UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF WASHINGTON

TACOMA DIVISION

AILA CURTIS, *et al,*	*	
	*	
Plaintiffs,	*	
	*	
VERSUS	*	CIVIL ACTION 3:23-cv-5741-RJB
	*	
PEACEHEALTH, LIZ DUNNE, DOUG, KOEKKOEK, AND GOV. JAY INSLEE	*	
	*	
Defendants,	*	

* * * * * * * * * * * * * *

AMENDED COMPLAINT
(JURY TRIAL REQUESTED)

NOW INTO COURT, through undersigned counsel, come Plaintiffs, Aila Curtis, *et al*, (hereinafter "Plaintiffs"), who, pursuant to the Order on Complaint [Rec. Doc. 7] respectfully file this Amended Complaint against Defendants, PeaceHealth; its policymakers, the CEO Liz Dunne, and Chief Physician Executive (CPE) Doug Koekkoek, in their individual and representative capacities; and Governor Jay Inslee, in his individual capacity and in his official capacity as Governor of the State of Washington, (hereinafter "Defendants"), presenting allegations and causes of action as follows:

DESCRIPTION OF CAUSE OF ACTION

This is a §1983 case seeking redress from Defendants for the deprivation of Plaintiffs' Constitutional and federally secured right to refuse an EUA investigational drug without incurring a penalty or loss of benefits to which Plaintiffs were otherwise entitled.

This lawsuit is being brought under 42 U.S.C. §1983 seeking redress for deprivation of rights granted to Plaintiffs by the United States Constitution, 21 U.S.C. §360bbb-3, 42 USC §247d-6d, 45 CFR 46, 18 U.S.C. §242, ICCPR Treaty, and the common laws of the State of Washington to hold accountable Governor Jay Inslee, PeaceHealth, a State Actor at all times pertinent herein, via its policymakers, the CEO Liz Dunne, Chief Physician Executive (CPE) Doug Koekkoek, for damages arising out of their unconstitutional, unlawful, malicious, unequal and contractually violative COVID-19 investigational drug mandate. Special laws apply to Governor Inslee and Liz Dunne's vaccine mandates because the FDA defines the drugs at issue as "investigational with no license for any indication." And even though Defendant's mandates were instituted during and in response to a pandemic emergency, as the U.S. Supreme Court noted since the beginning of the pandemic: **"even in a pandemic, the Constitution cannot be put away and forgotten."** *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S.Ct. 63, 208 L.Ed.2d 206 (2020).

I. Introduction

1. In early 2020, the nation and the world faced a novel coronavirus called SARS-CoV-2, which caused the highly contagious disease COVID-19.

2. On January 31, 2020, the Secretary of Health and Human Services (HHS) declared a public health emergency. The President declared a national emergency on March 13, 2020, of which led to the development of investigational new drugs designed to perform as a vaccine from the virus, i.e., cause the body to produce antibodies to the virus so that the person is immune from infection when exposed to the true virus.

3. To implement the nationwide distribution and administration of these investigational new drugs, the U.S. Food and Drug Administration (FDA) issued an Emergency

Use Authorization pursuant to 21 U.S.C. 360bbb-3 (Section 564 of the Food, Drug & Cosmetic Act.)

4. The FDA made clear on its website:

> FDA believes that terms and conditions of an EUA issued under Section 564 preempt state or local law, both legislative requirement and common-law duties, that impose different or additional requirements on the medical product for which the EUA was issued in the context of the emergency declared under section 564…In an emergency, it is critical that the conditions that are part of the EUA or an order or waiver issued pursuant to section 564A – those that FDA has determined to be necessary or appropriate to protect public health – be strictly followed, and no additional conditions be imposed.

5. In August 2020, the Centers for Disease Control (CDC) published the transcript of a meeting of the Advisory Committee on Immunizations and Respiratory Diseases, at which Dr. Amanda Cohn stated (@1:14:40):

> I just wanted to add that, just wanted to remind everybody, that **under an Emergency Use Authorization, an EUA, vaccines are not allowed to be mandatory**. So, early in the vaccination phase, individuals will have to be **consented** and **they won't be able to be mandated.** (Emphasis added)

6. In August 2021, Governor Inslee usurped the authority of the United States Congress by issuing an official proclamation in defiance of federal law when he mandated the use of investigational new drugs by healthcare workers. Additionally, Governor Inslee engaged in outrageous tyrannical conduct by mandating that healthcare facilities deny employment to healthcare workers who exercised their federally secured right to refuse investigational drugs.

7. PeaceHealth, CEO Liz Dunne, as PeaceHealth's policymaker, and CPE Doug Koekkoek decided that the suffering of the few was justified by the windfall such suffering had on PeaceHealth's financial bottom line. Thus, PeaceHealth prescribed its own "required conditions" in defiance of Congress and the rights of individuals under Defendants' authority as secured by the Constitution.

8. In August 2021, CEO Dunne issued a despicable illegal mandate that shocked the conscience. During the height of the pandemic, when hospitalization rates soared, and SARS-CoV-2 variants abounded, and in direct contravention to federal law governing investigational drugs, CEO Dunne subjected 16,000 individuals to investigational drug use under threat of penalty and outside of their free will and voluntary consent. Should those individuals not comply with CEO Dunne's fraudulent usurpation of authority, they would be segregated, penalized, humiliated, terminated, and denied unemployment benefits, thus depriving Plaintiffs of their Constitutional and federally secured right to refuse an investigational drug without penalty.

9. Governor Jay Inslee used his office as official cover in hopes of obtaining for himself immunity from liability in future legal actions. Similarly, attempting to hide behind the PREP Act as a liability cover, PeaceHealth, its policymaker, CEO Dunne, and CPE Koekkoek willfully chose to engage in violations of federal law.

II. Jurisdiction and Venue

10. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343.

11. The civil-rights portions of this action raise federal questions under the Spending Clause and the Fourteenth Amendment to the U.S. Constitution.

12. This Court has original jurisdiction under 42 U.S.C. §§ 1983 and 1988.

13. This Court has the authority to award costs and reasonable attorney's fees under 42 U.S.C. § 1988.

14. This court has supplemental jurisdiction over Plaintiff's state law claims.

15. This Court has personal jurisdiction over Defendants as they are domiciled within this Court's jurisdictional boundaries.

16. This Court has subject matter jurisdiction over the parties because all acts complained of herein were committed by Defendants in the State of Washington and caused damage and/or deprivation to the Plaintiffs listed herein.

17. Venue is proper in this court because all events underlying the claims in this Complaint occurred in the State of Washington, which is situated within this Court's jurisdiction, and all Defendants reside in the State of Washington.

III. Plaintiffs

18. The following individuals are plaintiffs herein:

18.1. Plaintiff, Aila Curtis, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.2. Plaintiff, Shannon Lee Adams, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.3. Plaintiff, Ciera Agee, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.4. Plaintiff, Nelli Antonov, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.5. Plaintiff, Alison Archer, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.6. Plaintiff, Rebecca Barcenas, is an adult individual who all times pertinent resided in the State of Oregon, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.7. Plaintiff, David Bennett, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.8. Plaintiff, Kathy Bordeaux, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.9. Plaintiff, Daniel Brickert, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.10. Plaintiff, Britney Brown, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.11. Plaintiff, Christine Amber Bruce, is an adult individual who all times pertinent resided in the State of Oregon, and is a current employee of PeaceHealth or one of its DBA entities in Washington.

18.12. Plaintiff, Susan Buchanan, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.13. Plaintiff, Kirsten Clarke, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA

entities in Washington.

18.14. Plaintiff, Diane Clemans, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.15. Plaintiff, Jeff Coffey, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.16. Plaintiff, The Estate of Cherie Coiner, by and through Michael Coiner, is the estate of Cherie Coiner who was an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.17. Plaintiff, Sheila Craig, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.18. Plaintiff, Rae Lynn Crocker, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.19. Plaintiff, Lisa Daluz, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.20. Plaintiff, Christina Dawson, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.21. Plaintiff, Margarita Demchenko, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.22. Plaintiff, Monica Dickinson, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.23. Plaintiff, Hayley Dixon, is an adult individual who all times pertinent resided in the State of Oregon, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.24. Plaintiff, Jason Dong, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.25. Plaintiff, Kristin Ellison, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.26. Plaintiff, Katerina Erokhina, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.27. Plaintiff, Shanta Gervickas, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.28. Plaintiff, The Estate of Caleb Gervickas, by and through Shanta Gervickas, is the estate of Caleb Gervickas, who was an adult individual who all times pertinent resided in the

State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.29. Plaintiff, Eduard Goncharuk, is an adult individual who all times pertinent resided in the State of Iowa, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.30. Plaintiff, Staci Gray, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.31. Plaintiff, Amy Haserot, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.32. Plaintiff, Betheny Hayden, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.33. Plaintiff, Rhonda Holmes, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.34. Plaintiff, Mikayla Holsinger, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.35. Plaintiff, Amy James, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.36. Plaintiff, Josey Kolbo, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.37. Plaintiff, Whitney Konrady, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.38. Plaintiff, Tamara Kopp, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.39. Plaintiff, Sumiko Kuba, is an adult individual who all times pertinent resided in the State of Oregon, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.40. Plaintiff, Lindsey Lamb, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.41. Plaintiff, Nadezhda Litvinenko, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.42. Plaintiff, Liliya Lopatin, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.43. Plaintiff, Misty Lyons, is an adult individual who all times pertinent resided in the State of Arkansas, and was previously an employee of PeaceHealth or one of its DBA entities in

Washington.

18.44. Plaintiff, Sheila Lyons, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.45. Plaintiff, Irina Maksimenko, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.46. Plaintiff, Lyubov Melnychuk, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.47. Plaintiff, Ashley Mendoza, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.48. Plaintiff, Monica Miller, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.49. Plaintiff, Cheryl Mitchell, is an adult individual who all times pertinent resided in the State of Oregon, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.50. Plaintiff, Damaris Mocan, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.51. Plaintiff, Kathryn Morgan, is an adult individual who all times pertinent resided

in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.52. Plaintiff, Nick Morzhov, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.53. Plaintiff, Dwain Nash, is an adult individual who all times pertinent resided in the State of Oregon, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.54. Plaintiff, Lysander Nerida, is an adult individual who all times pertinent resided in the State of Oregon, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.55. Plaintiff, Yelena Onofrey, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.56. Plaintiff, Kathryn Ortega, is an adult individual who all times pertinent resided in the State of Alabama, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.57. Plaintiff, Yvonne Quashie, is an adult individual who all times pertinent resided in the State of Tennessee, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.58. Plaintiff, Leslie Quintana, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.59. Plaintiff, Emma Ranson, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.60. Plaintiff, Shannon Ringnalda, is an adult individual who all times pertinent resided in the State of Washington, and is a current employee of PeaceHealth or one of its DBA entities in Washington.

18.61. Plaintiff, Angela Ripp, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.62. Plaintiff, Violetta Roberts, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.63. Plaintiff, Mallory Schlang, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.64. Plaintiff, Igor Shapoval, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.65. Plaintiff, Melissa Smithdeal, is an adult individual who all times pertinent resided in the State of Florida, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.66. Plaintiff, Lori Souders, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA

entities in Washington.

18.67. Plaintiff, Amy Tallbut, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.68. Plaintiff, Brooke Tanner, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.69. Plaintiff, Amber Taylor, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.70. Plaintiff, Tracie Thomas, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.71. Plaintiff, Dena Thorp, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.72. Plaintiff, Jennifer Torres, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.73. Plaintiff, Lyubov Tshuprin, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.74. Plaintiff, Olga Tsytsyna, is an adult individual who all times pertinent resided in

the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.75. Plaintiff, Linda Veatch, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.76. Plaintiff, Roxana Volynets, is an adult individual who all times pertinent resided in the State of Tennessee, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.77. Plaintiff, Hannah Wagar, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.78. Plaintiff, Vera Yadlovskiy, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.79. Plaintiff, Alla Kutsar Zabolotska, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.80. Plaintiff, Dina Zabolotska, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.81. Plaintiff, Nelya Zabolotska, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

18.82. Plaintiff, Kristine Zamudio, is an adult individual who all times pertinent resided in the State of Washington, and was previously an employee of PeaceHealth or one of its DBA entities in Washington.

