“**naturally**
8 **immune individuals**”).

9 While different vaccines for COVID-19 work in different ways, they are all
10 designed to create immunity to a portion of the virus (specifically, the spike protein),
11 without creating too many side effects, in the hope that this partial immunity to a portion
12 of the virus will confer neutralizing immunity to the entire virus when encountered by
13 the vaccinated individual. Despite humanity’s best efforts at mimicking the immune
14 system’s protection, the immunity generated after infection with a virus, including
15 SARS-CoV-2 (the virus which causes the disease COVID-19, hereinafter the “**virus**” or
16 the “**COVID-19 virus**”), creates a more robust and durable form of immunity to a virus
17 than any vaccine can create.

18 The University of California (“**UC**”) recently enacted a policy to “facilitate the
19 protection of the health and safety of the University community” by ensuring that
20 individuals who return to campus have immunity to the virus that causes COVID-19 (the
21 “**Mandate**”). *See* Declaration of Plaintiff Aaron Kheriaty (hereinafter, “**A.K. Dec.**”) ¶ 3.
22 However, to reach this goal, UC decided that only vaccinated individuals will be
23 permitted on a UC campus, ignoring those who have natural immunity to the virus. In
24 enacting this policy, the University is treating naturally immune individuals differently
25 from individuals whose immunity was created by one of the COVID-19 vaccines.

26 Plaintiff was infected with the virus in July 2020 and had COVID-19. In fighting
27 off the virus, his body created a robust immunity to every antigen on the COVID-19 virus,
28

1 not just the spike protein of the virus as happens with the COVID-19 vaccines.
2 Nevertheless, UCI has told Plaintiff that he cannot return to campus unless he receives a
3 COVID-19 vaccine. Thus, the school is treating him differently by refusing to re-admit
4 him to campus when other individuals who are considered immune to the virus are being
5 admitted back simply because their immunity was created by a vaccine. This policy is
6 illogical and cannot withstand strict scrutiny or even a rational basis test because naturally
7 immune individuals, like Plaintiff, have at least as good or better immunity to the virus
8 that causes COVID-19 than do individuals who are vaccinated.

9 In the more than 19 months that the world has been transfixed by the COVID-19
10 pandemic, evidence shows that the reinfection rate after natural infection is less than 1%,
11 and there are no documented cases of reinfection and transmission to others by naturally
12 immune individuals. In contrast, COVID-19 vaccination in the optimal setting of a
13 clinical trial has, at best, an estimated 67% to 95% efficacy (depending on the COVID-
14 19 vaccine and the variant of the virus) and the vaccine manufacturers, public health
15 agencies, and the Biden administration have made clear that booster doses will be needed,
16 due to waning immunity created by the vaccines. Likewise, CDC studies are replete
17 with reports of so-called “breakthrough cases” where fully vaccinated individuals are
18 infected and, in those cases, the amount of virus in those individuals’ noses is the same
19 as the unvaccinated who have COVID-19. This has led to the CDC’s revised guidelines
20 recommending a return to masks for those who have been vaccinated and experts to
21 conclude that “vaccination is now about personal protection” because “herd immunity is
22 not relevant as we are seeing plenty of evidence of repeat and breakthrough infections.”¹

23 As described more fully herein, UCI’s refusal to readmit Plaintiff to campus unless
24 he receives a vaccine is an equal protection violation. The right of individuals to their
25 bodily integrity, which includes a right to refuse medical treatment, has long been
26

27 ¹ See <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>; see
28 also <https://www.washingtonpost.com/health/2021/07/29/cdc-mask-guidance/>.

1 recognized as one of the fundamental liberty rights afforded under due process. By
2 forcing Plaintiff to receive a vaccine he does not want or need, and that may cause him
3 harm, in order to be treated equally as other individuals who are also immune, UCI’s
4 Mandate implicates Plaintiff’s substantive due process rights, and the Court should
5 analyze his equal protection claim under the strict scrutiny analysis, i.e., whether the
6 Mandate is both satisfying a compelling government need and is implemented by the
7 least restrictive means. Defendants cannot satisfy either of these prongs. Even though a
8 government entity may have a compelling government interest in preventing the spread
9 of COVID-19, that interest is not furthered by compelling Plaintiff to be vaccinated to
10 satisfy this interest because he is already immune and, unlike the vaccinated, if exposed
11 to the virus, has neutralizing immunity. By failing to acknowledge that “naturally”
12 immune individuals are unlikely to spread the virus, and certainly far less likely than the
13 vaccinated, the Mandate is not narrowly tailored.

14 Nor can the Mandate satisfy rational basis analysis. Because Plaintiff is already
15 immune and less likely to infect other individuals than are people who have been
16 vaccinated, requiring him to be vaccinated in order to return to campus is irrational. In
17 addition, by targeting people who have had the virus but remain unvaccinated, the
18 Mandate unfairly singles out one unpopular group for disparate treatment.

19 For these reasons, more fully explained below, Plaintiff seeks a preliminary
20 injunction enjoining Defendants from enforcing the Mandate against him or any other
21 “naturally” immune individual.

22 **FACTS**

23 **I. THE PLAINTIFF HAD COVID-19**

24 Plaintiff is a professor of Psychiatry and Human Behavior at the UCI School of
25 Medicine and the director of the Medical Ethics Program at UCI Health. *See* A.K. Dec.
26 ¶ 7. Plaintiff’s residency training was at UCI from 2003-2007. *Id.* ¶ 6. In 2007, Plaintiff
27 was hired by UCI as a Health Sciences Assistant Clinical Professor. *Id.* Plaintiff was
28

1 promoted to Health Sciences Associate Clinical Professor in 2013 and to Health Sciences
2 Clinical Professor in 2019 and holds this position currently. *Id.* ¶ 6-7.

3 Plaintiff contracted the COVID-19 virus in July 2020, which was confirmed by
4 PCR testing, and he experienced many of the common symptoms associated with
5 COVID-19, including loss of taste and smell. *Id.* ¶ 2. Plaintiff fully recovered. *Id.*

6 **II. COVID-19 IN CALIFORNIA AND FAILED RESTRICTIVE MEASURES**

7 The first confirmed case of the COVID-19 virus in California was on January 22,
8 2020.² Governor Gavin Newsom (“**Newsom**”) instituted aggressive stay at home orders
9 in California on March 19, 2020, when there were approximately 900 cases within the
10 state.³ Despite the aggressive stay at home orders, the virus continued to spread.

