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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF ALAMEDA**

9 TEAMSTERS LOCAL UNION 2010, JASON
10 RABINOWITZ, JEANETTE BELL, DANIEL
11 FAUSTO, ANDY TAFF, HOWARD POE, and
PAULETTE CARNEY,

12 Plaintiffs/Petitioners,

13 v.
14

15 THE REGENTS OF THE UNIVERSITY OF
16 CALIFORNIA, a Public Corporation, and
MICHAEL V. DRAKE, in his official capacity
17 as President of the UNIVERSITY OF
CALIFORNIA

18 Defendants/Respondents.

Case No.

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF [CCP §1085]**

19
20 **INTRODUCTION**

21 Petitioners TEAMSTERS LOCAL UNION 2010, JASON RABINOWITZ, JEANNETTE
22 BELL, DANIEL FAUSTO, ANDY TAFF, HOWARD POE, and PAULETTE CARNEY hereby
23 submit their Verified Petition for Writ of Mandate pursuant to Code of Civil Procedure 1085 seeking
24 declaratory and injunctive relief against Respondents THE REGENTS OF THE UNIVERSITY OF
25 CALIFORNIA (“University” or “UC”) and MICHAEL V. DRAKE, in his official capacity as
26 President of the University. The action seeks to enjoin the University’s Executive Order (“EO”) that
27 mandates all UC faculty, staff, and students receive an influenza vaccine, absent a religious or
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1 medical exception, by November 1, 2020. Petitioners, who are UC employees and exclusively
2 represented by Teamsters Local 2010 (“Local 2010”), seek to correct the University’s prejudicial
3 abuse of discretion and violation of Petitioners’ rights in issuing the Executive Order.

4 As a result of these failures and abuse of discretion, Petitioners, as well as the workers
5 represented by Petitioner Local 2010, all face the threat of separation from their public employment
6 for refusing to receive the influenza vaccine. A Writ of Mandate lies because Petitioners do not have
7 any other plain, speedy and adequate remedy available in the ordinary course of law to secure the
8 University’s compliance with state statutes and regulation and rights protected by the state and
9 federal constitutions.

10 **PARTIES**

11 1. Petitioner TEAMSTERS LOCAL UNION 2010 (“Local 2010”) is labor organization
12 that is the exclusive representative of the statewide bargaining units of Clerical and Allied Employees
13 (“CX Unit”) at all UC campuses and medical centers and the Skilled Trades bargaining units at UC
14 Irvine, UCLA, UC Merced, UC Santa Barbara, and UC San Diego. Local 2010 currently represents
15 approximately 13,500 UC employees.

16 2. Petitioner JASON RABINOWITZ is Secretary-Treasurer of Local 2010.

17 3. Petitioners JEANETTE BELL, DANIEL FAUSTO, ANDY TAFF, HOWARD POE,
18 and PAULETTEE CARNEY are all current UC employees represented by Local 2010 who, for
19 various reasons that would not qualify as a medical or religious exception, do not want to receive a
20 seasonal flu vaccine.

21 4. Petitioner JEANETTE BELL is employed by the UC at UCLA Health in its
22 Ambulatory Care Clinics. During her employment she has consistently refused to receive the
23 seasonal flu vaccine.

24 5. Petitioner DANIEL FAUSTO is employed by the UC at UCI Health and works at the
25 UCI Medical Center. He has not received the seasonal flu vaccine this year.

26 6. Petitioner ANDY TAFF is employed by the UC at its UCSB campus as a Painter.
27 During his employment with the UC he has never received the seasonal flu vaccine.

1 7. Petitioner HOWARD POE is employed by the UC at its UCLA campus as a Lead
2 Steam Operating Engineer. During his employment with the UC he has never received the seasonal
3 flu vaccine through UCLA and has not received the seasonal flu vaccine this year.

4 8. Petitioner PAULETTE CARNEY is employed by the UC at its UC Santa Cruz
5 campus as a Childcare Enrollment Coordinator. She has not received the seasonal flu vaccine.

6 9. Respondent THE REGENTS OF THE UNIVERSITY OF CALIFORNIA is a public
7 legal entity charged with the governance of a public trust under Article IX, Section 9 of the State's
8 Constitution.

9 10. Respondent MICHAEL V. DRAKE is the President of the University of California.

