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8 ROLL CALL 4 FREEDOM, LLC

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 ROLL CALL 4 FREEDOM, LLC, a
12 California LLC

13 Plaintiff,

14 v.

15 CITY OF LOS ANGELES, a municipal
16 entity of the State of California, and
17 DOES, I through X, inclusive,

18 Defendants.
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CASE NO. 2:22-cv-01725-GW-SK

**FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF, AND
ATTORNEY’S FEES**

Honorable George H. Wu
United States District Judge

1 COMES NOW, ROLL CALL 4 FREEDOM, LLC (“Plaintiff” or “RC4F”)
2 which asserts the following claims for relief against Defendants CITY OF LOS
3 ANGELES, (“City”), and Does I through X, inclusive, and hereby alleges as follows:

4 **INTRODUCTION**

5 1. By this action, Plaintiff seeks to protect the free exercise of religion
6 under the First Amendment of the United States and California Constitutions
7 possessed generally by workers of the Defendant, City of Los Angeles (“City”) but
8 in particular, by the members of Plaintiff who are all qualified/eligible employees of
9 the City. The religious exemption and testing provisions of the Covid-19 vaccine
10 mandate enacted by The City Ordinance #187134 (“The Ordinance”), requiring
11 vaccination of City workers against Covid-19, as enacted and implemented, violate
12 the free exercise of religion, as more specifically alleged below. **This action contests**
13 **only the testing and exemption portions of The Ordinance, and not the entire**
14 **vaccine mandate.** The purpose of the religious exemption and testing scheme is not
15 to provide for exemptions for sincerely held religious beliefs but to force employees
16 holding such beliefs to abandon them or to forfeit employment with the City in an
17 effort to move toward a fully vaccinated workforce. As Mayor Garcetti has stated:
18 “Let me be clear: Any employee who refuses to get vaccinated by this date should be
19 prepared to lose their job.”¹

20 2. The members of Plaintiff, Roll Call 4 Freedom (“RC4F”), have a sincere
21 religious belief that it would be immoral to submit to the Covid-19 vaccines because
22 they were developed using fetal cell lines derived from abortions. It is contrary to
23 their religious beliefs to encourage abortions, to be even indirectly involved in them,
24 or to have remnants of fetal cells injected into their bodies. A similar belief was the
25 basis of the ruling in *Burwell v Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014)
26 (Employer refused to pay for Plan B birth control in ACA coverage).

27
28 ¹ [Mayor Garcetti says LA employees who aren't vaccinated by Dec. 18 'should be prepared' to lose jobs - abc7](#)

1 3. The Ordinance clearly targets religious conduct for disfavored treatment
2 and cannot be deemed a neutral burden on the Plaintiffs’ religious exercise. It plainly
3 treats “comparable secular activity” (i.e., vaccinated employees being allowed to
4 work without being tested) “more favorably than religious exercise” (i.e., requiring
5 unvaccinated employees to be tested weekly and, in many cases, to pay for that
6 testing), in violation of federal law.

7 4. The Ordinance is not being followed in a uniform fashion by employers
8 throughout the City, or in a manner that comports with the language and intent of The
9 Ordinance. The testing provision of The Ordinance, as implemented, exceeds the
10 authority granted by the Ordinance and excessively and improperly burdens the
11 exercise of religion. The Ordinance prescribes weekly testing for unvaccinated
12 employees, yet employees are being tested twice weekly by virtually all City
13 departments. At this time, when the newer COVID-19 variants exceed 80% (and
14 rising) of all California Covid cases, and when the rolling average of positive tests is
15 20.6%, there is no basis for not testing vaccinated employees, so those with religious
16 exemptions are being discriminated against on the basis of religion. The Ordinance
17 states that testing shall be free to the employees, yet unvaccinated employees are
18 being charged \$230 per pay period for testing; an excessive burden upon religion and
19 one not allowed by The Ordinance. Currently, testing is time-consuming. Work is
20 being missed and it is unknown at this time whether, or how much paid time will be
21 allowed for seeking testing. Many members of Plaintiff have not been compensated
22 for time spent trying to arrange for and take a Covid test in violation of the Federal
23 Fair Labor Standards Act. The protocols for handling positive tests and returning to
24 work are not uniform. But unvaccinated employees who are seeking religious
25 accommodations are penalized on their sick days, while vaccinated employees that
26 may have these newer COVID-19 variants, are not tested and are not penalized.
27 Employees who test positive and who work in an area where other employees have
28 tested positive are going out with time paid by “workers comp.” The City has created

1 a payroll code for this specific type of absence from the office and it is being paid for
2 by the City. However, if the person works in an area where no one else is out sick
3 besides them (i.e. if they are patient #1 in their area) then the City assumes they were
4 exposed outside of work and they have to use personal sick time.