11 The CDC has explained that even with protective measures as instituted in
12 California, “most of the U.S. population will be exposed to this virus [SARS-CoV-2].”⁴
13 The CDC estimates that, through May 2021, approximately 49% of those aged 18 to 49
14 years have been infected with SARS-CoV-2 despite lockdowns. *See* Declaration of
15 Joseph Ladopo, MD, PhD; John Patrick Whelan MD, PhD; Lazlo Boros, MD; Carole
16 Browner PhD, MPH; Aditi Bhargava, PhD; and Gabriel Vorobiof, Bachelor of Medicine
17 and Bachelor of Surgery (hereinafter, “**UC Faculty Dec.**”) ¶ 3.

18 UC is a public university intended to serve the residents of California and is open
19 to students from around the world. It currently has more than 280,000 students and
20 more than 227,000 faculty and staff. *Id.* ¶ 2. UC is telling those that are immune from
21 prior infection that unless they get vaccinated that they need not bother leaving their
22 homes since they will be excluded from campus.

23 If Defendants instituted the Mandate with the goal of having a student body and
24

25 ² *See* <https://www.latimes.com/world-nation/story/2020-08-21/surprising-tale-first-la-covid-19-case>.

26 ³ *See* <https://www.politico.com/states/f/?id=00000170-f5a4-d209-af70-fdae4c930000>; *see*
27 *also* <https://www.ksla.com/2020/03/20/california-becomes-first-state-order-lockdown/>.

28 ⁴ https://stacks.cdc.gov/view/cdc/86068/cdc_86068_DS1.pdf.

1 faculty that is immune to the COVID-19 virus, it would have exempted from the Mandate
2 those who are already immune due to having had COVID-19. Failure to do so means
3 that Defendants’ Mandate is not about immunity, it is only about vaccination status.

4 **III. PLAINTIFF HAS A LOWER RISK OF BECOMING INFECTED AND**
5 **TRANSMITTING THE VIRUS THAN VACCINATED INDIVIDUALS**

6 Peer reviewed studies on COVID-19 demonstrate the durability of natural
7 immunity following COVID-19 infection. A.K. Dec. ¶¶ 12-14. CDC and FDA data also
8 shows that natural immunity has proved far more than 99% effective while vaccine
9 immunity is at best between 67% and 95% effective, depending on the vaccine, and this
10 is under the previous ideal conditions of a clinical trial. UC Faculty Dec. ¶ 14. Moreover,
11 unlike those vaccinated for COVID-19 who can still become infected and have the same
12 amount of virus in their nose as those unvaccinated and infected with COVID-19, there
13 has never been a single documented case of a naturally immune individual becoming re-
14 infected with and transmitting the virus to anyone.

15 **A. Infection with COVID-19 Virus Provides Long-Term Immunity**

16 The human body knows how to develop immunity to new viruses. The adaptive
17 immune system consists of an enormously diverse repertoire of B cells—precursors of
18 antibody-secreting plasma cells—and T cells with a nearly unlimited capacity to
19 recognize and ‘adapt’ to previously unseen pathogens. UC Faculty Dec. ¶ 5.

20 As explained by Dr. Ryan Cole, a Mayo Clinic-trained pathologist, “Yes, our
21 antibody levels drop over time, however, scientifically, the memory B cells that make
22 antibodies have been proven to be present in our lymph nodes and bone marrow.” A.K.
23 Dec. ¶ 13. Dr. Cole further explains, “They are primed and ready to produce a broad
24 array of antibodies upon...exposure. It would be physiologically, energetically
25 impossible to maintain high antibody levels to all the pathogens we are constantly
26 exposed to, and we would look like the ‘swollen Stay-Puft marshmallow man’ of lymph
27 nodes, constantly, if the immune system were required to do that.” *Id.*

1 In line with Dr. Cole’s explanation, numerous immunologic studies of individuals
 2 that have had the COVID-19 virus demonstrate that they developed sustained, broad and
 3 durable immunity, and robust B cell and T cell memory to the virus which protect them
 4 from reinfection. UC Faculty Dec. ¶¶ 5, 7-8. In other words, “natural” immunity to the
 5 COVID-19 virus continues to be present and effective even after antibody levels,
 6 detectable by lab tests, wane over time. *Id.* Similarly, in a study of monkeys that were
 7 deliberately re-exposed to the COVID-19 virus after having COVID-19, *none* of them
 8 were re-infected. *Id.* ¶ 18.

9 Reflecting these findings, the immunity produced by the closely-related virus,
 10 SARS-CoV-1, is lifelong. Declaration of Peter A McCullough, MD, MPH (hereinafter
 11 “**McCullough Dec.**”) ¶ 14. As explained by an infectious-disease physician and professor
 12 at the UC: “Natural immunity after COVID-19 infection is likely lifelong, extrapolating
 13 from data on other coronaviruses that cause severe illness, SARS and MERS.”⁵

14 **B. Natural Immunity is Superior to Vaccine Immunity**

15 *i. Natural Immunity – Great Than 99% Effective*

16 The hunt for re-infections has been a nationwide effort and out of the estimated
 17 120.2 million individuals in the United States who have been infected with SARS-CoV-
 18 2 as of May 2021,⁶ there is not a single documented case of an individual being re-
 19 infected with the virus and transmitting it to another person. UC Faculty Dec. ¶ 11, 12,
 20 14, 2; McCullough Dec. ¶ 17.

21 A five-month study looking at reinfection rates in employees of the Cleveland
 22 Clinic Health System previously infected with the COVID-19 virus found that not one of
 23 the 1,359 previously infected subjects who remained unvaccinated was reinfected with
 24 the virus despite a high background rate of COVID-19 in the hospital. UC Faculty Dec ¶
 25 11. Irish researchers recently published a review of 11 cohort studies with over 600,000
 26

27 ⁵ <https://www.wsj.com/articles/herd-immunity-is-near-despite-faucis-denial-11616624554>.

28 ⁶ See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/burden.html>.