10 **FACTUAL ALLEGATIONS**

11 11. For several years, UC medical centers have each had policies regarding flu vaccination
12 for workers. Generally, the policies require staff to receive a flu vaccine or wear a mask in patient
13 care areas during flu season, with a sticker or other indicator attached to employees' work badges to
14 show who had been vaccinated. Flu season generally was defined as running from November 1
15 through March 31. Employees could decline the vaccine for medical, religious, or personal reasons,
16 and were required to fill out a form stating that they were declining. Although the vaccine was not
17 mandatory, data collected by the California Department of Public Health shows that approximately
18 95% of workers at UC medical centers were vaccinated against the flu under these policies.

19 12. UC has not had a similar policy for campus employees, nor has it tracked whether
20 campus employees received the vaccine¹. Campus employees work in a wide variety of settings, and
21 particularly considering the current COVID-19 pandemic, a large number work alone or in settings
22 where they are physically distant from other workers of the number of workers in a space is limited.

23 13. On August 7, 2020, Peter Chester, Executive Director of Systemwide Labor Relations
24 sent a message to UC unions announcing a new flu vaccination requirement for all students, faculty
25 and staff. Under the Executive Order issued by University President Janet Napolitano, employees
26 must get a flu vaccine by November 1 or else they will be prohibited from reporting to any work site.
27 (Exh. A, p.2 ["Effective November 1, 2020, no person employed by the University of working on-site
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¹ Starting in 2015, the University did require childcare employees to get the flu vaccine.

1 at any location owned, operated, or otherwise controlled by the University may report to that site for
2 work unless they have received the 2020-2021 flu vaccine or an approved medical exemption.”].)

3 The new policy suspends any contrary policy currently in place. (Exh. A, p. 3.)

4 14. The policy makes limited allowance for medical exemptions, which must be
5 documented and signed by a healthcare provider. (Exh. A, pp. 4-5.) The policy states that requests for
6 disability or religious accommodations will be “adjudicated” through the interactive process “consistent
7 with existing location policies and procedures.” (Exh. A, pp. 2-3.)

8 15. The UC’s stated justification for mandating the flu vaccine for all members of the UC
9 community in the EO “Background and Findings” is that mandating a flu vaccine for the entire UC
10 community may reduce the likelihood that the health system will be overwhelmed if there were to be
11 a shortage of hospital beds due to the coronavirus pandemic.

12 16. The UC’s contention that the health system will be overwhelmed due to the seasonal
13 flu is not supported by the facts. The most recent California Department of Public Health data on
14 hospital beds usage shows that peak rates for seasonal flu hospital admissions during the 2016–2017
15 and 2017–2018 influenza seasons were 12.2 and 20.4 influenza hospitalizations per 100,000,
16 respectively, which did not overburden hospitals.

17 17. Assuming worst case COVID-19 numbers (using data publicly available to date),
18 California has not exceeded more than 10 hospitalizations per 100,000/week, since March 7th in any
19 week of the pandemic through August 22nd. According to Kaiser Permanente, there are about 180
20 hospital beds per 100,000 California residents. The EO’s stated rationale of freeing up hospital beds
21 in case there is an overload is factually inconsistent with CDPH’s own data on hospital usage during flu
22 seasons.

23 18. In addition to the policy, the UC posted a “frequently asked questions” (“FAQ”)
24 regarding the vaccination requirement on its website. The FAQ acknowledges that UC has not required
25 flu immunizations for all employees before. The FAQ is explicit that “[d]ue to the severe risk posed by
26 the confluence of influenza and COVID-19 this year, no other exceptions apply” and that the
27 November 1 deadline is firm.

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1 19. Since the issuance of the policy, workers have been told by UC supervisors or managers
2 that they will be placed on leave without pay if they fail to get the vaccine or obtain an exemption by
3 the November 1 deadline. Additionally, workers have been told that failure to comply may result in
4 corrective action.

5 20. The UC's implementation of the EO contravenes the University's violates state
6 statutes and regulation, as well as Petitioners' and its' members rights to equal protection, privacy,
7 and bodily integrity enshrined in and secured by the U.S. and California Constitutions.

8 **FIRST CAUSE OF ACTION**
9 **(Verified Petition for Writ of Mandate)**
10 **[Code Civ. Proc. §1085]**

11 20. Petitioner hereby incorporates paragraphs 1 through 19, inclusive, as though fully
12 set forth herein.

13 21. Petitioners allege that the UC violated its ministerial duty by issuing the Executive
14 Order mandating the flu vaccine for all employees by November 1, 2020 as a condition of
15 continued employment. There are three reasons why the EO must be struck down.