5 5. Accordingly, the City's implementation of the Ordinance has led to an
6 excessive burden upon religion, which includes: 1) the cost of testing, 2) the positive
7 results leading to separation from work, 3) the use of sick days, 4) the exhaustion of
8 sick days or their unavailability when needed later, and 5) the bullying employees out
9 of their religious beliefs with this unconstitutional and illegal exemption
10 application/testing regime.

11 **JURISDICTION AND VENUE**

12 6. This Court has jurisdiction and venue over this action pursuant to 28
13 U.S.C. §§ 1331, 1343, and 42 U.S.C. §§ 1983 and 1988 because the Defendants are
14 violating Plaintiffs' civil rights; and 42 U.S.C. §2000e-5(f)(3), which confers original
15 jurisdiction on federal district courts to address the deprivation of rights, privileges,
16 and immunities secured by the United States Constitution and federal law, and the
17 general legal and equitable powers of this Court, which empower this Court to grant
18 the requested relief. Plaintiffs' claims for declaratory and injunctive relief are
19 authorized by 28 U.S.C. §§ 2201-2202, and Federal Rules of Civil Procedure, Rule
20 57 and 65. Supplemental Jurisdiction of this Court is invoked pursuant to 28 U.S.C.
21 § 1367 over the State law claims which are so related to the federal claims in this
22 action that they form part of the same case or controversy under Article III of the
23 United States Constitution.

24 7. This Court has the authority to award Plaintiffs' attorneys' fees and costs
25 associated with this action pursuant to 42 U.S.C. § 1988 and other applicable laws.

26 8. Venue lies in the United States District Court for the Central District of
27 California because the events giving rise to Plaintiff's claims occurred in the City and
28 County of Los Angeles, California. 28 U.S.C. § 1391(b)(2).

PARTIES

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9. At all relevant times, RC4F was, and now is, a California limited liability company, headquartered in Upland, California, whose mission is to protect and preserve the rights of medical freedom and privacy of Los Angeles City employees. RC4F has approximately 90 members, all qualified/ eligible City employees who reside within the Central District of California. Each member has a sincerely held religious belief preventing him/her from submitting to taking any of the available Covid-19 vaccines. This is a religious objection rather than a political one. While each member might state the religious belief in a very personal and unique way, it may be summarized as follows: 1) human life begins at conception; 2) abortion is morally wrong; 3) the Covid vaccines were developed from fetal cells or fetal cell lines and still contain remnants thereof; 4) it would be morally reprehensible, verging upon satanic, to inject into one’s body this material; 5) it is morally wrong to be involved vicariously in the abortion of another, no matter how indirectly, or to support a public policy that encourages abortion on the premise that good comes from it. Vicarious liability is, in fact, a well-accepted theory in American jurisprudence. A subset of members who have this belief also believes that vaccines alter human DNA², which invades the sole power of the Creator.

10. At all relevant times, Defendant City of Los Angeles (“Defendant” or “City”) was, and now is, a municipal corporation and political subdivision of the State of California, operating pursuant to a city charter, under the law of the State of California. The City employs each member of Plaintiff.

11. At all relevant times, Defendant possessed the power and authority to adopt policies and prescribe rules, regulations, and practices affecting the operation of the City and its employees.

² A study was recently released confirming the fact that mRNA vaccines do, in fact, alter DNA. [Study: Pfizer COVID shot converts into DNA in human cells – Clark County Today](#)

1 12. The true names and capacities, whether individual, corporate,
2 association, or otherwise of Defendants DOES 1 through 10, inclusive, are unknown
3 to Plaintiff who otherwise sues these Defendants by such fictitious names.

4 13. Plaintiff will seek to leave to amend this Complaint to show the true
5 names and capacities of these Doe Defendants when they have been ascertained.
6 Each of the fictitiously named Defendants is responsible in some manner for the
7 conduct or liabilities alleged herein.