IV. Defendants

19. The following individuals are named as defendants herein:

19.1. Jay Inslee, is the Governor of the State of Washington. Mr. Inslee is named as a defendant in his official and individual capacities.

19.2. Defendant, PeaceHealth, is a not-for-profit healthcare system headquartered in Clark County, WA recognized as tax-exempt pursuant to Section 501(c)(3) of the Internal Revenue Code.

19.3. Defendant, Liz Dunne, is the President and Chief Executive Officer of PeaceHealth. Ms. Dunne is named as a defendant in her official and individual capacities.

19.4. Defendant, Doug Koekkoek, is the Chief Physician and Clinical Executive of PeaceHealth. Mr. Koekkoek is named as a defendant in his official and individual capacities.

V. Statement Of Facts

20. Plaintiffs make no assertions regarding whether it is lawful for a public or private entity to mandate taking a ***licensed*** vaccine. Plaintiffs' allegations herein only relate to Defendants' mandating the use of drugs, biologics, and devices under 21 U.S.C. §360bbb-3 and PREP Act protocols.

21. Plaintiffs adamantly assert that an individual has the absolute Constitutional and federally secured right to refuse the administration of an Emergency Use Authorization (EUA) drug (e.g., Pfizer BioNTech COVID-19 Vaccine), biologic, or device (e.g., EUA testing articles

and masks) without incurring a penalty or losing a benefit to which they are otherwise entitled. Moreover, such a right is not dependent upon a person seeking a religious or medical exemption.

22. Plaintiffs assert that they have the Constitutional and federally secured right to refuse participation in any activity or product covered by the PREP Act.

23. Plaintiffs assert that Defendants are prohibited by Congress from establishing conditions requiring Plaintiffs to surrender their statutory rights and Constitutional protections as a condition to participate in privileges and benefits offered under federal and Washington State laws, regulations, ordinances, and customs.

24. Plaintiffs were employed as healthcare workers licensed by the State of Washington, working in healthcare facilities also licensed by the State, which has the authority to deny healthcare facilities and workers the right to conduct commerce by losing their respective State licenses.

25. In August 2021, Governor Inslee, acting under color of law, issued official proclamations 21-14 and 21-14.1[1] **prohibiting**:

> A. "Any Health Care Provider from failing to be fully vaccinated against COVID-19 after October 18, 2021;" and,
>
> B. "Any operator of a Health Care Setting from permitting a Health Care Provider to engage in work for the operator as an employee, contractor, or volunteer in their capacity as a Health Care Provider after October 18, 2021 if the Health Care Provider has not been fully vaccinated against COVID-19 and provided proof thereof as required below. Providers who do not work in a Health Care Setting must provide proof of vaccination to the operator of the facility in which the Provider works, if any, or, if requested, to a lawful authority. A lawful authority includes, but is not limited to, law enforcement, local health jurisdictions, and the state Department of Health."

[1] See Exhibit G - Proclamation 21-14-1

26. Proclamation 21-14.1 defines fully vaccinated as:

> A. "A person is fully vaccinated against COVID-19 two weeks after they have received the second dose in a two-dose series of a COVID-19 vaccine (e.g., Pfizer-BioNTech or Moderna) or a single-dose COVID-19 vaccine (e.g., Johnson & Johnson (J&J)/Janssen) authorized for emergency use, licensed, or otherwise approved by the FDA or listed for emergency use or otherwise approved by the World Health Organization."

27. As of the date of the filing of this Amended Complaint, no FDA-licensed COVID-19 vaccine has been introduced into commerce for general commercial marketing. Therefore, Governor Inslee exclusively relied on investigational new drugs under 21 U.S.C. §360bbb-3 authorization for Plaintiffs to comply with his 21-14-1 Proclamation.

28. No person has the legal authority to require another person to inject an unlicensed investigational drug into their body as a condition to earn, receive, or enjoy a privilege of the State or conduct commerce, including employment. (See, discussion *infra*)

29. The only COVID-19 drugs available to Plaintiffs when Governor Inslee issued his Proclamations were, and still are, under EUA (21 U.S.C. §360bbb-3) protocols and PREP Act authority.

30. On December 11, 2020, the FDA issued to Pfizer-BioNTech the first COVID-19 EUA for its investigational drug (officially named Pfizer-BioNTech COVID-19 Vaccine[2]), and the FDA confirmed that Pfizer's product "is an investigational vaccine not licensed for any indication."[3]

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[2] The FDA improperly allowed Pfizer to add the word "Vaccine" to its investigational name. The court should not confuse this name to mean the drug is legally indicated for use as a vaccine. Pfizer-BioNTech COVID-19 Vaccine is an investigational drug having no legal indication to treat, cure, or prevent any known disease. The FDA classified the drug as an "investigational new drug." See Exhibit D, FDA's EUA Scope of Authorization Letter to Pfizer.

[3] 86 Fed.Reg. 5200, Jan. 19, 2021

31. On December 18, 2020, the FDA issued to ModernaTX, Inc., an EUA for its investigational drug (officially named Moderna COVID-19 Vaccine), and the FDA confirmed that Moderna's product "is an investigational vaccine not licensed for any indication."[4]

32. On February 27, 2021, the FDA issued to Janssen Biotech, Inc., an EUA for its investigational drug (officially named Janssen COVID-19 Vaccine), and the FDA confirmed that Janssen's product "is an investigational vaccine not licensed for any indication."[5]

33. Investigational new drugs[6] (IND) have no FDA-licensed legal indication to treat, cure, or prevent any known disease and are experimental by their very nature.[7]

34. Therefore, it is indisputable that Governor Inslee unlawfully required Plaintiffs to inject an unlicensed investigational new drug into their bodies before October 18, 2021, as a condition to continue employment in their chosen healthcare profession.

35. Governor Inslee stated in his Proclamation 21-14-1, "Where required above, Workers for State Agencies, Workers for operators of Educational Settings, and Health Care Providers must provide proof of full vaccination against COVID-19."

36. Factually speaking, Plaintiffs were never allowed to provide proof of full vaccination because Governor Inslee never procured drugs with an FDA-licensed indication to vaccinate persons from any SARS-CoV-2 (COVID-19) variant infection.

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[4] 86 Fed.Reg. 5211, Jan. 19, 2021

[5] 86 Fed.Reg. 28608, May 27, 2021

[6] Investigational drug "means a new drug or biological drug that is used in a clinical investigation." (21 CFR 312.3 "Investigational new drug") Clinical investigation "means any experiment in which a drug is administered or dispensed to, or used involving, one or more human subjects. For the purposes of this part, an experiment is any use of a drug except for the use of a marketed drug in the course of medical practice." (21 CFR 312.3 "Clinical investigation") (Emphasis added).

[7] Investigational new drug means, "A substance that has been tested in the laboratory and has been approved by the U.S. Food and Drug Administration (FDA) for testing in people…Also called experimental drug, IND, investigational agent, and investigational drug." NCI Dictionary of Cancer Terms. National Cancer Institute. Published 2023. Accessed June 25, 2023. https://www.cancer.gov/publications/dictionaries/cancer-terms/def/investigational-new-drug

37. Drugs and biologics are regulated according to their classification and not their formulation, and the EUA classification has no legal indication as a "vaccine." That is why the FDA stated in its respective EUA letters to the manufacturers that the drugs were "investigational vaccines not licensed for any indication," meaning they were under investigation to receive the vaccine classification potentially. Still, they did not then, nor do they now, have a classification as a "vaccine."

38. Governor Jay Inslee voluntarily agreed to participate in the CDC COVID-19 Vaccination Program. The CDC informed Governor Inslee that,

> "[a]t this time, **all COVID-19 vaccine in the United States has been purchased by the U.S. government** (USG) for administration exclusively by providers enrolled in the CDC COVID-19 Vaccination Program and remains U.S. government property until administered to the recipient. Only healthcare professionals enrolled through a health practice or organization as vaccination providers in the CDC COVID-19 Vaccination Program (and authorized entities engaged in shipment for the Program) are authorized to lawfully possess, distribute, deliver, administer, receive shipments of, or use USG-purchased COVID-19 vaccine. Other possession, distribution, delivery, administration, shipment receipt, or use of COVID-19 vaccine **outside the parameters of the Program** constitutes, at a minimum, theft under 18 U.S.C. § 641, and violation of other federal civil and criminal laws. Violators are subject to prosecution to the full extent of the law." (Emphasis added) [See Exhibit A – CDC Covid-19 Vaccination Program Provider Agreement.]

39. Although the CDC states that Defendants are engaging in a "Vaccination Program," the CDC has relied exclusively on investigational drugs to administer its COVID-19 Vaccination Program Provider Agreement ("Provider Agreement"), which means no one has received a true vaccine against any COVID-19 virus.

40. The CDC said, "This program is a part of **collaboration** under the relevant state, local, or territorial immunization's cooperative agreement with CDC. To receive one or more of

the publicly funded COVID-19 vaccines (COVID-19 Vaccine), constituent [8] products, and ancillary supplies at no cost, Organization agrees that it will adhere to the following requirements…" (emphasis added).

41. The "Organization" refers to the healthcare facility signing the Provider Agreement and agreeing to administrate or administer the federal government's property. The "Organization" is either a state health clinic, health care professional licensed by the State, healthcare facility licensed by the State, or other person authorized by the State to administer the federal property on the State's behalf.

42. The CDC informed Governor Inslee that "Organization must comply with all applicable requirements as set forth by the U.S. Food and Drug Administration, including but not limited to requirements in any EUA that covers COVID-19 Vaccine."[9] This requirement not only applied to Washington State and its various health agencies and clinics, but it also applied to all private healthcare facilities (and their employees) licensed by the State of Washington and signed the Provider Agreement.

43. Therefore, since the COVID-19 drugs available to persons under Governor Inslee's mandate were only authorized under 21 U.S.C. §360bbb-3, Governor Inslee was legally bound to ensure his mandate complied with "all applicable requirements as set forth by the U.S. Food and Drug Administration, including but not limited to requirements in any EUA[10] that covers COVID-19 Vaccine."

[8] 21 CFR 312. §4.2 "constituent…is part of a combination product" defined in 21 CFR § 3.2(e).
[9] See 12(a) in the Provider Agreement.
[10] 21 U.S.C. §360bbb-3

44. 21 U.S.C. §355(a) states that "no person shall introduce or deliver for introduction into interstate commerce any new drug unless an approval of an [FDA marketing] application." (Emphasis added).

45. Congress carved out exemptions to that restriction under 21 U.S.C. §360bbb *et seq.* to allow individuals access to unlicensed drugs and biologics under compassionate, educational, and emergency conditions.

46. Congress established **a required condition** before expanded access protocols could be issued under 21 U.S.C. §360bbb-3, "[w]ith respect to the emergency use of an unapproved product, the Secretary, to the extent practicable given the applicable circumstances described in subsection (b)(1), **shall**, for a person who carries out any activity for which the authorization is issued, **establish such conditions** on an authorization under this section as the Secretary finds necessary or appropriate to protect the public health." (21 USC 360bbb-3(e)) (emphasis added)

47. Congress also conferred authority onto the Secretary that he may "appropriate conditions on who may administer the product with respect to the emergency use of the product, and on the categories of individuals to whom, **and the circumstances under which**, the product may be administered with respect to such use." (21 U.S.C. §360bbb-3(e)(1)(B)(ii)) (Emphasis added).