16 22. First, the EO contravenes state statute and regulation that requires personnel at
17 daycare or childcare facilities and employees covered under the Aerosol Transmissible Disease
18 ("ATD") standard, such as medical facilities, be given the option of either receiving the flu vaccine
19 or wearing a mask.

20 23. Second, by not allowing the option to wear a mask instead of receiving the flu
21 vaccine, the EO violates the Equal Protection rights of all non-daycare and childcare personnel and
22 non-medical personnel who are not covered by the ATD standard because there is no rational basis
23 for the UC to afford that option only to daycare or childcare personnel and medical personnel or
24 those covered by the ATD standard.

25 24. Third, the EO is unconstitutional because it compels the UC member community to
26 vaccinate against the flu, which has no proven benefit against COVID-19. The UC's rationale for
27 requiring the flu vaccine is to mitigate against a possible future shortage of ICU hospital beds,
28 however, this rationale is too speculative to satisfy constitutional scrutiny.

1 **A. The EO Contravenes State Statutes and Regulation**

2 25. California Health and Safety Code section 1288.7, regarding hospital employees,
3 provides in relevant part that,

4 [T]he department [of health] shall require that each general acute care hospital, in
5 accordance with the Centers for Disease Control guidelines, take all of the
6 following actions:

7 (a) Annually offer onsite influenza vaccinations, if available, to all hospital
8 employees at no cost to the employee. ***Each general acute care hospital shall
9 require its employees to be vaccinated, or if the employee elects not to be
10 vaccinated, to declare in writing that he or she has declined the vaccination.***

11 (Cal. Health & Saf. Code § 1288.7 [*emphasis added*].)

12 26. California Health and Safety Code section 1596.7995, regarding day care center
13 employees, provides in relevant part that,

14 (b) ***A person is exempt from the requirements of this section*** [influenza
15 vaccination] only under any of the following circumstances:

16 ...
17 (3) ***The person submits a written declaration that he or she has declined the
18 influenza vaccination. This exemption applies only to the influenza vaccine.***

19 (Cal. Health & Saf. Code § 1596.7995 [*emphasis added*].)

20 27. California Code of Regulations Title 8, Section 5199, entitled “Aerosol
21 Transmissible Diseases”, which applies to health care facilities, as well as to facilities with an
22 increased risk for transmission of aerosol transmissible disease, provides in relevant part that,

23 (h)(10) The employer shall make available seasonal influenza vaccine to all
24 employees with occupational exposure. ***The employer shall ensure that each
25 employee who declines to accept the seasonal influenza vaccine signs the
26 statement in Appendix C2.***

27 (8 CCR § 5199 [*emphasis added*].)

28 28. State law requires healthcare and other workers covered by the ATD standard and
29 childcare workers be given the option to decline the seasonal influenza vaccine. (Cal. Health & Saf.
30 Code §§ 1288.7, 1596.7995; 8 CCR § 5199.)

31 29. Thus, under state law workers employed by the UC in medical centers, childcare
32 centers, or other facilities with increased risk for transmission of aerosol transmissible disease,

1 cannot be compelled through the EO to receive the seasonal influenza vaccine, but must be
2 afforded the option to decline vaccination.

3 **B. The EO Violates Equal Protection**

4 30. As explained above, state law prohibits compelling workers employed at medical
5 and childcare centers to receive the seasonal influenza vaccine. They must be afforded the
6 opportunity to decline vaccination.

7 31. UC workers employed in departments outside of medical or childcare centers cannot
8 be compelled to receive the influenza vaccine because doing so violates their right to equal
9 protection under the U.S. and California constitutions.

10 32. Equal protection of the law is denied when there is no “rational relationship between
11 the disparity of treatment and some legitimate governmental purpose.” (*People v. Turnage*, 55 Cal.
12 4th 62, 74-75 (quoting *Heller v. Doe* (1993) 509 U.S. 312, 320).) In other words, the legislation
13 survives constitutional scrutiny only if there is a “ ‘reasonably conceivable state of facts that could
14 provide a rational basis for the classification.’ ” (*Id.*)

15 33. Here, there is no rational basis for the UC to only permit workers in medical
16 facilities or covered by the ATD standard, and in childcare facilities to decline the influenza virus,
17 which is required by state law, but require workers in other fields to receive the vaccine. Medical,
18 ATD covered, and childcare workers are exposed to a higher risk of infection and to spreading the
19 virus than workers in other settings because of the populations they interact with, children and
20 people with health issues. It is irrational therefore, and a violation of equal protection, to require
21 workers to receive the influenza vaccine who are less likely to contracting or spreading the
22 seasonal influenza.