8 14. The claims that RC4F will allege against any subsequently named Doe
9 Defendant will arise out of the same allegations and claims as those set forth herein.
10 Any subsequently named Doe Defendants will have such notice of this action and/or
11 the claims of Plaintiff that they will not be prejudiced in making their defense. Any
12 subsequently named Doe Defendants will know or should have known that but for a
13 mistake of identity, they would have been named in this Complaint.

14 15. The Defendants, and each of them, were the agents, employees, joint
15 venturers, and co-conspirators of each of the remaining Defendants. Each of the
16 Defendants was acting within the course and scope of said agency, employment, joint
17 venture, or conspiracy at all relevant times. Each Defendant agreed in advance to the
18 tortious objective of the conspiracy and committed affirmative acts in furtherance of
19 the conspiracy. To the extent any act of any Defendants was not initially authorized,
20 the same was subsequently ratified by the remaining Defendants.

21 **GENERAL ALLEGATIONS AS TO ALL CLAIMS FOR RELIEF**

22 16. All operative facts are pleaded upon information and belief.

23 ***The Pandemic and the COVID-19 Variants***

24 17. COVID-19 was first identified by the World Health Organization
25 (“WHO”) on January 7, 2020. On March 11, 2020, COVID-19 was declared a
26 pandemic by the WHO.

27 18. In August of 2020, the Lambda variant was first discovered in Peru. In
28 September 2020, the Alpha variant was first identified in the UK. The discovery of

1 these variants showed that the virus was evolving, and disease outcomes were
2 changing. With the emergence of these new variants, cases of COVID-19 began to
3 rise again in many countries and by the 29th of September 2020, there had been 1
4 million COVID-19 deaths.

5 19. In December 2020, the Delta variant was first discovered in India.
6 Concerns over the potential increased transmissibility of the variants forced many
7 governments to reinforce lockdown measures once again to varying degrees.

8 20. On or about November 22, 2021, the Omicron variant was first detected
9 in Botswana. It is estimated to spread 70 times faster than other variants. Over 95%
10 of current Covid-19 infections in the United States are estimated to be of the Omicron
11 variant. Omicron infects those who have been vaccinated as well as those who are
12 unvaccinated. Although the result may not be as severe for the vaccinated, they are
13 nonetheless carriers and may be asymptomatic carriers of this variant. In December
14 2021, the infection rate among the vaccinated increased sevenfold, due almost
15 entirely to Omicron. The vaccines have shown no effectiveness against Omicron,
16 even with boosters.³

17 21. The lack of uniform mandates across political units has led to unintended
18 consequences as shown by detailed data science undertaken by the National Institute
19 of Health.⁴ Additionally inconsistent guidance from the CDC and other government
20 agencies has led to a loss of credibility undermining efforts to control the pandemic.⁵

21 22. In Los Angeles County, a new record was set on January 9, 2022, with
22 45,484 new cases of the virus. The rolling seven-day average of positive test results
23 is 20.6%. 199,314 fully vaccinated residents of Los Angeles County have tested
24 positive. 973 healthcare workers tested positive this past week, an increase of 47%,
25 despite their very high vaccination rate. Over 80% of the current positives in Los

26 _____
27 ³ <http://publichealth.lacounty.gov/media/coronavirus/data/>; CDC: Omicron Variant Responsible For 99% Of New
COVID Cases Last Week – CBS Miami

28 ⁴ [The unintended consequences of inconsistent pandemic control policies - NCBI](#)

⁵ [CDC's credibility is eroded by internal blunders and external attacks as coronavirus vaccine campaigns loom - Washington Post](#)

1 Angeles County are of the Omicron variant.⁶

2 23. On August 11, 2022, the CDC loosened its restrictions, making the
3 guidelines the same for all individuals, regardless of the individual’s vaccination
4 status. The guidance now treats all COVID-19 exposures the same way, regardless of
5 whether the person exposed is vaccinated. Further, the CDC dropped its
6 recommendation of testing asymptomatic without known exposures.⁷ This change
7 recognizes that the Omicron variants are infecting both vaccinated and unvaccinated
8 individuals, many of whom may be asymptomatic, and that “there is a significantly
9 less risk of severe illness, hospitalization, and death compared to earlier in the
10 pandemic.”

11 ***The Available Vaccines***

12 24. Numerous vaccines have been made available in an attempt to combat
13 the COVID-19 pandemic. However, all of these vaccines are derived from fetal cell
14 lines in some way.