48. However, because all COVID-19 drug EUAs must comply with 45 CFR 46[11] and the Belmont Report, Congress informed Governor Inslee that "[n]othing in this section provides the Secretary **any authority to require any person to carry out any activity** that becomes lawful

[11] 45 CFR §46.122 "Federal funds administered by a Federal department or agency may not be expended for research involving human subjects unless the requirements of this policy have been satisfied." "Research means a systematic investigation, including research development, testing, and evaluation, designed to develop or contribute to generalizable knowledge. Activities that meet this definition constitute research for purposes of this policy, whether or not they are conducted or supported under a program that is considered research for other purposes." - 45 CFR §46.102(1) (emphasis added)

pursuant to an authorization under this section (21 U.S.C. 360bbb-3(l))" (Emphasis added). In other words, not even the Secretary of HHS may require any person to manufacture, distribute, administer, or receive an EUA product.

49. This restriction ensures that the healthcare professional has complete authority to provide quality healthcare to individuals considering participation. Not every person is a quality candidate to participate in an IND. Therefore, medical professionals, not political bureaucrats, have the necessary medical knowledge to understand when and when not to administer an emergency medical countermeasure.

50. Governor Inslee, acting with moral turpitude, removed the option of the medical community to ascertain who should and should not participate in using unlicensed investigational drugs. Ironically, the Governor ordered healthcare professionals to act in a manner that was not professional and to forgo their oath to do no harm by ignoring the more than six trillion potential contraindications of the three mRNA INDs available when he issued his edict (see discussion, *infra*).

51. Therefore, Congress provided only the HHS Secretary authority to grant expanded access protocols to unlicensed medical products undergoing clinical trials or products not licensed for their intended use under a declared emergency. However, Congress restricted the Secretary from requiring anyone to manufacture, distribute, administer, or receive the product simply because the product was granted emergency access. Moreover, Congress did not authorize the HHS Secretary to delegate his authority to another person. By extension, any person involved in a 21 U.S.C. §360bbb-3 activity is also restricted from requiring any person to participate in that activity.

52. The moment Governor Inslee volunteered Washington State to participate in the CDC COVID-19 Vaccination Provider Program, he agreed to the terms and conditions of the

program, which required him to comply with all protocols under 21 U.S.C. §360bbb-3, including the restriction that no person can be required to participate in any EUA activity. However, even if no contract existed, Governor Inslee must abide by 21 U.S.C. §360bbb-3 anytime the State involves an individual with an IND authorized under its provisions. Therefore, when he issued his mandate, Gov. Inslee violated statutory and contractual duties and deprived Plaintiffs of their Constitutional and federally secured rights.

53. Specifically, when Governor Inslee issued an Executive Proclamation prohibiting "Any operator of a Health Care Setting from permitting a Health Care Provider to engage in work for the operator as an employee, contractor, or volunteer in their capacity as a Health Care Provider after October 18, 2021 if the Health Care Provider has not been fully vaccinated against COVID-19" he fraudulently misrepresented his authority to Plaintiffs and established 21 U.S.C. §360bbb-3 protocols that Congress legally prohibited.

54. Moreover, Governor Inslee freely volunteered to comply with the CDC COVID-19 Vaccination Program Provider Agreement, having third-party beneficiary rights for Plaintiffs, which his executive proclamation deprived.

55. Governor Inslee, at no time, from the beginning of the pandemic through the filing of this Amended Complaint, provided Plaintiffs with information about their legal right to either accept or refuse EUA products without consequence. Governor Inslee intentionally refrained from referencing 21 U.S.C. §360bbb-3 in any of his Proclamations because that statute proves his mandates were factually unlawful because he lacked authority to issue such a proclamation and the requirement to inject unlicensed drugs into Plaintiffs' bodies infringes upon the authority of

Plaintiffs to freely choose their preferred "option" under 21 U.S.C. §360bbb-3(e)(1)(A)(ii)(III), among other Constitutional rights.[12]

56. The Supremacy Clause doctrine establishes that 21 U.S.C. §360bbb-3 supersedes Washington State's and Governor Inslee's authority to establish conditions conflicting with the federal statute. Because Congress restricted the HHS Secretary from delegating his authority, Governor Inslee unlawfully enacted legislation outside of the authority of the United States Congress, creating a Constitutional crisis within the State of Washington and the nation by issuing his Executive Proclamations outside of his authority leading to severe deprivation of Plaintiffs' Constitutional protections. Therefore, when Governor Inslee issued his Proclamations in August 2021, he established conditions that conflicted and interfered with the federal statute's provision, mainly the authority of the individual to freely choose an option without penalty.

57. Congress expressly required Governor Inslee and all licensed healthcare facilities and workers in the State "to inform" Plaintiffs of their **legal rights** under 21 U.S.C. §360bbb-3, which are that they can either "accept" or "refuse" without penalty. Governor Inslee unlawfully amended 21 U.S.C. §360bbb-3 regarding Plaintiffs by removing their legal option to "refuse" participation in a federally funded program (CDC COVID-19 Vaccination Program).

58. Governor Inslee exclusively relied on emergency medical countermeasures for compliance, which are also under PREP Act authority. The PREP Act also expressly restricts Governor Inslee from issuing laws, regulations, and ordinances that conflict with or interfere with the statute's provisions.[13]

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[12] 21 U.S.C. §360bbb-3(e)(1)(A)(ii)(III) requires that individuals to whom the product is being administered are informed "of the option to accept or refuse administration of the product."

[13] "Preemption of State law During the effective period of a declaration under subsection (b)…no State or political subdivision of a State may establish, enforce, or continue in effect with respect to a covered countermeasure any provision of law or legal requirement that— (A) is different from, or is in conflict with, any requirement applicable

59. Congress expressly wrote into legislation that Governor Inslee could not establish a "legal requirement" "of the covered countermeasure, **or to any matter** included in a requirement applicable to the covered countermeasure under this section or any other provision of this chapter, or under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.]" (emphasis added). The "any matter" directly links to the authority of Plaintiffs to either accept or refuse the medical countermeasures without consequence under 21 U.S.C. §360bbb-3 (Federal Food, Drug, and Cosmetic Act).

60. Governor Inslee intentionally ignored the PREP Act's restriction of his authority, even though the CDC informed him, stating, "Coverage under the Public Readiness and Emergency Preparedness (PREP) Act extends to Organization **if** it complies with the PREP Act and the PREP Act Declaration of the Secretary of Health and Human Services"[14](Emphasis added). Clearly, Governor Inslee did not comply with the PREP Act; therefore, immunity protections under the PREP Act do not extend to the State.

61. Although the PREP Act does not provide for a private right of action, the PREP Act's restrictions demonstrate that Governor Inslee acted under fraudulent pretense. Thus, his Proclamations were illegal and directly led to Plaintiffs' legal, financial, and health injuries. Therefore, those injuries provide for a private right of action under 42 U.S.C. § 1983 and other federal and state laws (see discussion, *infra*). Governor Inslee used the fact that the COVID-19 EAU drugs were granted expanded access protocols under 21 U.S.C. §360bbb-3 and the PREP

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under this section; and (B) relates to the…administration…of the covered countermeasure, or to any matter included in a requirement applicable to the covered countermeasure under this section or any other provision of this chapter, or under the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.]." - 42 USC 247d-6d(b)(8) See https://www.fda.gov/regulatory-information/search-fda-guidance-documents/emergency-use-authorization-medical-products-and-related-authorities#preemption

[14] CDC COVID-19 Vaccination Program Provider Agreement

Act as the means to push his political agenda while ignoring the restrictions contained within those same statutes.

62. It is well-established Washington State common law that Plaintiffs exercising a legal right may not be terminated or prohibited from employment for exercising such a right.[15]

63. It cannot be disputed that Plaintiffs considering participation in a medical countermeasure authorized under 21 U.S.C. §360bbb-3 have the exclusive legal right to determine which option to choose, and Congress prohibits all other authorities from interfering with that choice.

64. Chaos has reigned within Washington State because Governor Inslee completely disregarded the right of Plaintiffs to be treated equally before the law as guaranteed to them under the Fourteenth Amendment. The "option" is the right. Governor Inslee knew that Plaintiffs were afforded the option, yet by fiat rule, he chose to demote Plaintiffs to second-class citizens for no other reason than he disagreed with their choice.

65. Governor Inslee declared by his actions that he, not the United States Congress, would determine which option Plaintiffs would choose. Such wanton disregard for the U.S. Constitution and its Separation of Powers Doctrine is unheard of in the modern-day Republic. It results in an actionable offense against Plaintiffs for which they are entitled to seek redress.

66. Governor Inslee's wanton disregard for the rights of Plaintiffs led him to conceal their right to refuse without consequence to such a degree that securing Plaintiffs' substantive and procedural Due Process rights was legally impossible. **If persons in authority, such as Governor Inslee, refuse to acknowledge rights conferred upon Plaintiffs by valid acts of Congress, then due process is legally impossible to secure.**

[15] *Becker v. Community Health Systems*, 184 Wn.2d 252, 359 P.3d 746 (2015); *Rose v. Anderson Hay & Grain Co*., 184 Wn.2d 268, 358 P.3d 1159 (2015), and *Rickman v. Premera Blue Cross*, 184 Wn.2d 300, 358 P.3d 1153 (2015)

67. Governor Inslee's Proclamation violates the well-established Unconstitutional Conditions Doctrine. The Supreme Court has held that a person "may not barter away his life or his freedom, or his substantial rights" (Home Ins. Co. of New York v. Morse, 87 U.S. 455, 451 (1874))

68. The State of Washington holds licensing power over the right of Plaintiffs to enjoy their profession, and Governor Inslee unlawfully utilized the powers of his office to prevent Plaintiffs from enjoying the equal protection of laws because of his personal preference in direct violation of his oath of office.

69. Governor Inslee's Proclamations require Plaintiffs to surrender their Constitutional Rights of Equal Protection of Laws and Due Process as a condition for continuing employment in their chosen profession. The US Supreme Court held:

> "It would be a palpable incongruity to strike down an act of state legislation which, by words of express divestment, seeks to strip the citizen of rights guaranteed by the federal Constitution, but to uphold an act by which the same result is accomplished under the guise of a surrender of a right in exchange for a valuable privilege which the state threatens otherwise to withhold. It is not necessary to challenge the proposition that, as a general rule, the state, having power to deny a privilege altogether, may grant it upon such conditions as it sees fit to impose. But the power of the state in that respect is not unlimited; and **one of the limitations is that it may not impose conditions which require the relinquishment of constitutional rights.** If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. **It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence** (emphasis added)."[16]

70. Governor Inslee's Proclamations established a condition that Plaintiffs must inject an investigational new drug into their bodies before October 18, 2021 to continue their employment under the State's licensing requirements. The U.S. Supreme Court held:

[16] *Frost Trucking Co. v. R.R. Com*, 271 U.S. 583, 593-94 (1926)

> "Broadly stated, the rule is that the right to continue the exercise of a privilege granted by the state cannot be made to depend upon the grantee's submission to a condition prescribed by the state which is hostile to the provisions of the federal Constitution.[17]

71. Governor Inslee unlawfully utilized the powers of his office to "produce a result which the State could not command directly" (*Speiser v. Randall*, 357 U.S. 513 (1958)). The State cannot demand by law that Plaintiffs inject an investigational new drug into their bodies[18] as a condition to participate in employment, education, the National Guard, or any licensed profession the State oversees, including healthcare.

72. Because the HHS Secretary prescribed research conditions meeting 45 CFR 46 requirements in each COVID-19 EUAs, Governor Inslee was bound to obtain Plaintiffs' legally effective informed consent. This consent requirement applies to any person acting on behalf of the sponsor[19] of the emergency medical countermeasure (e.g., COVID-19 drugs, masks, testing articles) program and not only to persons administering the product.