23 **C. The EO Violates Petitioners’ Right to Privacy and Liberty Protected in the**
24 **U.S. and California Constitutions**

25 34. In 1974, an amendment to the California Constitution elevated the right of privacy
26 to an "inalienable right." Cal. Const. art. I, § 1, *Lantz v. Superior Court* (1994) 28 Cal. App. 4th
27 1839, 1848. See also, California Constitution, Article I, section 7, especially “A person may not be
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1 deprived of life, liberty, or property without due process of law or denied equal protection of the
2 laws”.

3 35. The California courts recognize the "relatively certain principle that a competent
4 adult has the right to refuse medical treatment, even treatment necessary to sustain life."
5 *Conservatorship of Wendland* (2001) 26 Cal.4th 519, 530; see also *Riese v. St. Mary's Hospital &*
6 *Medical Center* (1987) 209 Cal.App.3d 1303, 1317.

7 36. As explained by *Wendland*, supra, 26 Cal.4th at pp. 531-532, this right is grounded
8 in both state constitutional and common law, together with the right of privacy guaranteed by the
9 California Constitution, article I, section 1 "guarantee[ing] to the individual the freedom to choose
10 to reject, or refuse to consent to, intrusions of his bodily integrity."

11 37. When balancing privacy rights against public health rights, the Court should come
12 down in favor of privacy in this case for the simple reason that there is no proven benefit that a
13 seasonal influenza vaccine can prevent or mitigate the effects of any coronavirus, and the UC's
14 rationale that vaccination against influenza will reduce the likelihood that our health system will be
15 overwhelmed during the current pandemic is too speculative to warrant an intrusion on Petitioners'
16 constitutional rights.

17 38. For these reasons, the University's EO violates Petitioners' privacy rights and rights
18 of bodily integrity conferred by the California Constitution.

19 **D. Traditional Mandate Is Appropriate**

20 39. Traditional mandate will issue to compel administrative agencies and their officials
21 and employees to perform legally required ministerial duties. (See *Westchester Secondary Charter*
22 *Sch. v. Los Angeles Unified Sch. Dist.* (2015) 237 CA4th 1226, 1235 ("The availability of writ
23 relief to compel a public agency to perform an act prescribed by law has long been recognized").
24 See also *American Indian Health & Servs. Corp. v. Kent*(2018) 24 CA5th 772, 784 (writ
25 proceeding not barred by state sovereign immunity).

26 40. The Petitioners herein for themselves and for the many other like-minded UC
27 employees do not consent to receiving the seasonal influenza vaccine and should not be compelled
28 by the UC to do so.

1 41. Upon implementation of the University’s EO to take effect on November 1, 2020,
2 Petitioners will be faced with either being deprived of continued employment and denied salary,
3 retirement benefits, health benefits, and all other benefits and emoluments of employment they
4 would continue to receive if not improperly separated, or compliance with the mandate, which is
5 irreparable and cannot be reversed by any remedy from this court.

6 42. As Petitioners have not yet suffered monetary damages, Petitioners have no
7 available administrative remedy to exhaust and any administrative process would be futile.

8 43. Other than the relief sought by this petition, Petitioners have no plain, speedy and
9 adequate remedy available in the ordinary course of law to secure the UC’s compliance with its
10 legal obligations.

11 44. At all relevant times hereto, Petitioners had and have a beneficial interest in the
12 issuance of the relief requested by way of this writ petition.

13 45. At all relevant times, hereto, Petitioners had and have a clear, present and
14 substantial right in the non-abusive, non-prejudicial exercise of Respondent’s discretion.

15 46. Petitioners are entitled to recover attorneys’ fees as provided in Government Code
16 §800 if they prevail in this action, on the ground that the University’s decision was a result of
17 arbitrary, capricious and unlawful conduct.

18 47. Petitioners are further entitled to recover attorneys’ fees as provided in Code of
19 Civil Procedure §1021.5, if they prevail in this action.

20 **SECOND CAUSE OF ACTION**

21 **(Declaratory Relief)**

22 48. Petitioners incorporate by reference the allegations set forth in paragraphs 1- 47
23 above.

24 49. A present and actual controversy has arisen and now exists between Petitioners and
25 the UC concerning their respective rights and duties with regard to the UC’s EO that requires the
26 influenza vaccination for all employees (absent a medical or religious exception), state statutes and
27 regulation that permit certain classes of UC employees to decline vaccination, and UC employees’
28 constitutional rights.