15 25. Fetal cell lines were used to develop the Johnson & Johnson and
16 AstraZeneca vaccines. Some remnants of these cell lines remain in these vaccines.
17 Fetal cell lines were also used in research and development for the Moderna and
18 Pfizer vaccines.⁸ The HEK 293 cell lines were used for the AstraZeneca, Moderna,
19 and Pfizer vaccines while Johnson & Johnson used the PER.C6 cell line.

20 ***The City and Its Employees***

21 26. The City was incorporated on April 4, 1850. It is the second largest city
22 in the United States and has the third largest GDP of any city in the world. The City
23 employs over 50,000 employees. Among the largest departments are police, fire, City
24 Attorney, harbor, library, Public Works, recreation, transportation, and council but
25 there are 40 departments as of 2015. City employees are represented by different

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27 ⁶ [LA County again breaks single-day record for COVID cases with 45,584 - abc7](#)

28 ⁷ [CDC loosens COVID-19 guidance, regardless of vaccination - The Hill; CDC streamlines COVID-19 guidance to help the public better protect themselves and understand their risk - CDC](#)

⁸ [Pfizer downplays COVID-19 vaccine’s ties to fetal tissue from abortions: Project Veritas – The Washington Times](#)

1 unions. Some employees are not members of any unions. City employees are
 2 members of many different religions or ascribe to many different belief systems, and
 3 some employees are agnostic or atheist. Both the City and the State of California are
 4 known worldwide for their cultural and religious diversity and tolerance.

5 ***Scope of City of Los Angeles Mandate***

6 27. On July 27, 2021, Mayor Eric Garcetti and City Council President Nury
 7 Martinez announced: “that they would push for mandatory COVID-19 vaccines for
 8 City employees, beginning with a requirement that workers either submit proof of
 9 *vaccination or a weekly negative test.*” (Emphasis added.)⁹ Mayor Garcetti stated
 10 further in his July 27, 2021, announcement, “This urgent need means that if you’re a
 11 City employee, we’re now going to require you to either show that you’re vaccinated
 12 *or take a weekly test, and we’re committed to pursuing a full vaccine mandate.*”
 13 (Emphasis added.) According to Mayor Garcetti, “The new policy will require all
 14 department heads to verify and keep track of their employees’ vaccination status and
 15 submit reports to the Personnel Department detailing that information. Each
 16 employee will be required to show proof of full vaccination to their department’s HR
 17 representative. *In the absence of that proof, employees must produce proof of a*
 18 *negative COVID-19 test on a weekly basis.* Discussions are ongoing with the City’s
 19 labor partners about the specific testing implementation plan.”¹⁰

20 28. On August 20, 2021, Mayor Garcetti signed and approved Ordinance
 21 No. 1871342 (herein “Ordinance”) (a true and correct copy of which is attached
 22 hereto as Exhibit A).¹¹ Among other things, the Ordinance mandates at Sec. 4.701(b)
 23 that “as of October 20, 2021, the *COVID-19 vaccination and reporting requirements*
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25 ⁹ A complete copy of the Mayor’s statement dated July 27, 2021 is located at [Mayor Garcetti, Council President
 Martinez push toward mandatory vaccines for City employees | Office of Los Angeles Mayor Eric Garcetti
 \(lamayor.org\)](#)

26 ¹⁰ A complete copy of the Mayor’s statement dated July 27,2021 is located at [Mayor Garcetti, Council President
 Martinez push toward mandatory vaccines for City employees | Office of Los Angeles Mayor Eric Garcetti
 \(lamayor.org\)](#)

27 ¹¹ See memorandum, Form Gen. 160A, regarding “[MANDATORY COVID-19 VACCINATION ORDINANCE](#)”,
 28 [Report No. R21-0252](#) from the City Attorney, a report of the “OFFICIAL ACTION OF THE LOS ANGELES CITY
 COUNCIL”, and [Ordinance 187134](#).

1 *are conditions of City employment and a minimum requirement* for all employees,
2 unless approved for an exemption from the COVID-19 vaccination requirement as a
3 reasonable accommodation for a medical condition or restriction or sincerely held
4 religious beliefs. Any employee that has been approved for an exemption must still
5 report their vaccination status.” (Emphasis added.)