1 total recovered COVID-19 patients (not all of whom were well defined and may have
2 had suspected COVID-19) who were followed up with over 10 months. *Id.* They found
3 the reinfection rate to be 0.27% “with no study reporting an increase in the risk of
4 reinfection over time.” *Id.* ¶ 13. Based on this data, the researchers were able to assert
5 that “naturally acquired SARS-CoV-2 immunity does not wane for at least 10 months
6 post-infection.” *Id.* Moreover, this study also did not document a single case of
7 reinfection that then resulted in transmission to another person.

8 Given that the current number of confirmed cases worldwide is approximately 200
9 million,⁷ if reinfection was possible in even one percent of individuals, the world would
10 have observed 2 million second and third cases with many requiring hospitalization and
11 coming to clinical attention. *Id.* ¶ 12; McCullough Dec. ¶ 17. No such large volume of
12 reinfection cases has come to clinical attention in any region of the world. *Id.*

13 ***ii. Vaccine Immunity – Far Less than 99% Effective***

14 In contrast to greater than 99% efficacy from natural immunity, the efficacy from
15 vaccine immunity in a clinical trial setting is admittedly no greater than between 67%
16 and 95%, depending on the COVID-19 vaccine. The Pfizer vaccine had initially, at best,
17 efficacy of 95%,⁸ the Moderna has efficacy of 94.5%,⁹ and the J&J vaccine has efficacy
18 of approximately 67%,¹⁰ and that was under previous ideal conditions in a clinical trial,
19 against the original wild-type variant of the virus. The COVID-19 vaccines have had
20 considerably less efficacy in the real world. UC Faculty Dec. ¶ 14. But even assuming
21 the optimal clinical trial efficacy numbers, this is still far less than the efficacy from
22 having had the COVID-19 virus, which is over 99%. *Id.* ¶ 14.

23 Vaccines, by design, attempt to emulate the immunity created by a natural
24 infection. Nonetheless, they have never achieved the same level of protection afforded

25 _____
26 ⁷ See <https://covid19.who.int/>.

27 ⁸ See <https://www.fda.gov/media/144416/download>.

28 ⁹ See <https://www.fda.gov/media/144673/download>.

¹⁰ See <https://www.fda.gov/media/146338/download>.

1 by natural infection from a virus. Every single vaccine for a virus confers an inferior
2 immunity to having had the actual virus. Even the best vaccines do not confer immunity
3 to all recipients.¹¹ In those who do obtain some immunity from vaccination, the
4 temporary immunity created by any vaccine typically wanes over time. Hence, the
5 warning in the Mandate that COVID-19 boosters will be needed.¹² This has been
6 confirmed by the pharmaceutical companies selling the COVID-19 vaccines and the CDC
7 has echoed the likely need for boosters of the COVID-19 vaccines, as discussed at its
8 advisory committee meeting on June 23, 2021.¹³

9 Reflecting the fact that infection-induced immunity to this virus is much deeper
10 and broader than vaccine immunity (*see* UC Faculty Dec. at 16), in an outbreak of
11 COVID-19 among gold mine workers in French Guiana, 60% of the fully vaccinated gold
12 mine workers were infected while none of the individuals with a prior COVID-19
13 infection were infected. *Id.* ¶ 11. Studies analyzing the entire population of Israel has
14 found that those with prior natural infection had a higher rate of protection from infection,
15 hospitalization, and severe illness than those that had immunity from the COVID-19
16 vaccine. *Id.* Another report from Israel found a sixfold rate of COVID-19 infection
17 among the vaccinated versus the naturally immune:

18 With a total of 835,792 Israelis known to have recovered from
19 the virus, the 72 instances of reinfection amount to 0.0086% of
20 people who were already infected with COVID. By contrast,

21
22 ¹¹ Pfizer Recipient Fact Sheet at <https://www.fda.gov/media/144414/download> (“The
23 COVID-19 Vaccine may not protect everyone.”); Moderna Recipient Fact Sheet at
24 <https://www.fda.gov/media/144638/download> (same); J&J Recipient Fact Sheet at
25 <https://www.fda.gov/media/146305/download> (same).

26 ¹² <https://policy.ucop.edu/doc/5000695/SARS-Cov-2> at FAQ No. 4 which states,
27 “Infectious disease experts anticipate that annual or more frequent boosters will be
28 necessary and receipt of boosters will be required.”

¹³ *See* <https://www.cdc.gov/vaccines/acip/meetings/downloads/slides-2021-06/06-COVID-Oliver-508.pdf>; *see also, e.g.,* <https://www.nytimes.com/2021/04/16/world/pfizer-vaccine-booster.html>.

1 Israelis who were vaccinated were 6.72 times more likely to get
2 infected after the shot than after natural infection.

3 *Id.* Reflecting this reality, internal official UCI emails reflect that there is a sufficiently
4 alarming number of vaccinated individuals acquiring symptomatic COVID-19 such that
5 it necessitated notice to the entire UCI School of Medicine about this issue, while no such
6 notice has been necessary for naturally immune individuals:

- 7 • On July 17, 2021, UCI informed faculty and residents, “[t]here has been a
8 substantial increase in the number of breakthrough infections [*i.e.*, infections in
9 fully vaccinated individuals] among our UCI health care workers, including
10 residents and fellows.” A.K. Dec. ¶ 19.
- 11 • On July 22, 2021, UCI Health’s CEO advised that “[t]he COVID-19 delta variant
12 is now responsible for the majority (75%) of UC cases, including several
13 breakthrough vaccine cases.” *Id.*
- 14 • On July 27, 2021 UCI explained that “due to continued and increasing concerns
15 about the spread of COVID-19, even among vaccinated individuals, we will not
16 be returning to the classrooms as had been expected for the past several months.”
17 *Id.*

18 In contrast, there has been no such notice of increasing cases among those who have
19 recovered from COVID-19. *Id.*

20 What is happening at UCI is similarly being seen nationwide as the number of
21 cases of COVID-19 in fully vaccinated individuals is rising precipitously. That number
22 was growing so rapidly and burdening resources to such an extent that the CDC changed
23 its reporting criteria to only report breakthrough cases resulting in hospitalization or
24 death. UC Faculty. Dec. ¶ 9.

25 But simply taking the FDA and CDC data at face value, the reality is that natural
26 infection provides for greater than 99% protection while vaccine immunity provides for,
27 at best, between 67% and 95% protection.