73. 45 CFR § 46.116 and the Belmont Report describe the conditions by which legally effective informed consent must be obtained. The burden on Governor Inslee when presenting Plaintiffs with the offer to participate in the federal government's property requires him to ensure Plaintiffs are not under "sanctions, "coercion," "undue influence," or "unjustifiable pressures" to participate.[20]

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[17] *Western Union Tel. Co. v. Kansas*, 216 U.S. 1, 47, 48 S., 30 S. Ct. 190; *Western Union Tel. Co. v. Foster*, 247 U.S. 105, 114, 38 S. Ct. 438, 1 A. L. R. 1278. (*U.S. v. Chicago, M., St. P. &P. Railway Co*., 282 U.S. 311, 328-329 (1931)).

[18] 45 CFR § 46.116, 45 CFR §46.122, the Belmont Report (45 CFR § 46.101(c,i)), 21 U.S.C. §360bbb-3, Article VII of the ICCPR Treaty, PREP Act, 10 U.S.C. §980.

[19] The Federal Government is the sole sponsor of all COVID-19 EUA drugs, biologics, and devices, paying for 100% of their costs. Therefore, Washington State is acting on behalf of the sponsor when establishing mandatory participation in the government's property.

[20] The publication of the Belmont Report was a required condition of the 1974 National Research Act. Congress required the HHS Secretary to act on the Belmont Report and issue regulations providing for the Protection of Human Subjects. 45 CFR §46.116 is the only federal definition of informed consent, and therefore, whether federal law explicitly or implicitly requires informed consent, this is the only known meaning of that requirement demonstrating the intent of Congress.

74. Governor Inslee deprived Plaintiffs' of legally effective informed consent rights by establishing a "sanction" for non-participation in investigational new drugs under "coercive" conditions. Moreover, Governor Inslee knew of the requirement to obtain Plaintiffs' legally effective informed consent by volunteering to participate in the CDC COVID-19 Vaccination Program Provider immunization project.[21]

75. Governor Inslee, acting with moral turpitude, placed Plaintiffs under moral duress to inject an unlicensed investigational drug into their bodies, knowing they relied on their chosen profession to access living wages and would be under extreme emotional distress to comply with his unlawful usurpation of authority.

76. Long before the COVID-19 pandemic started, Washington State provided HHS with an "assurance" that it would comply with 45 CFR 46 and the Belmont Report anytime it offered an individual participation in an investigational new drug.

77. This assurance is a requirement by the Federal Government of Washington State as a condition for the State to receive federal funds to be expended on research activities.[22]

78. The agreement is why the CDC chose to use the State's existing immunization agreement because Governor Inslee was already bound to protect the rights of individuals under his authority when it agreed to the Federal Wide Assurance[23] (FWA) agreement administered under the Office of Human Rights Protection within HHS.

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[21] CDC COVID-19 Vaccination Program Provider Agreement (Exhibit A) Clause 12(a) states, "Organization must comply with all applicable requirements as set forth by the U.S. Food and Drug Administration, including but not limited to requirements in any EUA that covers COVID-19 Vaccine." Therefore, 21 U.S.C. §360bbb-3 (under Food, Drug, and Cosmetic Act) requires adherence to 45 CFR §46.116 and the Belmont Report.

[22] 45 CFR § 46.122

[23] "The Federal Wide Assurance (FWA) is the only type of assurance currently accepted and approved by OHRP. Through the FWA, an institution commits to HHS that it will comply with the requirements in the HHS Protection of Human Subjects regulations at 45 CFR part 46." - 1.Office. Federalwide Assurances (FWAs). HHS.gov. Published June 16, 2009. Accessed August 31, 2023. https://www.hhs.gov/ohrp/federalwide-assurances-fwas.html#:~:text=The%20Federalwide%20Assurance%20(FWA)%20is,at%2045%20CFR%20part%2046.

79. In exchange for the assurance to comply with the ethical principles of the Belmont Report and 45 CFR 46 when involving humans with INDs, HHS assigned Washington State FWA00000327, denoting a legally binding agreement between the State of Washington and the United States Government for the explicit benefit of third-party participants.

80. Governor Inslee deprived Plaintiffs' third-party beneficiary rights under the FWA agreement when he issued the requirement that Plaintiffs inject investigational new drugs into their bodies by October 18, 2021 as a condition to continue employment in their chosen healthcare profession.[24]

81. In direct violation of 45 CFR §46.116 and the Belmont Report and deprivation of Plaintiffs' rights thereunder, Governor Inslee purposefully placed Plaintiffs under "sanctions," "coercion," and "undue influence" to participate in an EUA medical countermeasure.

82. Governor Inslee pledged that Washington State would protect individuals considering participation in the CDC COVID-19 Vaccination Program. Before the ink dried from his affirmation, he turned around and deprived the third-party beneficiary rights belonging to Plaintiffs under that contract and the State's FWA.

83. Although the Biden Administration purchased all COVID-19 EUA drugs, it is not exempt from 21 U.S.C. §360bbb-3 requirements. Moreover, simply because the CDC has a program whereby Washington State can access the Federal Government's EUA property does not exempt the State from complying with its legal obligations under 21 U.S.C. §360bbb-3. The CDC COVID-19 Contract is an additional layer of responsibility for organizations to comply with, not an exemption from their legal obligations under 21 U.S.C. §360bbb-3.

[24] 45 CFR §46.116

84. Therefore, Governor Jay Inslee knew that 21 U.S.C. §360bbb-3(e)(1)(A)(ii)(III) contained a required condition of him "to ensure that individuals to whom the product is administered are informed— of the option to accept or refuse administration of the product."

85. At all times pertinent, Governor Jay Inslee concealed this right from Plaintiffs in his Proclamations and intentionally refrained from guiding the healthcare community on this right because it undermined his desire to push an experimental biomedical research project onto Plaintiffs outside of their free will and voluntary consent.

86. Governor Inslee's Proclamations deprived Plaintiffs of their Fourteenth Amendment Equal Protection Rights, substantive and procedural Due Process rights, 21 U.S.C. §360bbb-3 statutory rights, leading to severe emotional distress and financial injury. (See, *infra*)

87. Governor Inslee's statement in Proclamations 21-14 and 21-14.1 that: "COVID-19 vaccines are safe and effective" was meant to fraudulently mislead Plaintiffs into participating in drugs having no FDA legal indication that the drugs are either safe or effective.[25] Moreover, such a statement directly violates federal law.[26]

88. Governor Inslee issued a misleading statement meant to compel participation under false pretense when stating, "COVID-19 vaccines were evaluated in clinical trials involving tens of thousands of participants and met the U.S. Food & Drug Administration's (FDA) rigorous scientific standards for safety, effectiveness, and manufacturing quality needed to support emergency use authorization; and, to date, more than 346 million doses of COVID-19 vaccines

[25] "Unless and until FDA properly classifies AVA [an anthrax vaccine] as a safe and effective drug for its intended use, an injunction shall remain in effect prohibiting defendants 'use of AVA on the basis that the vaccine is either a drug unapproved for its intended use or an investigational new drug…" *Doe v. Rumsfeld*, 341 F. Supp. 2d 1 (D.D.C. 2004)
[26] "A sponsor or investigator, or any person acting on behalf of a sponsor or investigator, shall not represent in a promotional context that an investigational new drug is safe or effective for the purposes for which it is under investigation or otherwise promote the drug." 21 CFR 312.7(a)

have been given in the United States with 8.2 million of those doses administered in Washington, and serious safety problems and long-term side effects are rare."

89. The Governor's statement lacked information Plaintiffs would want to know when considering participation.[27] For example, COVID-19 mRNA drugs also had historical reports of adverse events, were not manufactured according to standards licensed drugs are manufactured, and had heart-related and blood clotting issues that were not common side effects of a typical "vaccine." Additionally, he failed to inform recipients that Pfizer's BioNTech COVID-19 Vaccine trial lost 93% of its participants by the sixth month of a 24-month trial. Most importantly, Governor Inslee intentionally concealed that a person choosing to volunteer as an EUA drug recipient is prohibited from seeking any meaningful judicial relief when injured by the medical countermeasure, specifically because they are under PREP Act authority.

90. Most concerning is Governor Inslee's concealment of the legally binding agreement Plaintiffs must agree to before injecting a 21 U.S.C. §360bbb-3 IND into their bodies. Congress was explicit that any person receiving a medical countermeasure under 21 U.S.C. §360bbb-3 protocols under PREP Act authority must agree to the following terms and conditions, including, but not limited to:

A. forfeiture of civil litigation rights resulting from injuries,[28]

B. allow their private identifiable information to be collected and used for a variety of purposes by unknown persons,[29]

C. allow their involvement with the EUA product to be cataloged by various persons for unknown purposes,

[27] 45 CFR 46.116(a)(4)

[28] PREP Act forfeits all civil actions for damages in most situations.

[29] Each EUA and/or the CDC COVID-19 Vaccination Program Provider Program requires manufacturers and/or emergency stakeholders to obtain private identifiable information.

D. allow the data collected about their adverse events to be utilized by researchers for unknown purposes and eternity,[30]

E. assume greater risks to their safety, health, and legal rights.[31],[32]

91. Governor Inslee violated RCW 7.7.060 by unlawfully mandating medical treatment for Plaintiffs, vitiating the statute's informed consent protocols.

92. Governor Inslee deprived the Plaintiffs' rights under RCW 69.77.050, requiring specific informed consent protocols for administering investigational new drugs.

93. Governor Inslee's requirement that Plaintiffs must provide proof of being injected with an unlicensed investigational drug was a severe deprivation of the privacy rights of Plaintiffs.

94. Plaintiffs choosing to be injected with unlicensed medical products is a private matter, and not even the Governor is empowered to force "public disclosure of Plaintiff's private facts."[33] All citizens have the right to accept or refuse investigational (i.e., experimental) products as a private affair, and intrusion into that private matter is "highly offensive"[34] to Plaintiffs.

95. Governor Inslee stated, "Workers for State Agencies, Workers for operators of Educational Settings, and Health Care Providers are not required to get vaccinated against COVID-19 under this Order if they are unable to do so because of a disability or if the requirement to do so conflicts with their sincerely held religious beliefs, practice, or observance."

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[30] Each EUA and/or the CDC COVID-19 Vaccination Program Provider Program requires manufacturers and/or emergency stakeholders to monitor, report and study a variety of adverse reactions to EUA products.

[31] 21 U.S.C. §360bbb-3 requires potential recipients to be made aware of the risks, alternatives, and the fact that the product is only authorized by the Secretary under emergency conditions. These elements provide potential recipients with the required information to make a quality and legally effective decision to consent. Therefore, consent means the individual agrees to assume more than minimal risk.

[32] 21 CFR 50.3(k) (Protection of Human Subjects; Definitions) defines minimal risk as "the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests."

[33] *Reid v. Pierce County*, 136 Wn. 2d 195, 136 Wash. 2d 195, 961 P.2d 333 (Wash. 1998) and see *Hearst Corp. v. Hoppe*, 90 Wn. 2d 123, 90 Wash. 2d 123, 580 P.2d 246 (Wash. 1978)

[34] *Adams v. King Cty.*, 164 Wash. 2d 640, 662, 192 P.3d 891, 902 (2008)

96. The requirement to obtain an exemption from medical experimentation is an unlawful misrepresentation of authority by the Governor.

97. Congress was explicit in that only the HHS Secretary has the authority to establish the conditions under which 21 U.S.C. §360bbb-3 products are administered. Not even the Secretary can require any person to participate in any activity under the section of law.