6 29. Sec. 4702 of the Ordinance allows “Qualified Exemptions” from the
7 mandatory vaccination policy for “Employees with medical conditions/restrictions or
8 sincerely held religious beliefs, practices, or observances that prevent them from
9 receiving a COVID-19 vaccine.” Sec. 4702(a). Section 4702 goes on to state that
10 “*The City’s goal is to have a vaccinated workforce.* As such, employees will not have
11 the option to ‘opt out’ of getting vaccinated and become subject to weekly testing.”
12 (Emphasis added.)

13 30. Expressing his true animus toward employees seeking religious or
14 medical accommodations for the vaccine, Mayor Garcetti was quoted on September
15 14, 2021, “This policy allows for medical and religious exemptions to protect certain
16 workers' health and constitutional rights, but let me be absolutely clear: We will not
17 tolerate the abuse of these exemptions by those who simply don't want to get
18 vaccinated.”¹² “To anyone thinking about filing a disingenuous exemption request,
19 I strongly urge that you reconsider. Every request will be carefully vetted, and our
20 goal will always be to get as many Angelenos vaccinated as possible,” Garcetti’s
21 statement continued.”¹³

22 31. Implementation of The Ordinance was delayed to set up a testing
23 program, and to bargain with unions over consequences. Mayor Garcetti stated in an
24 article appearing on November 16, 2021, that the delay was about giving more time
25 to set up the testing program. A new deadline of December 18, 2021, was set and
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28 ¹² [Nearly 11% of LA City Employees Plan to Seek Exemption from Vaccine Mandate | KFI AM 640 \(iheart.com\)](#)

¹³ [Thousands of LA Workers Fail to Provide Vaccine Proof or Request Exemptions – NBC Los Angeles](#)

1 Garcetti’s spokesperson stated that anyone refusing to comply should be ready to lose
2 their job.

3 32. The testing agency is PPS Health, a California LLC based out of
4 Sherman Oaks, dba Bluestone Safe. An online search shows that this joint venture
5 had no prior existence before this giant testing program. In fact, there is no evidence
6 available that either company has ever previously done Covid testing. PPC
7 Healthcare is a small local company selling health equipment. Bluestone is a small
8 Florida company. Prior to early January 2021, there was nothing about saliva testing
9 for Covid-19 on Bluestone Safe’s online presence. Now, it is all over the internet. No
10 information on competitive bidding for this contract or even the request for proposals
11 was readily available. Allegations of corruption with this contract have been rampant
12 as well as claims that another company offered to test free of charge. If so, or even if
13 there was no competitive bid, there can be no justification for burdening religion by
14 charging those claiming a religious exemption for their tests—tests in excess of the
15 number allowed by The Ordinance. The total tests allowed should be ONCE
16 WEEKLY AND FREE OF CHARGE WITH TIME OFF PAID. Those with religious
17 exemptions are being tested twice weekly. Although no one is currently being
18 charged for testing while the exemptions are in the review process, if an employee’s
19 exemption is ultimately denied, the employee will be invoiced for the cost of all the
20 tests that they have taken with Bluestone, approximately \$230 per pay period, in
21 addition to being terminated. If an employee’s exemption is approved, that employee
22 will not have to pay for the tests they have taken.

23 ***Provisions of the Ordinance and How Implementation is Differing from its***
24 ***Provisions***

25 33. The relevant portions of the Ordinance, in more detail, for purposes of
26 this lawsuit are as follows:

27 a. All City employees must be fully vaccinated or request either a
28 medical or religious exemption and report their status in accord with the City

1 Workplace Safety Standard by October 5, 2021. Fully vaccinated means 2 shots of
2 Moderna or Pfizer (updated by booster shots as determined) or one shot of J&J.
3 Workers must be partially vaccinated (one shot) by September 7, 2021. (These dates
4 have been extended, but the Ordinance is now in full effect.)

5 b. By October 20, 2021, any new contract with the City must have a
6 provision requiring all workers appearing on a City site to be fully vaccinated. There
7 is no clause for any exemptions. **(Sec. 4.701. (c)4.)** Regardless of status, all
8 employees must report their vaccination status. Additional booster shots may be
9 required. The personnel department maintains records of booster shots.

10 c. **Sec. 4702 Deals with Qualified Exemptions.** All employees have
11 the right to petition for a religious exemption to “be evaluated on a case-by-case
12 basis” consistent with the City procedure for reasonable accommodation requests.
13 The documentation prescribed shall include:

14 i. The applicant may qualify upon the approval of the
15 documentation provided to the appointing authority or designee---may be subject to
16 WEEKLY testing. (but obviously, that does not describe any documentation).
17 [comment in quotations added].