1 *iii. COVID-19 Vaccines Do Not Prevent Infection and Transmission*

2 Natural immunity confers an additional benefit over vaccine immunity. Natural
3 immunity will prevent a virus from being able to replicate and shed in the naturally
4 immune individual. UC Faculty Dec. ¶ 17. In contrast, COVID-19 vaccines appear to
5 reduce symptoms in some but still permit the vaccinees to become infected with and
6 transmit the virus. *Id.*

7 In animal studies, the COVID-19 vaccine candidates could *not* fully block viral
8 infection and replication in the nose of monkeys upon viral challenge. UC Faculty Dec.
9 ¶ 18. In contrast, natural COVID-19 infection of monkeys completely prevented further
10 re-infection at any site tested—by nasal, throat, and anal swabs. *Id.*

11 Viral carriage by the vaccinated is reflected in the recent outbreak in Barnstable
12 County, Massachusetts, which has a 69% vaccination coverage rate among its eligible
13 residents. *Id.* ¶ 19. A recent CDC investigation found that 74% of those infected in the
14 outbreak were fully vaccinated for COVID-19 and, even more alarming, the vaccinated
15 had on average more virus in their nose than the unvaccinated that were infected. *Id.* The
16 study reported zero cases of infection among those that previously had COVID-19.

17 This forced the Director of the CDC, Rochelle Walensky, to admit on CNN that
18 individuals vaccinated for COVID-19, while having less symptoms, can still become
19 infected with and transmit the virus. *Id.* ¶ 20. Dr. Walensky admitted that “**what [the**
20 **COVID-19 vaccines] can’t do anymore is prevent transmission.**” After this
21 admission, Dr. Walensky was asked by Wolf Blitzer: “you get covid, you’re fully
22 vaccinated, but you are totally asymptomatic, you can still pass on the virus to someone
23 else, is that right?” and Dr. Walensky answers “**that is exactly right.**” *Id.*

24 Defendants will nonetheless only allow individuals that have been vaccinated back
25 on campus, despite the unequivocal data that proves that the COVID-19 vaccines cannot
26 and do not prevent infection and transmission. On the other hand, Defendants will *not*
27 allow back on campus “naturally” immune individuals who, upon reexposure to the virus,
28

1 have neutralizing immunity, that not only prevents symptoms but also reinfection and
2 transmission. McCullough Dec. ¶¶ 13-20. As explained by a professor at Johns Hopkins
3 School of Medicine, the failure to lift restrictions on naturally immune individuals is “one
4 of the biggest failures of our current medical leadership.”¹⁴

5 **IV. COVID-19 VACCINES ARE NOT RISK-FREE AND THE RISK IS**
6 **GREATER FOR THE PREVIOUSLY INFECTED**

7 There are legitimate safety concerns regarding the current COVID-19 vaccines,
8 and heightened concerns when vaccinating naturally immune individuals.

9 **A. Vaccinating “Naturally” Immune Individuals Presents an Increased Risk**

10 Studies have found that naturally immune individuals have significantly higher
11 rates of adverse reactions after a COVID-19 vaccine. Raw, *et al.* reported that among
12 974 individuals vaccinated for COVID-19, the vaccinated COVID-19 recovered patients
13 had higher rates of vaccine reactions. UC Faculty Dec. ¶ 23. Mathioudakis, *et al.* found
14 the same result in a study of 2,002 individuals. *Id.* Krammer, *et al.* found the same result
15 in a study of 231 individuals, concluding that, “[v]accine recipients with preexisting
16 immunity experience systemic side effects with a significantly higher frequency than
17 antibody naïve vaccines.” *Id.*

18 **B. The COVID-19 Vaccines Present Certain Risks for Everyone**

19 There are also risks to receiving COVID-19 vaccines irrespective of prior
20 infection. The primary system for tracking adverse vaccine events in the United States
21 is the CDC’s Vaccine Adverse Events Reporting System (“VAERS”). A.K. Dec. ¶ 22.
22 A three-year federal government funded study by Harvard researchers tracking 715,000
23 patients found that “fewer than 1% of vaccine adverse events are reported.” *Id.* ¶ 25.

24 Reports of serious adverse events from COVID-19 vaccines are similarly
25 underreported to VAERS. *Id.* For example, according to the CDC, “Anaphylaxis after
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27 ¹⁴ <https://summit.news/2021/05/26/johns-hopkins-prof-half-of-americans-have-natural-immunity-dismissing-it-is-biggest-failure-of-medical-leadership/>.
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1 COVID-19 vaccination is **rare** and occurred in approximately **2 to 5 people per million**
 2 vaccinated in the United States based on events reported to VAERS.” *Id.* This is in stark
 3 contrast to a recent study at Mass General Brigham that assessed anaphylaxis in a clinical
 4 setting after the administration of COVID-19 vaccines and found “severe reactions
 5 consistent with anaphylaxis occurred at a rate of **2.47 per 10,000 vaccinations.**” *Id.* This
 6 is equivalent to 50 to 120 times more cases than what VAERS and the CDC are reporting.
 7 And this is for a serious, potentially life-threatening, adverse event that occurs almost
 8 immediately after vaccination and which vaccine providers are repeatedly advised to
 9 watch for and report. UC Faculty Dec. ¶ 25.

10 If anaphylaxis is being underreported, the level of underreporting for serious
 11 adverse events that do not occur immediately after vaccination or are not easily identified
 12 is likely far greater. For example, on June 23, 2021, the CDC reported the alarming
 13 numbers of reported myocarditis and pericarditis cases occurring after COVID-19
 14 vaccination. UC Faculty Dec. ¶ 26. The long-term effects of myocarditis are not fully
 15 understood but can be very serious. *Id.* Cases of thrombocytopenia have also occurred
 16 after COVID-19 vaccination, as well as serious and sometimes fatal blood clots. *Id.*
 17 These and numerous other serious adverse events that are recognized but the true rate of
 18 these serious adverse events is most certainly underreported.¹⁵

19 Even if the risks from the COVID-19 vaccines are truly small, there is no reason
 20 to expose someone to *any* risk when they are already immune. UC Faculty Dec. ¶ 22.