98. Governor Inslee ignored his constitutional restrictions, legal obligations, and his oath of office to protect the rights, privileges, and immunities of Plaintiffs, and with utter disregard for the rule of law, Governor Inslee assumed a power not granted to him for the intentional purpose of causing the Plaintiffs to surrender their constitutional rights resulting from their fears of economic loss by establishing conditions he had no authority to establish.

99. However, the following statement demonstrates Governor Inslee's moral turpitude:

> "Workers for State Agencies, Workers for operators of Educational Settings, and Health Care Providers are prohibited from claiming an exemption or accommodation on false, misleading, or dishonest grounds, including by providing false, misleading, or dishonest information to a State Agency, operator of an Educational Setting, or operator of a Health Care Setting when seeking an accommodation."

100. Governor Inslee's entire 21-14.1 Proclamation is built upon "false," "misleading," and "dishonest grounds" "by providing false, misleading, or dishonest information" to the general public. The moral turpitude of his statement demonstrates the utter disregard for Plaintiffs' rights, the Constitution, and his oath of office.

101. Governor Inslee harassed, intimidated, publicly humiliated, and used the powers of his office in an attempt to cause Plaintiffs to surrender the Constitutional Protections, Statutory rights, and third-party contract benefits. What he could not directly achieve by law through his State's legislature, he indirectly achieved by fiat by ordering healthcare facilities to financially

destroy the careers, families, dreams, goals, and lives of Plaintiffs for no other reason than he disagreed with their 21 U.S.C. §360bbb-3 chosen option of refusing an EUA investigational drug.

102. Governor Inslee cannot produce a treaty, statute, regulation, or other legal right affording him authority to ignore Congress, abuse the Constitution, or defy his oath of office when requiring anyone to inject an investigational new drug into their body as a condition of anything.

103. Congress preempted Governor Inslee's actions, restricted his authority, denied his power, and still, Governor Inslee acted as if the rule of law did not apply to him, his office, or those state actors under his authority.

104. Governor Inslee's actions are more akin to an authoritarian dictatorship than a duly elected officer acting for the public's benefit by upholding his office's oath to respect Plaintiffs' rights as guaranteed to them by the United States Constitution and the Washington State Constitution.

105. Governor Inslee's actions directly led to Plaintiffs experiencing life-altering emotional trauma, financial destruction, careers, and loss of life's goals, dreams, and aspirations, with Governor Inslee intentionally inflicting upon Plaintiffs emotional distress for the express purpose of hoping they would surrender their Constitutional protections and statutory rights.

106. PeaceHealth is a not-for-profit healthcare system headquartered in Clark County, WA recognized as tax-exempt pursuant to Section 501(c)(3) of the Internal Revenue Code. PeaceHealth operates facilities throughout the State of Washington.

107. At all times pertinent, Plaintiffs were under the authority of PeaceHealth.

108. CEO Liz Dunne is PeaceHealth's policymaker.

109. CPE Doug Koekkoek is a Policymaker at PeaceHealth, holds the position requiring him to sign the CDC COVID-19 Vaccination Program Provider Agreement and, in conjunction with Liz Dunne, issued the policy requiring Plaintiffs to inject an unlicensed drug into their bodies.

110. On August 30, 2021, PeaceHealth, CEO Liz Dunne, and CPE Doug Koekkoek, conspiring with Governor Jay Inslee and acting under color of law, illegally subjected Plaintiffs to investigational drug use under threat of penalty outside of Plaintiffs' free will and voluntary consent by issuing a new company policy[35] stating in part:

A. "It is the policy of PeaceHealth to require healthcare workers (HCWs) to be fully vaccinated against COVID-19."
1.

B. "HCWs are considered fully vaccinated two weeks after they have received Pfizer or Moderna second dose, Johnson & Johnson single dose or other U.S. Food and Drug Administration (FDA) Emergency Use Authorization (EUA), FDA approved, FDA authorized or World Health Organization (WHO) emergency use/approved COVID-19 vaccine/series."
2.

C. "All new or returning HCWs must obtain a COVID-19 vaccination series/dose or submit a medical or religious exemption that is approved and can be accommodated before starting/restarting at PeaceHealth. If a new or returning HCW is scheduled to start before October 15, 2021, they may start/restart at PeaceHealth if they are (1) fully vaccinated; (2) have an approved medical or religious exemption for which reasonable accommodations are made; or (3) if they have received at least one dose of a COVID-19 vaccination/series dose, have a second dose scheduled (if a two-dose series) and will be fully vaccinated by October 15, 2021."
3.

111. PeaceHealth, like Governor Inslee, also freely volunteered to participate in the CDC COVID-19 Vaccination Program when it signed the CDC COVID-19 Vaccination Program Provider Agreement.

112. Before the CDC accepts an entity as a Provider in the CDC COVID-19 Vaccination Program, that entity, its CEO, and its Chief Medical Officer (or equivalent) are required to sign the

[35] See Exhibit B, PeaceHealth Vaccine Requirement Policy

CDC COVID-19 Vaccination Program Provider Agreement (hereinafter referred to as the "Provider Agreement").

114.. The Provider Agreement informs the person or entity that "Your Organization's chief medical officer (or equivalent) and chief executive officer (or chief fiduciary)—collectively, Responsible Officers—must complete and sign the CDC COVID-19 Vaccination Program Provider Requirements and Legal Agreement (Section A)" (See Exhibit A.)

115. The Provider Agreement requires the Organization to assign a person or persons who will be under a legal obligation to ensure the program is carried out effectively, declaring, "For the purposes of this agreement, in addition to Organization, Responsible Officers named below will also be accountable for compliance with the conditions specified in this agreement. The individuals listed below must provide their signature after reviewing the agreement requirements."

116. As previously discussed, "compliance with the conditions specified in this agreement" extends under 21 U.S.C. §360bbb-3 to Plaintiffs' "option to accept or refuse."

117. Although PeaceHealth and its policymakers at other times and in other circumstances are private parties, they acted under color of law when, as collaborators with the federal and state governments pursuant to the Provider Agreement, penalized Plaintiffs for refusing to inject one of the mandated unlicensed investigational drugs into their bodies.

118. The Supreme Court and Ninth Circuit Court of Appeals utilize several tests to ascertain when a private party is engaged in state action.

119. The "public function" test considers whether a private entity performs a function traditionally and exclusively performed by government. See *Jackson v. Metro. Edison Co.*, 419 U.S. 345, 352-53 (1974).

120. 21 U.S.C. §360bbb-3 and the PREP Act are exclusive functions of the government. The Provider Agreement is undeniably a public function of the State because the Federal Government states: "This program is a part of collaboration under the relevant state, local, or territorial immunization's cooperative agreement with CDC." (Emphasis added). Only the State can authorize PeaceHealth to participate in its immunization program.

121. **The public function test** is proved by (1) PeaceHealth exercising powers exclusively held by the federal government and Washington State[36], (2) the power is part of Washington State's prerogative[37] (the State did not have to volunteer to participate), and (3) the power is such that the State itself is obligated to perform due to Governor Inslee voluntarily agreeing to perform for the CDC.[38]

122. **The State Compulsion test** determines if the state encouraged, coerced, or required the private party's challenged conduct.[39]

123. Governor Inslee's Proclamation 21-14-1 prohibits "Any operator of a Health Care Setting from permitting a Health Care Provider to engage in work for the operator as an employee, contractor, or volunteer in their capacity as a Health Care Provider after October 18, 2021 if the Health Care Provider has not been fully vaccinated against COVID-19 and provided proof thereof…".

124. PeaceHealth cited Proclamation 21-14-1 in its August 30, 2021, vaccination policy as one of the reasons it issued its illegal policy. Moreover, PeaceHealth informed Plaintiff Monica Miller that "Washington Proclamation 21-14.1 requires healthcare providers like PeaceHealth to

[36] *Jackson v. Metropolitan Edison Co*., 419 U.S. at 352
[37] *Flagg Bros., Inc. v. Brooks*, 436 U.S. at 160. See also *Jackson v. Metropolitan Edison Co*., 419 U.S. at 353
[38] *Jackson v. Metropolitan Edison Co*., 419 U.S. at 353
[39] *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982) (citing *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 166 (1978); *Jackson*, 419 U.S. at 357; *Adickes v. S.H. Kress & Co*., 398 U.S. 144, 170 (1970); *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 173 (1965)).

require its employees to be vaccinated against COVID-19 or have an approved medical or religious exemption by October 18, 2021. PeaceHealth cannot allow employees to work after that date if they are not compliant with those requirements."[40] Therefore, it is unassailable that PeaceHealth was encouraged to participate in the unlawful activity.

125. Courts also determine state action by utilizing **the symbiotic relationship test**.[41] The State is bound by 21 U.S.C. §360bbb-3, the PREP Act, and the Provider Agreement to ensure Plaintiffs give their legally effective informed consent, which is only obtained if the recipient of the IND is not under outside pressure to participate prospectively.

126. The informed consent requirement is under the command of the Fourteenth Amendment[42],[43] (Equal Protection & Due Process). Therefore, under its own agreement with the federal government and statutes to obtain Plaintiffs' legally effective informed consent, the State also required PeaceHealth to conduct that legal exercise.

127. The State and PeaceHealth are in a symbiotic relationship to conduct 45 CFR § 46 "research" activities[44] for all EUA COVID-19 drugs, including the monitoring, recording, and

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[40] See Exhibit B, PeaceHealth COVID-19 Vaccine Requirement Policy.

[41] *Brunette v. Humane Society of Ventura County*, 294 F.3d 1205 (9th Cir. 2002): "Burton (*Burton v. Wilmington Pkg. Auth*, 365 U.S. 715, 81 S. Ct. 856 (1961)) teaches that substantial coordination and integration between the private entity and the government are the essence of a symbiotic relationship. Often significant financial integration indicates a symbiotic relationship. See *Rendell-Baker v Kohn*, 457 U.S. at 842-43, 102 S.Ct. 2764; *Vincent v. Trend W. Tech. Corp*., 828 F.2d 563, 569 (9th Cir. 1987). For example, if a private entity, like the restaurant in Burton, confers significant financial benefits indispensable to the government's "financial success," then a symbiotic relationship may exist. *Vincent*, 828 F.2d at 569. A symbiotic relationship may also arise by virtue of the government's exercise of plenary control over the private party's actions. See *Dobyns v. E-Systems, Inc*., 667 F.2d 1219, 1226-27 (5th Cir. 1982) (finding symbiotic relationship where the government-controlled a private peacekeeping force engaged in a government-directed field mission in the Sinai Peninsula).

[42] In *Giron v. Corrections Corp. of America*, 14 F. Supp. 2d 1245 (D.N.M. 1998), the court stated, "If a state government must satisfy certain constitutional obligations when carrying out its functions, it cannot avoid those obligations and deprive individuals of their constitutionally protected rights by delegating governmental functions to the private sector. *See Terry v. Adams,* 345 U.S. 461, 73 S. Ct. 809, 97 L. Ed. 1152 (1953). The delegation of the function must carry with it a delegation of constitutional responsibilities."

[43] *Rawson v. Recovery Innovations, Inc*., No. 19-35520 (9th Cir. 2020) that "The Supreme Court has … held that private parties may act under color of state law when they perform actions under which the state owes Constitutional obligations to those affected."

[44] The required activities are found in each EUA's Scope of Authorization, CDC COVID-19 Vaccination Providers Program Agreement, and 21 U.S.C. §360bbb-3 required conditions.

reporting of the individual's names, adverse reactions, and classification of certain adverse reactions.