1 50. Petitioners contend that the UC's EO mandating employees receive a flu vaccine
2 violates state law, the equal protection clause of the state and federal constitutions, as well as their
3 constitutional right to privacy and liberty.

4 51. Petitioners further contend that the UC had the statutory duty to comply with state
5 law and not require workers in medical centers, childcare centers, and other facilities with
6 increased risk of aerosol transmission of aerosol transmissible disease, to be vaccinated against
7 seasonal influenza.

8 52. Petitioners seek a judicial determination of the UC's duties, and specifically, a
9 declaration that a) the UC's EO mandating employees receive the seasonal influenza vaccine
10 violates state law with regards with employees working at medical centers, childcare centers, and
11 other facilities with increased risk of aerosol transmission of aerosol transmissible disease; and b)
12 the EO violates all UC employees' equal protection, privacy, and bodily integrity rights protected
13 by the U.S. and California Constitutions.

14 53. A judicial declaration is necessary and appropriate under the circumstances detailed
15 above to ensure that the UC complies with its statutory and constitutional duties.

16 **THIRD CAUSE OF ACTION**

17 **(Injunctive Relief)**

18 54. Petitioners incorporate by reference the allegations set forth in paragraphs 1-53
19 above.

20 55. An injunction is needed to prevent the UC from failing to abide by its statutory and
21 constitutional duties to afford UC employees the choice of whether to receive the seasonal flu
22 vaccine.

23 56. Specifically, an injunction is also needed to prevent the UC from enforcing the
24 terms of the EO and depriving Petitioners of their right to employment without due process and in
25 violation of their constitutional rights.

26 57. Petitioners seek an injunction barring the UC from enforcing the terms of the EO.

27 58. Petitioners will suffer irreparable harm if an injunction is not granted and they are
28 compelled to comply with the mandatory vaccination order, or they will be deprived of continued

1 employment and denied salary, retirement benefits, health benefits and all other benefits and
2 emoluments of employment had they continued in employment.

3 WHEREFORE, Petitioners pray:

4 1. For a peremptory writ of mandate pursuant to Code of Civil Procedure §1085, directed
5 to the University and its President, compelling them, and all persons acting on their behalf or in
6 concert with them, to rescind the Executive Order mandating all UC employees receive the seasonal
7 flu vaccine.

8 2. For a declaration that the UC violated its duties by implementing the systemwide
9 mandatory influenza vaccine.

10 3. For an order enjoining the UC from separating Petitioners' employment and enforcing
11 the provisions of Executive Order it has adopted.

12 4. That Petitioners be awarded their attorneys' fees, litigation expenses and court costs in
13 this action, including attorneys' fees under Government Code §800 and/or Code of Civil Procedure
14 §1021.5; and

15 5. For such other relief that the Court considers proper.

16 Dated: October 19, 2020

BEESON, TAYER & BODINE, APC

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19 By: _____

ROBERT BONSALL

Attorneys for Petitioners

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VERIFICATION

I, Jason Rabinowitz, declare as follows:

I am a party to this action, and I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents. The matters stated in the aforementioned document are true based on my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

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

Executed in _____, California, on this date, October ____, 2020.

Jason Rabinowitz

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VERIFICATION

I, Jeannette Bell, declare as follows:

I am a party to this action, and I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents. The matters stated in the aforementioned document are true based on my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

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

Executed in _____, California, on this date, October ____, 2020.

Jeannette Bell

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VERIFICATION

I, Daniel Fausto, declare as follows:

I am a party to this action, and I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents. The matters stated in the aforementioned document are true based on my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

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

Executed in _____, California, on this date, October ____, 2020.

Daniel Fausto

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VERIFICATION

I, Andy Taff, declare as follows: I am a party to this action, and I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents. The matters stated in the aforementioned document are true based on my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

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

Executed in _____, California, on this date, October ____, 2020.

Andy Taff

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VERIFICATION

I, Howard Poe, declare as follows:

I am a party to this action, and I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents. The matters stated in the aforementioned document are true based on my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

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

Executed in _____, California, on this date, October ____, 2020.

Howard Poe

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VERIFICATION

I, Paulette Carney, declare as follows:

I am a party to this action, and I have read the foregoing Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief and know its contents. The matters stated in the aforementioned document are true based on my own knowledge, except as to those matters stated on information and belief, and as to those matters I believe them to be true.

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

Executed in _____, California, on this date, October ____, 2020.

Paulette Carney