21 **V. THE MANDATE IMPLEMENTED BY UC**

22 On July 15, 2021, the UC system released its final COVID-19 Vaccination
 23 Program Policy.¹⁶ Since that time, it has systemically enforced the policy. The stated

24 ¹⁵ The spike protein from COVID-19 vaccines enters the bloodstream and can be found
 25 in almost all vital organs. <https://tinyurl.com/2zbbnwjp>. A viral immunologist stated:
 26 “We thought the spike protein was a great target antigen, we never knew the spike protein
 27 itself was a toxin... So by vaccinating people we are inadvertently inoculating them with
 28 a toxin.” <https://tinyurl.com/329ybktb>.

¹⁶ See <https://policy.ucop.edu/doc/5000695/SARS-Cov-2>.

1 purpose of the policy “is to facilitate protection of the health and safety of the University
2 community” by requiring the UC community to “be fully vaccinated against COVID-19
3 before physically accessing the University’s Locations and Programs.”

4 The Mandate is clear that it is a permanent policy and that “compliance will require
5 repeat vaccinations or boosters on an annual or recurring basis.”¹⁷ The Frequently Asked
6 Questions section of the Mandate specifically addresses “naturally” immune individuals:

7 *I was recently diagnosed with COVID-19, and/or I had an*
8 *antibody test that shows that I have natural immunity. Does*
9 *this support a Medical Exemption? You may be eligible for a*
10 *temporary Medical Exemption (and, therefore, a temporary*
11 *Exception), for up to 90 days after your diagnosis and certain*
12 *treatments. According to the US Food and Drug*
13 *Administration, however, “a positive result from an antibody*
14 *test does not mean you have a specific amount of immunity or*
15 *protection from SARS-CoV-2 infection ... Currently*
16 *authorized SARS-CoV-2 antibody tests are not validated to*
17 *evaluate specific immunity or protection from SARS-CoV-2*
18 *infection.” For this reason, individuals who have been*
19 *diagnosed with COVID-19 or had an antibody test are not*
20 *permanently exempt from vaccination.*¹⁸

21 As discussed above, the immunity achieved following natural infection does not expire
22 after 90 days and is, almost certainly, lifelong. UC has not shared any data to show that
23 immunity on day 89 following diagnosis differs from immunity on day 91 following
24 diagnosis. Plaintiff recovered from COVID-19 over one year ago and would not be
25 entitled to this temporary naturally immune exemption even though his immunity is
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27 ¹⁷ *Id.* at pages 4 and 10 of 14.

28 ¹⁸ *Id.* at page 11 of 14, ¶ 9 (“**temporary naturally immune exemption**”).

1 superior to an individual who was vaccinated 1 day or 91 days ago.

2 Plaintiff, and his fellow students and faculty that are “naturally” immune, will
3 suffer great detriment if prevented from returning to campus. Plaintiff is frustrated and
4 negatively impacted by the prospect of being forced to choose between an invasion of his
5 bodily integrity and his employment at UCI. A.K. Dec. ¶¶ 4, 39. Plaintiff merely wants
6 to be treated the same as those deemed immune through vaccination. Instead, he is being
7 required, under threat of exclusion from UC, to violate his bodily integrity with an
8 injection of a product that presents risks but no benefit to him or others similarly situated.

9 **ARGUMENT**

10 It lacks rational basis, let alone a compelling reason, to allow vaccinated
11 individuals to attend or work at UC in person when their immunity is less effective at
12 preventing infection and spread of COVID-19 than those that have had the virus.

13 The issuance of preliminary injunctive relief rests upon consideration of four
14 factors: [1] the likelihood of the plaintiffs’ success on the merits; [2] the threat of
15 irreparable harm to the plaintiffs if the injunction is not imposed; [3] the relative balance
16 of this harm to the plaintiffs and the harm to the defendants if the injunction is imposed;
17 and [4] the public interest. *L.A. Mem’l Coliseum Comm’n v. NFL*, 634 F.2d 1197, 1200-
18 01 (9th Cir. 1980).

19 **I. PLAINTIFF IS LIKELY TO SUCCEED ON THE MERITS BECAUSE**
20 **DEFENDANTS’ RULE VIOLATE HIS CONSTITUTIONAL RIGHTS**

21 **A. Plaintiff’s Right to Equal Protection of the Laws Has Been Violated**

22 Plaintiff is immune to SARS-CoV-2. Therefore, Plaintiff is at least as equally
23 situated as those who are fully vaccinated with a COVID-19 vaccine, yet Defendants
24 deny Plaintiff equal treatment and seek to burden Plaintiff with an unnecessary violation
25 of bodily integrity to which Plaintiff does not consent in order to be allowed to continue
26 to work at UCI. Defendants’ denial of Plaintiff’s constitutional rights in this manner
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1 cannot be justified under a strict scrutiny analysis.

2 When analyzing an equal protection violation, courts apply a two-part analysis.
3 First, they identify the defendants' classification of groups. *See Lazy Y Ranch LTD v.*
4 *Behrens*, 546 F.3d 580, 589 (9th Cir. 2008). Essentially, the question is whether the
5 policy is applied in a discriminatory manner or imposes different burdens on different
6 groups of people. Next, the court should identify the level of scrutiny. *See Golinsky v.*
7 *U.S. Office of Pers. Mgmt.*, 824 F. Supp. 2d (N.D.Cal. Feb. 22, 2012). If the classification
8 implicates a fundamental right, the court applies a heightened level of scrutiny. *See*
9 *Sanchez v. City of Fresno*, 914 F. Supp. 2d 1079, 1111 (E.D. Cal. 2012). Under strict
10 scrutiny, the government must show the highest need for such restrictions combined with
11 the least restrictive methods of achieving that need. *Id.* at 1108.