128. PeaceHealth is under express COVID-19 vaccination protocols by the State and the CDC to include[45]:

A. Organization must administer COVID-19 Vaccine in accordance with all requirements and recommendations of CDC and CDC's Advisory Committee on Immunization Practices (ACIP),

B. Within 24 hours of administering a dose of COVID-19 Vaccine and adjuvant (if applicable), Organization must record in the vaccine recipient's record and report required information to the relevant state, local, or territorial public health authority,

C. Organization must submit Vaccine-Administration Data through either [a] the immunization information system (IIS) of the state and local or territorial jurisdiction or [b] another system designated by CDC according to CDC documentation and data requirements,

D. Organization must preserve the record for at least 3 years following vaccination, or longer if required by state, local, or territorial law,

E. Organization must not sell or seek reimbursement for COVID-19 Vaccine and any adjuvant, syringes, needles, or other constituent products and ancillary supplies that the federal government provides without cost to Organization,

F. Organization **must** administer COVID-19 Vaccine regardless of the vaccine recipient's ability to pay COVID-19 Vaccine administration fees, (emphasis added)

G. Before administering COVID-19 Vaccine, Organization must provide an approved Emergency Use Authorization (EUA) fact sheet or vaccine information statement (VIS), as required, to each vaccine recipient, the adult caregiver accompanying the recipient, or other legal representative,[46]

H. Organization's COVID-19 vaccination services must be conducted in compliance with CDC's Guidance for Immunization Services During the COVID-19 Pandemic for safe delivery of vaccines,"

[45] See Exhibit A, CDC COVID-19 Vaccination Program Provider Requirements and Legal Agreement.
[46] See Exhibit C, Fact Sheet for Recipients and Caregivers

I. Organization must comply with CDC requirements for COVID-19 Vaccine management,

J. Organization must report the number of doses of COVID-19 Vaccine and adjuvants that were unused, spoiled, expired, or wasted as required by the relevant jurisdiction,

K. Organization must comply with all federal instructions and timelines for disposing COVID-19 vaccine and adjuvant, including unused doses,

L. Organization must report moderate and severe adverse events following vaccination to the Vaccine Adverse Event Reporting System (VAERS),

M. Organization must provide a completed COVID-19 vaccination record card to every COVID-19 Vaccine recipient, the adult caregiver accompanying the recipient, or other legal representative. Each COVID-19 Vaccine shipment will include COVID-19 vaccination record cards,

N. Organization must comply with all applicable requirements as set forth by the U.S. Food and Drug Administration, including but not limited to requirements in any EUA that covers COVID-19 Vaccine (emphasis added)

(i) PeaceHealth must inform the individual of their legal right to accept or refuse the product,

(ii) PeaceHealth must inform the individual of the risks/benefits/alternatives to the product,

(iii) PeaceHealth must provide medical counseling in advance of the product and forego payment if the person chooses to refuse the product and,

O. Organization must administer COVID-19 Vaccine in compliance with all applicable state and territorial vaccination laws. (emphasis added).

129. From the time a person walks into PeaceHealth's facility to determine whether they will participate in the use of a COVID-19 EUA drug to the time they walk out, irrespective of the chosen option, they are under State Action because the government fully funds the EUA drugs, ancillary supplies, administrative overhead, and post-administration research activities if, in return,

PeaceHealth fully collaborates and complies with Washington State's immunization program as required by CDC COVID-19 Vaccination Provider Program Agreement.

130. The State informed PeaceHealth that the COVID-19 EUA drugs are considered the property of the Federal Government until they are injected into a human. Peacehealth contractually agreed to store the product, administer the product, and record the necessary information to comply with the State's mandatory requirements, so PeaceHealth is an agent of the State engaged in State Action when it involves a human in one of the COVID-19 EUA drugs.[47]

131. The Supreme Court noted in *Adickes v. S. H. Kress & Co*., 398 U.S. 144 (1970) that the "Petitioner will have established a claim under § 1983 for violation of her equal protection rights if she proves that she was refused service by respondent because of a state-enforced custom…" (emphasis added)

132. Washington State developed a custom of outright ignoring the authority of Congress by amending 21 U.S.C. § 360bbb-3 as follows:

A. Congress only authorized the Secretary to grant access to experimental medical products and the conditions under which that access can occur. Defendants illegally established conditions contrary to those established by the Secretary,

B. Congress only authorized the Secretary to determine who can participate in any activity that becomes lawful to 21 U.S.C. § 360bbb-3. However, the Secretary is prohibited from requiring anyone to participate in such activity. Yet, Defendants usurped the

[47] As the court held in *Modaber v. Culpeper Memorial Hospital, Inc.,* 674 F.2d 1023 (4tCir. 1982): "we must inquire 'whether there is a sufficiently close nexus between the State and the challenged action of the regulated entity that the action of the latter may fairly be treated as that of the State itself." *Jackson v. Metropolitan Edison Co.,* 419 U.S. 345, 351, 95 S.Ct. 449, 453, 42 L.Ed.2d 477 (1974); *accord, Flagg Brothers, Inc. v. Brooks,* 436 U.S. 149, 157, 98 S.Ct. 1729, 1733, 56 L.Ed.2d 185 (1978). In holding that a privately-owned utility's termination of service is not "state action", the Court in *Jackson* makes it clear that state involvement without state responsibility cannot establish this nexus. *See* 419 U.S. 358, 95 S.Ct. 457. A state becomes responsible for a private party's act if the private party acts (1) in an exclusively state capacity, (2) for the state's direct benefit, or (3) at the state's specific behest. It acts in an exclusively state capacity when it "exercises powers traditionally exclusively reserved to the state[,]" 419 U.S. 352, 95 S.Ct. 454; for the state's direct benefit when it shares the rewards and responsibilities of a private venture with the state, *see id.,* 357-58, 95 S.Ct. 456-57, *Burton v. Wilmington Parking Authority,* 365 U.S. 715, 723-24, 81 S.Ct. 856, 860-61, 6 L.Ed.2d 45 (1961); and at the state's specific behest when it does a particular act which the state has directed or encouraged."

Constitutional authority of Congress and mandated that all healthcare facilities and providers must participate in the EUA program,

C. Congress expressly preempted all state laws via the PREP Act and 21 U.S.C. § 360bbb-3. Yet, Defendants usurped the authority of Congress, ignored the Constitution's Supremacy Clause, and enforced laws, customs, ordinances, and regulations in defiance of Congress, the Constitution, and the rights of Plaintiffs.

133. The custom was that authorities could, and should, ignore the right of residents to refuse the administration of an unlicensed 21 U.S.C. §360bbb-3 medical product without consequence, making the custom to ignore the law as if it did not exist literally.

134. The custom was so prevalent that Governor Inslee constructively or directly terminated an estimated 1,900 State employees[48] outside of the authority of his office.

135. The State also violated the Unconstitutional Conditions Doctrine when enforcing the custom by refusing unemployment benefits for Plaintiffs solely based on their refusal to allow someone to inject an unlicensed investigational drug into their bodies.

136. The U.S. Supreme Court has held that "to act 'under color of' state law for § 1983 purposes does not require that the defendant be an officer of the State. It is enough that he is a willful participant in joint action with the State or its agents. Private persons, jointly engaged with state officials in the challenged action, are acting 'under color' of law for purposes of § 1983 actions."[49]

137. Therefore, when PeaceHealth and its Policymakers issued a new company policy on August 30, 2021, stating they would no longer allow Plaintiffs to access living wages after October 15, 2021, if they refused to inject an unlicensed investigational new drug into their bodies,

[48] O'Sullivan J. Nearly 1,900 Washington state workers quit or are fired over COVID vaccine mandate. The Seattle Times. Published October 20, 2021. Accessed June 28, 2023. https://www.seattletimes.com/seattle-news/politics/nearly-1900-washington-state-workers-quit-or-are-fired-over-covid-vaccine-mandate/

[49] *Dennis v. Sparks*, 449 U.S. 24 (1980)

the policy, and its authors, deprived Plaintiffs' Equal Protection and Due Process rights as guaranteed under the Fourteenth Amendment, as well as federally secured rights under the EUA statute and PREP Act because Defendants were acting under color of law when issuing the policy.[50]

138. PeaceHealth is legally sophisticated in the laws, regulations, and contracts involving humans with medical research as PeaceHealth provided HHS with an assurance long before the current COVID-19 Pandemic that they would not place individuals under outside pressures to participate in investigational new drugs. Thus, HHS provided them with an FWA00003906 agreement affording PeaceHealth authority to access federal funding. The FWA provides Plaintiffs with third-party beneficiary rights, as previously discussed *supra*.

139. PeaceHealth routinely conducts clinical trials and administers investigational drugs under the various 21 U.S.C. §360bbb *et seq*. protocols, and they know that investigational new drugs under 21 U.S.C. §360bbb-3 are no different than any other expanded access protocol in regards to the legally effective informed consent protocols.

140. Despite that knowledge, CEO Liz Dunne and CPE Doug Koekkoek concealed the legal rights of Plaintiffs to refuse without penalty under 21 U.S.C. §360bbb-3 in all of their company policies and communications.

141. Had CEO Dunne and CPE Koekkoek informed Plaintiffs that they could refuse injection of an EUA IND, then the estimated 16,000 employees might have refused the drugs outright, thus harming the cash cow the Provider Program offered Defendants' financial bottom line, and thus PeaceHealth and its Policymakers engaged in moral turpitude for no other reason

[50] "There is such a close nexus between the state and the challenged action that the seemingly private behavior may be fairly treated as that of the state itself." *Brentwood Academy v. Tennessee Secondary School Athletic Assoc*., 531 U.S. 288, 295 (2001).

than greed while hiding behind the greater good argument that has harmed untold tens of millions of humans in our nation's past.

142. To coerce Plaintiffs into surrounding their Constitutional protections, PeaceHealth and its Policymakers subjected Plaintiffs to severe intentional emotional distress and Fourteenth and Fifth Amendment discriminations because Defendants only required those who refused to be injected with a COVID-19 IND, to wear N95 masks, to segregate from other employees, and to take routine COVID-19 tests utilizing EUA experimental diagnostic articles.

143. Moreover, Defendants (1) terminated employment, (2) placed on administrative leave, (3) terminated health insurance, and (4) forced the use of paid-time-off only for those employees, such as Plaintiffs, who refused to be injected with a COVID-19 investigational drug.

144. PeaceHealth's COVID-19 Vaccine Requirement Policy, issued on August 30, 2021, states, "PeaceHealth recognizes that immunization with a safe and effective vaccine is a proven strategy to reduce COVID-19 related illness for its HCWs, patients, and communities. Only HCWs with a qualified and accepted medical or religious exemption may decline COVID-19 vaccination."[51]

145. The statement that "immunization with a safe and effective vaccine is a proven strategy to reduce COVID-19 related illness" was an intentionally misleading statement and a violation of federal law (21 CFR 312.7(a)) because PeaceHealth had no legal basis to make that statement. Its purpose was to coerce Plaintiffs' participation under a false belief fraudulently.

146. The policy statement, "Only HCWs with a qualified and accepted medical or religious exemption may decline COVID-19 vaccination," severely violates federal law and the Plaintiffs' Constitutional and statutory rights because the requirement to seek out an exemption

[51] See Exhibit B, PeaceHealth's COVID-19 Vaccine Requirement Policy.

fraudulently amends federal statutes, PeaceHealth's FWA and Provider Agreement, which have third-party benefits for Plaintiffs, and such a requirement is completely preempted under 21 U.S.C. §360bbb-3 and the PREP Act.

147. It is irrefutable that no person can require anyone to inject an unlicensed investigational drug into their body as a condition of anything. Therefore, PeaceHealth and its Policymakers stating that "only" those who qualify for an exemption approved by them may decline the experimental injection without penalty is a fraudulent statement[52] meant to coerce the participation of Plaintiffs under moral duress to comply.