18 ii. If the applicant is reporting regularly to a City worksite,
19 he/she shall be subject to WEEKLY tests at NO COST during work hours, if working
20 at home, ad hoc testing will be when reporting to a worksite on an as needed basis.

21 1. In fact, City employees are being tested TWICE a
22 week and are being charged for the tests-in some cases the price of testing is being
23 deducted from their pay at the rate of \$230 per pay period. Additionally, testing is
24 being done “on duty” but is generally not available during work hours, often not
25 available at all, and not uniformly paid for by all City Employers in violation of the
26 FLSA. Additionally, the testing program is different from what The Ordinance allows
27 and different from the guidance given to private businesses who have been told to
28 provide testing at no cost to not fully vaccinated employees.

1 when limited to those with exemptions. Neither masks nor vaccines appear to be
2 retarding the spread of these new variants yet no employees other than those with
3 religious exemptions are bearing the cost of this onerous testing program, and the
4 burden of the removal from the workforce, that has been concocted to injure free
5 exercise even though it is not permitted by the ordinance.

6 iv. **Sec. 4704.** To be hired, transferred, or promoted, an employee
7 must be fully vaccinated or exempt.

8 34. On or about February 14, 2022, the City announced that it would be
9 updating its mandatory Covid-19 testing requirements to 1) reduce the COVID-19
10 testing mandate for unvaccinated employees to once per week, 2) reduce the number
11 of City employee PCR testing locations, and 3) allow employees to submit third-party
12 PCR tests in lieu of testing through Bluestone. Although the City is reducing the
13 testing requirement to once per week, the City maintains the right to increase testing
14 back to twice per week at any time; there is nothing to prevent the City from changing
15 the requirement back.

16 35. Further, as evidenced by the rate at which the City’s procedures have
17 frequently been changed, Plaintiff and its members still “remain under a constant
18 threat” that the City will change its procedures to require testing twice weekly again
19 if there is any increase in Covid-19 cases. *See Roman Catholic Diocese of Brooklyn*
20 *v. Cuomo*, 141 S. Ct. 63, 68 (2020).

21 36. A cornerstone of justice is that like cases be treated alike. Here, the
22 Ordinance clearly targets religious conduct for disfavored treatment and cannot be
23 deemed a neutral burden on the Plaintiffs’ religious exercise. It’s obvious that, at this
24 time, vaccinated employees present similar risks of spreading COVID-19 as those
25 with religious objections to the vaccine. Therefore, the Ordinance plainly treats
26 “comparable secular activity” (i.e., vaccinated employees being allowed to work
27 without being tested) “more favorably than religious exercise” (i.e., requiring
28 unvaccinated employees to be tested weekly and, in many cases, to pay for that

1 testing). This is exactly the kind of disparate treatment that federal law prohibits. *See*
2 *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021).

3 37. The Omicron variant has been rampaging through California. There is
4 an abundance of widely accepted evidence that COVID-19 vaccines likewise do not
5 prevent the transmission of COVID-19 and its variants. (Exhibits B and C attached
6 hereto (Statement of CDC Director Dr. Rochelle Walensky that “what [COVID]
7 vaccines can’t do anymore is prevent transmission”).) At present, vaccinated
8 employees spread the COVID-19 virus at a rate similar to that of unvaccinated
9 employees.¹⁵ Moreover, vaccinated employees may have it yet be asymptomatic, or
10 not report the symptoms.¹⁶ If all employees were tested, a positive return rate of
11 20.6% would result, showing a real threat to the workforce of the City. But, only
12 those with exemptions are being tested.

13 38. This has led to an excessive burden upon religion, which includes: 1) the
14 cost of testing, 2) the positive results leading to separation from work, 3) the use of
15 sick days, 4) the exhaustion of sick days or their unavailability when needed later,
16 and 5) the bullying employees out of their religious beliefs with this unconstitutional
17 and illegal exemption application/testing regime. Several Supreme Court cases in the
18 past year have made clear that disparate treatment between religious activity and
19 secular activity will be fatal to any covid-19 pandemic regulation. *See Tandon, supra*,
20 141 S.Ct. 1294; *Gateway City Church v. Newsom*, 141 S. Ct. 1460 (2021); *Southbay*
21 *Pentecostal Church v. Newsom*, 141 S.Ct. 716 (2021); *Gish v. Newsom*, 141 S.Ct.
22 1290 (2021); *Roman Catholic Archdiocese, supra*, 141 S.Ct. at 67-68.