12 ***i. Naturally Immune Individuals are Similarly Situated to Vaccinated Individuals***

13 The Mandate's express purpose is to protect members of the UCI community from
14 COVID-19. A.K. Dec. ¶3. Defendants seek to achieve this by ensuring that only people
15 who theoretically have immunity to the virus return to campus. *Id.* Both individuals with
16 natural immunity, like Plaintiff, and individuals who are vaccinated are alike in that they
17 have immunity to the virus that causes COVID-19. UC Faculty Dec. ¶¶ 5-16. Naturally
18 immune individuals have at least as good, and in fact superior, immunity when compared
19 to vaccinated individuals. *See, e.g., McCullough Dec. ¶¶ 13-20.*

20 Nevertheless, the Mandate fails to treat these two groups of immune individuals
21 similarly. Individuals who have vaccine-created immunity will be permitted to return to
22 campus.¹⁹ However, with the exception of the temporary naturally immune exception,
23 individuals who have natural immunity will not be allowed to return to campus.²⁰

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27 ¹⁹ *See* <https://policy.ucop.edu/doc/5000695/SARS-Cov-2>.

28 ²⁰ *Id.* at 11.

1 ***ii. The Court Should Apply Strict Scrutiny Because the Mandate Implicates***
2 ***Plaintiff's Fundamental Liberty Interest in Bodily Integrity***

3 “The Fourteenth Amendment’s due process clause ‘provides heightened protection
4 against government interference with certain fundamental rights and liberty
5 interests.’” *Sanchez*, 914 F. Supp. 2d at 1100-01 (quoting *Wash. v. Glucksberg*, 521 U.S.
6 702, 720 (1997)). It is well established that these fundamental liberty interests include
7 the right to bodily integrity. *See Cty. of Santa Cruz v. Ashcroft*, 279 F. Supp. 2d 1192
8 (N.D. Cal. Aug. 28, 2003) (“The analysis in *Cruzan*, in which the Supreme Court
9 presumed the existence of a constitutionally protected liberty interest in refusing
10 unwanted medical treatment, was based on a long line of earlier cases recognizing such
11 a right. The fundamental right to maintain bodily integrity protects against unjustified
12 invasions of one’s body by the state.”). “This notion of bodily integrity has been
13 embodied in the requirement that informed consent is generally required for medical
14 treatment.” *Cruzan v. Dir., Mo. Dept. of Health*, 497 U.S. 261, 277-78 (1990). This
15 means that the right to bodily integrity includes the concept that a “competent person has
16 a constitutionally protected liberty interest in refusing unwanted medical treatment.” *Id.*;
17 *Wash. v. Harper*, 494 U.S. 210 (1990); *see also Galvan v Duffie*, 807 Fed. App’x 696,
18 697 (9th Cir. 2020) (quoting *Cruzan*).

19 Here, the Mandate unquestionably impinges this right to refuse unwanted medical
20 treatments. UCI is telling Plaintiff that to return to campus, and thereby be treated equally
21 with other individuals who are immune to COVID-19, he must submit to receive a
22 vaccine, which is a medical treatment he does not want to receive. Because the Mandate
23 impinges a fundamental liberty right by forcing a choice on Plaintiff, it must be analyzed
24 under strict scrutiny. *Sanchez*, 914 F. Supp. 2d at 1108, 1111 (holding that a city’s
25 demolition of homeless shelters as temperatures approached freezing could implicate the
26 fundamental right to life/bodily integrity and thus form the basis for strict scrutiny of the
27 equal protection claim); *Saulsberry v. Maricopa Cty.*, 151 F. Supp. 2d 1109, 1118 (D.
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1 Ariz. 2001) (“A competent person has a constitutionally protected liberty interest to
2 refuse unwanted medical treatment.”).

3 ***iii. The Mandate Cannot Satisfy Strict Scrutiny Because It Does Not Satisfy a***
4 ***Compelling Government Interest As Applied to Naturally Immune Individuals***

5 While Defendants may be able to claim that there is a compelling need to limit
6 transmission of SARS-CoV-2, as applied to Plaintiff, that interest is not in any way
7 furthered by compelling him to be vaccinated. Plaintiff is already immune to the virus.
8 See Section III.a., *supra*. That immunity is superior to the immunity created by vaccines.
9 See Section III.b., *supra*. Therefore, Plaintiff and other naturally immune individuals are
10 at less risk than the vaccinated of transmitting the virus. See Section III, *supra*. Under
11 such circumstances, Defendants’ need to prevent transmission cannot trump Plaintiff’s
12 fundamental right to bodily integrity and to willingly consent to any medical procedure.

13 Further, as applied to Plaintiff, the Mandate is arbitrary, oppressive, and irrational.
14 The Mandate it is not just a response to a temporary emergency where deference may be
15 given to the government—it is a permanent policy with no end date.²¹

16 ***iv. The Mandate Cannot Satisfy Strict Scrutiny As It is Not Narrowly Tailored***

17 The Supreme Court explained that any restriction implicating a fundamental right
18 “must be narrowly tailored to promote a compelling Government interest.” *U.S. v.*
19 *Playboy Entm’t Grp.*, 529 U.S. 803, 813 (2000). “If a less restrictive alternative would
20 serve the Government’s purpose, the legislature must use that alternative.” *Id.*; see also
21 *Sable Commc’ns of Cal. v. FCC*, 492 U.S. 115, 126 (1989).

22 Defendants’ Mandate is not narrowly tailored because it does not exempt naturally
23 immune individuals whose immunity to SARS-CoV-2 is at least as good as, and in fact
24 better than, the fully vaccinated. There are numerous ways to achieve the asserted
25 interest, including, without limitation, providing the same exemptions for the naturally
26 immune as for the vaccinated. Defendants cannot prove that naturally immune

27 _____
28 ²¹ See <https://policy.ucop.edu/doc/5000695/SARS-Cov-2> (“This is a permanent policy.”)

1 individuals have any higher risk of reinfection and transmission of SARS-CoV-2 when
2 compared to the fully vaccinated and, hence, the Mandate violates Plaintiff's
3 constitutional rights to equal protection and bodily autonomy. The Mandate is overbroad
4 as to Plaintiff and others that are naturally immune.

5 **v. *The Mandate, Which Conditions Employment on the Invasion of Bodily***
6 ***Integrity, Triggers the Unconstitutional Conditions Doctrine***

7 It is possible that Defendants may raise issues related to rights as employers. But
8 government cannot condition benefits, or employment, on forgoing fundamental rights,
9 which triggers the unconstitutional conditions doctrine. *Perry v. Sindermann*, 408 U.S.
10 593, 597 (1972); *Agency for Int'l Dev. v. Alliance for Open Soc'y Int'l, Inc.*, 570 U.S.
11 205 (2013); *Keyishian v. Bd. of Regents*, 385 U.S. 589 (1967).