148. PeaceHealth's policy stated, "Except as set forth below, HCWs are considered fully vaccinated two weeks after they have received Pfizer or Moderna second dose, Johnson & Johnson single dose or other U.S. Food and Drug Administration (FDA) Emergency Use Authorization (EUA), FDA approved, FDA authorized or World Health Organization (WHO) emergency use/approved COVID-19 vaccine/series."

149. PeaceHealth lacked legal authority to convey that a person would be "fully" protected when and if they were administered experimental drugs undergoing clinical trials, having no legal indication to treat, cure, or prevent any known disease. The statement was dangerous because the medical community had not even come close to establishing how many contraindications the EUA drugs had with existing medical conditions or other drugs.

150. PeaceHealth disseminated misinformation when conveying that if Plaintiffs received the recommended doses of one of the unlicensed medical products, they would become "fully vaccinated" against the virus because no EUA COVID-19 drug manufacturer claims to immunize any person from any COVID-19 variant.

[52] 42 USC 247d-6d(b)(8), 21 U.S.C. §360bbb-3, and the Supremacy Clause Doctrine preempt Washington State's at-will employment doctrine when conflicting with any emergency medical countermeasure program.

151. PeaceHealth's Policymakers attempted to shield themselves from future litigation regarding their threats of penalizing individuals who wanted to refuse the shots by creating a document entitled "Covid-19 Vaccine Acknowledgment (caregivers)."[53] It includes the following statement to which Plaintiffs were to attest by signing the document: "I am making the choice to get the COVID-19 vaccine on my own and freely. I know I have the option to refuse the vaccine or talk to my physician prior to receiving the vaccine. I ask that the vaccine be given to me."

152. CEO Dunne holds the proverbial gun to the heads of Plaintiffs, telling them that she will destroy their financial lives if they do not participate in the use of one of the COVID-19 experimental drugs, and then compels them, under duress, to sign a document before receiving the product, or the product's Fact Sheet, attesting that such action was under their free will and voluntary consent. CEO Dunne's actions express why Congress passed the 1973 National Research Act and enacted 45 CFR 46, giving the Belmont Report the force of law.

153. PeaceHealth shocks the conscience when mandating, "Fully vaccinated HCWs will be provided a badge sticker by PeaceHealth that indicates vaccination…The badge sticker must be visibly attached to their PeaceHealth name badge or other name badge used to be on-site at a PeaceHealth location and not cover the HCW's name or other pertinent identifying information."

154. By mandating that the "vaccinated" wear a badge sticker, PeaceHealth not only identified the "vaccinated," but they identified by omission, and thus publicly shamed, the "unvaccinated." The purpose of such atrocious behavior was to intentionally inflict emotional damage upon Plaintiffs in hopes of causing them to surrender their statutory rights conferred upon them by valid acts of Congress.

[53] See Exhibit F – PeaceHealth COVID-19 Vaccine Acknowledgment for Caregivers.

155. Moreover, PeaceHealth is a "covered" entity under HIPAA. CEO Dunne is well aware that disclosing Private Health Information publicly is a criminal law violation. The requirement for "vaccinated" employees to wear a badge sticker violated the HIPAA rights, not only the "vaccinated" but the "unvaccinated," including Plaintiffs herein.

156. Moreover, the HHS developed standards for protecting individually identifiable health information. It issued a final rule in 2002[54] stating in part: "a covered entity must remain cognizant of its dual roles as an employer and as a health care provider, health plan, or health care clearinghouse. Individually identifiable health information created, received, or maintained by a covered entity in its health care capacity is protected health information. It does not matter if the individual is a member of the covered entity's workforce or not. Thus, the medical record of a hospital employee who is receiving treatment at the hospital is protected health information and is covered by the Rule, just as the medical record of any other patient of that hospital is protected health information and covered by the Rule. The hospital may use that information only as permitted by the Privacy Rule, and in most cases will need the employee's authorization to access or use the medical information for employment purposes." (Emphasis added)

157. PeaceHealth willfully engaged in criminal violations of HIPAA laws[55] for the express purpose of subjecting Plaintiffs to public pressure in hopes of causing them to surrender their constitutional protections and inject a COVID-19 investigational drug into their bodies under coercive pressure.

[54] 67 Fed. Reg. 53191

[55] 42 U.S.C. § 1320d-6(b)(3) "if the offense is committed with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, be fined not more than $250,000, imprisoned not more than 10 years, or both."

158. As a direct result of PeaceHealth's badge sticker mandate, when Plaintiffs thereafter arrived for their work shifts, PeaceHealth personnel ridiculed Plaintiffs for not having a badge sticker.

159. Even more shocking to the conscience, PeaceHealth patients were all made aware of the badge sticker's meaning. They required Plaintiffs to leave the room, making Plaintiffs feel as if they were a stigma to society, all because Plaintiffs chose to exercise their constitutionally protected rights to refuse administration of a drug that potentially had significant health and legal consequences for their lives.

160. PeaceHealth was disgusted that Plaintiffs chose the option to refuse and engaged in a "scorched earth" policy to make Plaintiffs pay for that choice no matter the laws PeaceHealth had to violate to achieve their unlawful goal.

161. However, what PeaceHealth, CEO Liz Dunne, and CPE Doug Koekkoek allowed to take place within the corridors of PeaceHealth's facilities is truly unimaginable, shocking to the conscience, and demonstrates the moral turpitude of these defendants when PeaceHealth created and publicly displayed, out in the open, actual physical binders containing a list of each employee's full name, facility location where they worked, the Department in which they worked, their employee ID, their job description, their "vaccination" status, and if they were "compliant" or "noncompliant" with PeaceHealth's COVID-19 policy.

162. These binders were placed at nurses' stations where employees could view them on demand. Plaintiffs were harassed, ridiculed, mocked, intimidated, and had their privacy continually invaded by staff managers.

163. PeaceHealth was well aware of RCW 70.02.020(1) (Disclosure By Health Care Provider), "Except as authorized elsewhere in this chapter, a health care provider, an individual

who assists a health care provider in the delivery of health care, or an agent and employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization."

164. Shockingly, PeaceHealth assured its employees that "Proof of vaccination shall be maintained by PeaceHealth in a confidential file for the time prescribed by law and will be made available to regulatory bodies upon request to the extent required or allowed by law. PeaceHealth may rely on third parties (e.g., contractors) to assist in maintaining proof of vaccination. In such case, such third party shall sign a declaration outlining its responsibility to help enforce this policy and applicable state law and provide PeaceHealth a copy of said proof of vaccination upon request as allowed by law."

165. It is plain to see that by providing a list of employees who were not "vaccinated," whoever reviewed the list would know who had been injected with an investigational drug, which information should have been kept confidential.

166. PeaceHealth also assured Plaintiffs that "Employee Health will track HCW compliance with this policy. PeaceHealth will protect HCW confidential information as required by law."

167. Despite these assurances, PeaceHealth did not comply with its policy, destroyed the trust the Plaintiffs placed in them, and allowed Plaintiffs' privacy to be invaded daily. Such outrageous conduct is unheard of in the nation's other healthcare facilities.

168. CEO Liz Dunne and CPE Doug Koekkoek allowed and encouraged a continual invasion of privacy of Plaintiffs' private health information that was offensive, illegal, and abusive, causing severe emotional distress to Plaintiffs.

169. PeaceHealth staff subjected Plaintiffs to degrading, inhuman, and emotional torture daily without consequence to the abuser. PeaceHealth's executive staff encouraged, enabled, and sustained this form of abuse throughout the pandemic to subject Plaintiffs to investigational drug use outside of their free will and voluntary consent, leading to life-altering emotional trauma.

170. PeaceHealth continued by stating, "HCWs that have received the vaccine but have not achieved a fully vaccinated status; are fully vaccinated but refuse to wear a vaccine badge sticker; or who are granted an exemption and a reasonable accommodation; or who are granted an exception as allowed below will be subject to the Universal Masking Policy, Physical Distancing Policy and other PeaceHealth PPE, infection control, and safety policies applicable to COVID-19, which include the requirement of routine PCR testing for COVID-19 infection." (Emphasis added).

171. Even employees who were "fully vaccinated but refuse[d] to wear a vaccine badge sticker" would be denied their Constitutional rights of equal protection and privacy rights under Washington State's common law. They, too, would be subjected to "the Universal Masking Policy, Physical Distancing Policy and other PeaceHealth PPE, infection control, and safety policies applicable to COVID-19, which include the requirement of routine PCR testing for COVID-19 infection." Such authoritarian disregard for the rule of law is outrageous in modern America.

172. PeaceHealth engaged in additional unconstitutional acts when declaring, "Non-employed HCWs who fail to comply with the requirements of this policy will be excluded from engaging in work for Health Care Settings operated, owned, leased, or controlled by PeaceHealth." The statement deprived Plaintiffs of the legal conditions PeaceHealth voluntarily agreed to under 21 U.S.C. 360bbb-3, FWA, IRB, 45 CFR 46, and the CDC COVID-19 Vaccination Program

Provider Agreement, and deprived Plaintiffs of their substantive and procedural Due Process rights.

173. PeaceHealth's vaccination policy was a medical requirement for Plaintiffs to inject an investigational drug into their bodies under threat of penalty that had more than 6.859 trillion[56] unknown potential contraindications. Shockingly, Liz Dunne and Doug Koekkoek refused to ensure that persons with a valid medical exemption would be free from the illegal requirement, a further deprivation of Plaintiffs' rights. Plaintiffs attest that PeaceHealth deprived their rights when PeaceHealth denied valid medical exemptions by their own healthcare provider to include pregnant mothers.

174. PeaceHealth has routinely administered investigational drugs under 21 U.S.C. §360bbb *et seq.* protocols for decades and knows that a pregnant woman cannot be under threat of penalty to participate in an investigational drug program. Moreover, if the drug involves more than minimal risk[57] to the mother or the fetus,[58] the mother is prohibited from participating.

175. At all times pertinent, PeaceHealth knew that myocarditis and pericarditis were risks of taking the Pfizer BioNTech COVID-19 EUA investigational drug.[59]

176. PeaceHealth was aware that Pfizer itself published data stating that its COVID-19 EUA drug caused adverse events including but not limited to syncope, diminished immune response, lymphadenopathy, anaphylaxis, pruritus, urticaria, angioedema, vomiting, dizziness, all of which could pose serious medical trauma to the mother and death to the embryo or fetus.

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[56] The FDA has licensed 19,000 marketable drugs, and in 2021, three mRNA drugs were available to Plaintiffs. Therefore, 19,000 to the power of three equals 6,859,000,000,000 potential contraindications that mere months of research could not have exposed.

[57] 21 CFR 50.3(k) (Protection of Human Subjects; Definitions) defines minimal risk as "the probability and magnitude of harm or discomfort anticipated in the research are not greater in and of themselves than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests."

[58] 45 CFR 46.204(b)

[59] See Exhibit C, Fact Sheet for Recipients and Caregivers

177. PeaceHealth's callous disregard for the safety and well-being of expectant mothers is unheard of by healthcare professionals, and its arrogant and potentially dangerous position that pregnant mothers who are also employees may not be granted a medical exemption from investigational drug use is a deprivation of their federally secured rights.

178. The moral turpitude of PeaceHealth and its policymaker, Liz Dunne,[60]is evidenced by willful acts disregarding federal and state laws, fraudulent misrepresentations of facts, publishing lies, and intentionally misleading employees about the legal distinctions between a licensed vaccine and a drug undergoing clinical investigation having no legal indication to treat, cure, or prevent any known disease.

179. At no time before, during, or after PeaceHealth's immunization policy was issued did PeaceHealth and its Policymakers attempt to educate Plaintiffs of their rights to refuse the administration of an investigational new drug without incurring a penalty or losing a benefit to which they were otherwise entitled. The concealment and lack of such communication is an act of intentional deprivation of federally secured rights.