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25 ¹⁵ <https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html> (“CDC expects that anyone with
26 Omicron infection can spread the virus to others, even if they are vaccinated or don’t have symptoms”);
27 <https://www.cnn.com/2022/01/11/health/us-coronavirus-tuesday/index.html> (quoting Dr. Anthony Fauci, "Omicron,
with its extraordinary, unprecedented degree of efficiency of transmissibility, will ultimately find just about
everybody").

28 ¹⁶ <https://www.ama-assn.org/delivering-care/public-health/what-doctors-wish-patients-knew-about-covid-19-omicron-variant> (“many of the people who are vaccinated or boosted are essentially reporting either very few to no symptoms, or they’re basically saying it feels like a common cold”).

1 44. Plaintiff’s members and other similarly situated employees have become
2 ensnared in an unauthorized testing regime. Although the Ordinance only permits
3 weekly testing, those with religious exemptions are tested twice a week. Although
4 the testing is required to be free of charge, those with religious exemptions are
5 charged \$230 per pay period. Although testing is a requirement of employment, no
6 pay is uniformly offered by City departments for time off for testing in violation of
7 FLSA. Taken together the testing regime is calculated to impose such a burden upon
8 religion that employees will abandon their sincerely held beliefs.

9 45. Further, the testing regime as implemented by the Defendants is
10 discriminatory to religion. At this point, COVID-19 is still rapidly evolving and the
11 majority of cases in Los Angeles County are coming from the new variants. Those
12 employees with religious exemptions are regularly tested for these COVID-19
13 variants and may be removed from work. They must use their sick days, and when
14 those run out, they will be unpaid. Yet, the vaccinated, who may be asymptomatic
15 carriers of these newer COVID-19 variants, are not tested. This is yet another burden
16 upon religion for the purpose of compelling abandonment of sincerely held religious
17 beliefs.

18 46. This regime is not neutral and is not generally applied as to all religions.
19 It is ripe for abuse, and actual abuse has ensued. It creates inconsistent results and the
20 establishment of one religion and the prejudice of others. It fails to serve a compelling
21 state interest because the newer COVID-19 variants are rampaging through the entire
22 workforce, yet the entire workforce is not being tested – only those seeking a religious
23 exemption are tested, and they are tested in terms not authorized by the Ordinance
24 but in a much harsher and more expensive manner intended by the departments to
25 bully them out of their religious beliefs.

26 47. Plaintiff, its members, and thousands of City employees are faced with
27 imminent and ongoing losses of employment and/or the free exercise of their First
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1 Amendment Rights. This constitutes irreparable injury that should not be
2 countenanced.

3 48. As set forth above, the First Amendment rights of members of Plaintiff
4 and thousands of other employees of the City have been unnecessarily burdened and
5 threatened by the religious exemption testing program. Their First Amendment rights
6 have been violated by the Ordinance, as passed and as applied to them. Their rights
7 have been burdened. Their terms of employment were threatened and impacted.

8 49. Plaintiff and its members are entitled to temporary, preliminary, and
9 permanent injunctive relief requiring the City and department heads to ensure that all
10 interference against Plaintiff's members and other employees who remain
11 unvaccinated, for whatever reason, stops.

12 50. Plaintiff, and its members, are further entitled to temporary, preliminary,
13 and permanent injunctive relief whereby the City should be enjoined from
14 discriminating in testing between those with religious exemptions and other
15 employees. It should show cause as to why the entire workforce is not being tested
16 for COVID-19 generally.

17 51. Plaintiff and its members are entitled to their reasonable costs of suit and
18 attorney's fees.

19 52. Plaintiff and its members are entitled to such other and further relief as
20 the Court may deem appropriate.

21 **SECOND CLAIM FOR RELIEF**

22 **FOR DECLARATORY RELIEF AND ATTORNEY'S FEES**

23 (28 U.S.C. §§ 2201, 2202)

24 (*Against All Defendants*)

25 53. Plaintiff hereby incorporates and realleges the preceding paragraphs as
26 though fully set forth herein.

27 54. A case and controversy has now arisen and exists between the City on
28 the one hand and Plaintiff, its members.