12 **vi. *The Mandate Does Not Pass Rational Basis***

13 Even if the Court were to assume that the Mandate does not implicate the
14 fundamental right to bodily integrity, which the Mandate does implicate, then it should
15 still be struck down under a rational basis analysis. “[W]hen a [government] policy
16 distinguishes one group of persons from another,” but does not implicate a fundamental
17 interest or a protected class, “that distinction must be rationally related to a legitimate
18 governmental purpose.” *Sanchez*, 914 F. Supp. 2d at 1108. “However, the rational
19 relation test will not sustain conduct by state officials that is malicious, irrational or
20 plainly arbitrary.” *Lockary v Kayfetz*, 917 F.2d 1150, 1155 (9th Cir. 1990). In *Lockary*,
21 for example, the plaintiffs were denied water hookups for their new buildings supposedly
22 because of a water shortage and, while a need to control water due to a shortage is a
23 legitimate governmental purpose, the Ninth Circuit found that plaintiffs presented
24 evidence that the water shortage may not have actually existed. *Id.* If there was no water
25 shortage then, even under a rational basis evaluation, the city’s refusal to provide new
26 hookups “may have been arbitrary or even malicious conduct prohibited by due process
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1 and equal protection.” *Id.*

2 The situation here is similar to that in *Lockary*. With the Mandate, UCI seeks to
3 ensure that individuals on its campuses will increase public health by having immunity
4 to the virus that causes COVID-19. However, the need to preclude Plaintiff and other
5 naturally immune individuals from campus is irrational because those individuals are at
6 least as immune to the virus than are people who have been vaccinated. *See* Section III,
7 *supra*. Therefore, even on a rational basis evaluation, the distinction made by Defendants
8 between people with natural immunity and vaccine immunity is irrational.

9 Alternatively, if Defendants are aware of the natural immunity possessed by
10 Plaintiff, but still chose to make the distinction simply because they preferred to favor
11 vaccinated people, that decision too cannot pass a rational basis test. Defendants’ refusal
12 to exempt naturally immune individuals shows that the Mandate is not about wanting an
13 immune student body and faculty, it is only about having a vaccinated student body and
14 faculty. Similar to the LGBTQ in *Romer v. Evans*,²² people who are not vaccinated are
15 an unpopular group at the moment, and a desire to harm them is prejudice as purpose and
16 not legitimate. A purpose to discriminate against the unvaccinated (a politically
17 unpopular group), but who are naturally immune and no more likely to transmit the virus
18 than vaccinated individuals, cannot constitute a legitimate governmental interest. The
19 Mandate, therefore, cannot satisfy rational basis review and is unconstitutional.

20 **B. Plaintiff’s Fundamental Right to Bodily Integrity Has Been Violated**

21 “The Fourteenth Amendment’s due process clause ‘provides heightened protection
22 against government interference with certain fundamental rights and liberty
23 interests.’” *Sanchez*, 914 F. Supp. 2d at 1100-01 (quoting *Glucksberg*, 521 U.S. at 720).

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26 _____
27 ²² *Romer v. Evans*, 517 U.S. 620, 634 (1996) (“If the constitutional conception of ‘equal
28 protection of the laws’ means anything, it must at the very least mean that a bare . . . desire
to harm a politically unpopular group cannot constitute a *legitimate* governmental interest.”).

1 As discussed *supra*, Plaintiff’s constitutional right to bodily integrity is impinged by the
2 Mandate. *See* Section I.A.ii.

3 It is well established that individuals have a fundamental liberty interest in and
4 right to bodily integrity and informed consent. *See Benson v. Terhune*, 304 F.3d 874, 884
5 (9th Cir. 2002) (“The due process clause of the Fourteenth Amendment substantively
6 protects a person’s rights to be free from unjustified intrusions to the body.”). “This
7 notion of bodily integrity has been embodied in the requirement that informed consent is
8 generally required for medical treatment.” *Cruzan*, 497 U.S. at 277-78. *See also Benson*,
9 304 F.3d at 884 (a person has a right “to refuse unwanted medical treatment and to receive
10 sufficient information to exercise these rights intelligently”). This means that the right
11 to bodily integrity includes the concept that a “competent person has a constitutionally
12 protected liberty interest in refusing unwanted medical treatment.” *Galvan*, 807 Fed.
13 App’x at 697 (quoting *Cruzan*, 497 U.S. at 277-78).

14 Defendants lack a compelling interest to impinge on Plaintiff’s fundamental rights.
15 The United States Constitution guarantees that state governments shall not “deprive any
16 person of life, liberty, or property without due process of law,” U.S. CONST. amend.
17 XIV § 1, and “forbids the government to infringe certain ‘fundamental’ liberty interests
18 *at all*, no matter what process is provided, unless the infringement is narrowly tailored to
19 serve a compelling state interest.” *Reno v. Flores*, 507 U.S. 292, 301-02 (1993).

20 As explained above, Plaintiff has constitutional and fundamental liberty interests
21 in bodily integrity and informed consent, and the substantive due process rights to liberty
22 and to life. Thus, Defendants must prove that the Mandate serves a compelling state
23 interest and is narrowly tailored to that interest.

24 Defendants cannot show that the Mandate serves a compelling state interest. *See*
25 Section I.A.3. While prior court decisions have found that a compelling state interest to
26 control the spread of infection from person-to-person can trump certain constitutional
27 rights in certain situations, *see generally Whitlow v. Cal. Dep’t of Educ.*, 203 F. Supp. 3d
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1 1079, 1089 (S.D. Cal. 2016), this interest is non-existent with respect to the COVID-19
 2 vaccine since this vaccine does not prevent vaccinated individuals from becoming infected
 3 and transmitting COVID-19. *See supra*, Section I.B.iii.

4 Professor Sir Andrew Pollard, director of the Oxford Vaccine Group, has
 5 explained: “Herd immunity is not a possibility because [the Delta variant] still infects
 6 vaccinated individuals.”²³ The vaccinated, when infected, can transmit the virus to
 7 others, and are more likely to do so because they have less symptoms and hence are more
 8 likely to interact with others not knowing they are contagious. *See supra*, Section I.B.iii.
 9 On the other hand, those who have had the COVID-19 virus and recovered have not been
 10 shown to become re-infected and transmit the virus to others. *See, e.g.*, McCullough Dec.
 11 ¶¶ 16-17; UC Faculty Dec. ¶¶ 11-18. Therefore, there is no compelling interest in
 12 requiring the COVID-19 vaccine among the naturally immune.

13 Hence, excluding individuals from the UC locations as a means to compel such
 14 individuals to receive an injection of a COVID-19 vaccine does not pass strict scrutiny.
 15 There is not even a rational basis to exclude the unvaccinated, recovered individuals from
 16 UC since vaccinated individuals are *at least* as likely to spread COVID-19 and, in reality,
 17 are more likely. *See* Section I.A.v.

18 **C. Plaintiff’s Fundamental Right to Informational Privacy Has Been Violated**

19 As a condition of employment, Defendants are compelling the disclosure of
 20 sensitive medical information: vaccination status. The Ninth Circuit has repeatedly
 21 acknowledged that the Constitution protects an “individual interest in avoiding disclosure
 22 of personal matters.” *In re Crawford*, 194 F.3d 954, 958 (9th Cir. 1999). “This interest
 23 covers a wide range of personal matters, including ... medical information.” *Nelson v.*

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 25 ²³ <https://twitter.com/Channel4News/status/1425086490002997248>. Professor Pollard
 26 also stated that, “And what I suspect the virus will throw up next is a variant which is
 27 **of a reason not to be making a vaccine program around herd immunity...**” (emphasis
 28 added).

1 *Nat'l Aero. & Space Admin.*, 530 F.3d 865, 877-78 (9th Cir. 2008), *rev'd on other*
 2 *grounds*, 131 S. Ct. 746 (2011). *See also Norman-Bloodsaw v. Lawrence Berkeley Lab.*,
 3 135 F.3d 1260, 1269 (9th Cir. 1998) (“The constitutionally protected privacy interest in
 4 avoiding disclosure of personal matters clearly encompasses medical information and its
 5 confidentiality.”). If the government’s actions compel disclosure of private information,
 6 it “has the burden of showing that its use of the information would advance a legitimate
 7 state interest and that its actions are narrowly tailored to meet the legitimate interest.”
 8 *Crawford*, 194 F.3d at 959 (internal quotation marks omitted). We must “balance the
 9 government’s interest in having or using the information against the individual’s interest
 10 in denying access,” weighing, among other things, “the type of [information] requested,
 11 ... the potential for harm in any subsequent nonconsensual disclosure, ... the adequacy of
 12 safeguards to prevent unauthorized disclosure, the degree of need for access, and whether
 13 there is an express statutory mandate, articulated public policy, or other recognizable
 14 public interest militating towards access.” *Doe v. Att’y Gen.*, 941 F.2d 780, 796-97 (9th
 15 Cir. 1991).

16 There is no narrow tailoring, much less legitimate interest, in applying the
 17 disclosure of vaccination status to the naturally immune. And, certainly, the Defendants
 18 could meet all of their interests by requiring disclosure of either vaccination status or
 19 natural immunity, demonstrating a lack of narrow tailoring.

20 **II. PLAINTIFF IS SUFFERING AND WILL SUFFER IRREPARABLE HARM,**
 21 **THE BALANCE OF THE EQUITIES TIP IN HIS FAVOR, AND THE PUBLIC**
 22 **INTEREST WEIGHS IN FAVOR OF A PRELIMINARY INJUNCTION**

23 Plaintiff will continue to suffer irreparable harm if the preliminary injunction
 24 requested herein is not granted. It has long been established that the loss of constitutional
 25 freedoms constitute irreparable harm. *Am. Trucking Ass’ns v. L.A.*, 559 F.3d 1046, 1059
 26 (9th Cir. 2012); *Monterey Mech. Co. v. Wilson*, 125 F.3d 702, 715 (9th Cir. 1997).
 27 Moreover, without a preliminary injunction preserving the status quo, Plaintiff will suffer
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1 an impending loss of employment and of his professional reputation. Indeed, “the loss
2 of one’s job does not carry merely monetary consequences; it carries emotional damages
3 and stress, which cannot be compensated by mere back payment of wages.” *Nelson*, 530
4 F.3d at 877-78.

5 If Plaintiff is not permitted on campus as a result of this mandate, his practice and
6 roles at UC will be drastically and adversely affected, including in the following ways:

- 7 a. He will not be able to attend in-person meetings with his team or with
8 patients and families in the hospital and so his role as ethics committee chair
9 and director of the ethics consult service will be impacted;
- 10 b. He will not be able to hold Monday and Tuesday afternoon Resident Clinic;
- 11 c. He will not be able to see his own patients from his practice as his faculty
12 practice is located at the Department of Psychiatry clinic;
- 13 d. He will not be able to do his Resident in-person teaching;
- 14 e. He will not be able to do on-site ethics consultations in the hospital; and
- 15 f. He will not be able to teach the Ethics and Behavioral Science course for
16 first and second-year medical students. A.K. Dec. ¶4.

17 The balance of the equities also tips in Plaintiff’s favor. Among other reasons
18 discussed *supra* at Section III, while the COVID-19 vaccine, depending on brand, at best
19 under the optimal setting of a clinical trial has between 67% and 95% efficacy, and that
20 protection wanes over time, Plaintiff poses virtually no risk to others.

21 Finally, the public interest always weighs in favor of the vindication of
22 constitutional rights. *See Melendres v. Arpaio*, 695 F.3d 990 (9th Cir. 2012). Treating
23 naturally immune individuals differently from the fully vaccinated, when both have
24 immunity, by demanding Plaintiff violate his right bodily integrity presents only a risk of
25 harm and is unconstitutional.

26 CONCLUSION

27 For the foregoing reasons, Plaintiff respectfully requests the court issue a
28

1 preliminary injunction enjoining and prohibiting Defendants enforcing the Mandate as to
2 naturally immune individuals.

3
4 Dated: August 23, 2021

5 SIRI & GLIMSTAD LLP

6 By: /s/ Caroline Tucker

7 Aaron Siri (Pro Hac Vice to be filed)

8 Elizabeth Brehm (Pro Hac Vice to be filed)

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