180. The continual unlawful promotion that the products were safe and effective and that it was the "duty" of healthcare workers to be injected with those investigational products implied that the Plaintiffs did not care about the rights of the Plaintiffs herein.

181. PeaceHealth affirmed this position when it informed the Washington State Employment Security Department that some Plaintiffs engaged in misconduct (i.e., exercising a federal right to refuse an EUA product) and, thus, must be deprived of unemployment benefits.

182. Not only did PeaceHealth's actions result in lost economic benefits to the Plaintiffs, but the actions also resulted in defamation of character of Plaintiffs who worked for decades

[60] "This phrase is used to describe the violation of decent, moral and honest behavior and an act of depravity or vileness." Black's Law Dictionary 2nd Ed.

without a blemish on their employment records, the same Plaintiffs who continually were called upon to give up their weekends, holidays, and other pleasures of life to sweat, toil, and labor for the express purpose of providing life-saving medical care to the community. The assault on Plaintiffs' character was designed to place fear into other employees and in the hopes of causing Plaintiffs to surrender their rights conferred upon them by Congress and the Constitution.

183. It shocks the conscience to think that in modern-day America, Liz Dunne, Chief Executive Officer of the State's largest hospital network, employing more than 16,000 healthcare heroes, would lie to the State about the conduct of her employees all to avoid paying higher unemployment insurance when it was her actions acting under color of law that led to the State having a higher financial burden resulting from needless loss of wages by Plaintiffs.

184. PeaceHealth and its Policymakers used the fact that Plaintiffs relied on them to access living wages to pay for groceries, healthcare, housing, education, water, electricity, and all other benefits living in Washington State afforded for the express purpose of inflicting unwanted emotional distress into their lives.

185. PeaceHealth knew that Plaintiffs would be forced into a legally binding agreement (see, *supra*) of which Plaintiffs knew nothing. The agreement Congress established denies Plaintiffs the right to seek judicial relief from physical damages resulting from investigational drug use. Liz Dunne cared more about the organization's cash flow than upholding the rights, safety, and health of Plaintiffs.

186. At all times pertinent, Defendants lacked authority to require Plaintiffs to inject an EUA IND into their bodies as a condition to continue employment, access unemployment benefits, forego COVID-19 testing, forego the wearing of masks, save their paid time off and other benefits to which they were otherwise entitled.

187. At all times pertinent, Defendants refused to acknowledge Plaintiffs' right to refuse injection of an IND under PREP Act authority and 21 U.S.C. §360bbb-3 expanded access protocols before depriving them of their liberty and property. Therefore, Plaintiffs' substantive and procedural Due Process rights were deprived.

188. At all times pertinent, Defendants deprived Plaintiffs of their third-party beneficiary rights under Defendants' FWA, the Provider Agreement, the Belmont Report, and 45 CFR §46. The primary benefit is the right of Plaintiffs to consider participation in an emergency medical countermeasure or investigational medical product without fearing consequences for refusal or needing payment.

189. The actions of Governor Inslee, PeaceHealth, CEO Liz Dunne, and CPE Doug Koekkoek were atrocious, intolerable, and so extreme and outrageous as to exceed the bounds of decency.

VI. Legal Claims

190. The facts described above constitute a deprivation of several of the rights guaranteed to Plaintiffs by the United States Constitution, federal statutes, and treaties. These deprivations are actionable under 42 U.S.C. § 1983 because the Defendants acted under color of state law when issuing their COVID-19 vaccination requirements and administrating the CDC COVID-19 Vaccination Program pursuant to the CDC COVID-19 Vaccination Program Provider Agreement and the federal statutes cited therein.

191. Court precedent demonstrates that federal statutes and regulations with rights conferring language are enforceable under 42 U.S.C. §1983.[61]

[61] *Maine v. Thiboutot*, 448 U.S. 1 (1980), the court held that "Even were the language ambiguous, however, any doubt as to its meaning has been resolved by our several cases suggesting, explicitly or implicitly, that the §1983 remedy broadly encompasses violations of federal statutory as well as constitutional law." See also, *Health and Hospital Corporation of Marion Cty. V. Talevski.*

192. Defendants were, and are, restricted from attempting to use state law to amend the above-referenced statutes, regulations, treaties, agreements, and contracts due to the Supremacy Clause Doctrine. The Supremacy Clause Doctrine, and the express preemption language in the PREP Act and 21 U.S.C. §360bbb-3, restrict public and private employers from using state laws to require individuals to participate in any EUA activity or use any EUA product. This extends to any at-will employment law, doctrine, or custom an employer would otherwise claim as the right to interfere in the CDC Vaccination Program, 21 U.S.C. §360bbb-3, or PREP Act protocols and to amend conditions established by Congress for Plaintiffs' benefit.

COUNT ONE

Subjected to Investigational Drug Use - 42 U.S.C. § 1983

193. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 192, as if fully set forth herein.

194. The CDC COVID-19 Vaccination Program Provider Agreement, and the implementing statutes and regulations found at 45 CFR Part 46, the Belmont Report, 21 U.S.C. §360bbb-3, Article VII of the ICCPR Treaty, Federal Wide Assurance, 10 U.S.C. § 980, EUA Scope of Authorization letters, and the Fourteenth Amendment clearly and unambiguously create rights enforceable pursuant to 42 U.S.C. § 1983.

195. 45 CFR 46.116(b)(8) states: "A statement that participation is voluntary, refusal to participate will involve no penalty or loss of benefits to which the subject is otherwise entitled, and the subject may discontinue participation at any time without penalty or loss of benefits to which the subject is otherwise entitled."

196. The Belmont Report declares, "An agreement to participate in research constitutes a valid consent only if voluntarily given. This element of informed consent requires conditions free of coercion and undue influence."

197. 21 U.S.C. §360bbb-3(e)(1)(A)(ii)(III) contains a required condition of the Secretary "to ensure that individuals to whom the product is administered are informed — "of the option to accept or refuse administration of the product."

198. Article VII of the ratified International Covenant on Civil and Political Rights (ICCPR) Treaty affirms that "…no one shall be subjected without his free consent to medical or scientific experimentation."

199. The Defendants' actions described above, individually and/or collectively, and in derogation of the Constitution and the above statutes, regulations, and treaty, unlawfully subjected Plaintiffs to the use of investigational medical products under threat of penalty outside of their free will and voluntary consent as described in the above facts, thereby causing them damages described in Paragraphs 273 through 280, *infra*.

COUNT TWO

Unconstitutional Conditions Doctrine - 42 U.S.C. § 1983

200. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 192, as if fully set forth herein.

201. The CDC COVID-19 Vaccination Program Provider Agreement, and the implementing statutes and regulations found at 45 CFR §46, the Belmont Report, 21 U.S.C. §360bbb-3, Article VII of the ICCPR Treaty, Federal Wide Assurance, the EUA Scope of Authorization letter, and the Fourteenth Amendment clearly and unambiguously create rights enforceable pursuant to 42 U.S.C. § 1983.

202. Defendants acting under color of law required Plaintiffs to barter their rights as a condition to enjoy the privileges of the State and benefits of employment.

203. The Defendants' actions described above, individually and/or collectively, and in derogation of the Constitution and the above statutes, regulations, and treaty, manipulated the Constitutional rights of Plaintiffs out of existence as described in the above facts, thereby causing them damages described in Paragraphs 273 through 280, *infra*.

COUNT THREE

Equal Protection - 42 U.S.C. § 1983

204. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 192, as if fully set forth herein.

205. The CDC COVID-19 Vaccination Program Provider Agreement, and the implementing statutes and regulations found at 45 CFR §46, the Belmont Report, 21 U.S.C. §360bbb-3, Article VII of the ICCPR Treaty, Federal Wide Assurance, the EUA Scope of Authorization letter, and the Fourteenth Amendment clearly and unambiguously create rights enforceable pursuant to 42 U.S.C. § 1983.

206. The Fourteenth Amendment to the U.S. Constitution guarantees equal protection of the laws.

207. At all times pertinent, Defendants only penalized individuals refusing to have injected an unlicensed investigational drug into their bodies or utilize an investigational device (e.g., masks, COVID-19 testing articles). These actions demonstrate well-established Equal Protection Doctrine deprivations.

208. The Defendants' actions described above, individually and/or collectively, and in derogation of the Constitution and the above statutes, regulations, and treaty, have deprived the

Plaintiffs of their equal protection rights as described in the above facts, thereby causing them damages described in Paragraphs 273 through 280, *infra*.

COUNT FOUR

Due Process - 42 U.S.C. § 1983

209. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 192, as if fully set forth herein.

210. The CDC COVID-19 Vaccination Program Provider Agreement, and the implementing statutes and regulations found at 45 CFR 46, the Belmont Report, 21 U.S.C. §360bbb-3, Article VII of the ICCPR Treaty, Federal Wide Assurance, the EUA Scope of Authorization letter, and the Fourteenth Amendment clearly and unambiguously create rights enforceable pursuant to 42 U.S.C. § 1983.

211. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution guarantees the right to due process of law before infringing a citizen's interest in life, liberty, or property.

212. At all times pertinent, Defendants, having knowledge of Plaintiffs' statutory and Constitutional rights to refuse aforementioned drugs and medical products, intentionally ignored those rights to push a personal political agenda for purposes of greed, leading to the loss of Plaintiffs' substantive and procedural Due Process.

213. The Defendants' actions described above, individually and/or collectively, and in derogation of the Constitution and the above statutes, regulations, and treaty, have deprived the Plaintiffs of their substantive and procedural due process rights as described in the above facts, thereby causing them damages described in Paragraphs 273 through 280, *infra*.

COUNT FIVE

Deprivation of Rights Under Color of Law - 42 U.S.C. § 1983

Spending Clause Doctrine

214. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 192, as if fully set forth herein.

215. The CDC COVID-19 Vaccination Program Provider Agreement, 45 CFR §46.122, 10 U.S.C. §980, and the Fourteenth Amendment clearly and unambiguously create rights enforceable pursuant to 42 U.S.C. § 1983.[62]

216. 45 CFR §46.122 provides: "Federal funds administered by a Federal department or agency may not be expended for research involving human subjects unless the requirements of this policy have been satisfied."

217. 10 U.S.C. §980 states: "Funds appropriated to the Department of Defense may not be used for research involving a human being as an experimental subject unless – the subject's informed consent is obtained in advance…"

218. The federal government funds all COVID-19 EUA shots via Medicare.[63]

219. The executive branch of government established the CDC COVID-19 Vaccination Program Provider Agreement to execute the government's objective.

220. Only persons authorized to participate in the CDC Vaccination program can bill the government for administered shots.

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[62] *Gonzaga Univ. v. Doe*, 536 U.S. 273 (2002), "the Court has found that spending legislation gave rise to rights enforceable under § 1983 only in *Wright* v. *Roanoke Redevelopment and Housing Authority,* 479 U. S. 418, 426, 432, and *Wilder* v. *Virginia Hospital Assn.,* 496 U. S. 498, 522523, where statutory provisions explicitly conferred specific monetary entitlements upon the plaintiffs, and there was no sufficient administrative means of enforcing the requirements against defendants that failed to comply." See also, *Health and Hospital Corporation of Marion County v. Talevski*, *supra*, 599 U.S. ____ (2023)

[63] https://www.medicare.gov/medicare-coronavirus

221. The Spending Agreement lacks any enforcement scheme of injuries sustained by Plaintiffs that would preclude § 1983 enforcement.

222. Agreement Requirement Number 3 on the CDC Provider Agreement states, "Organization must not sell or seek reimbursement for COVID-19 Vaccine and any adjuvant, syringes, needles, or other constituent products and ancillary supplies that the federal government provides without cost to Organization."

223. Agreement Requirement Number 4 states, "Organization must administer COVID-19 Vaccine regardless of the vaccine recipient's ability to pay COVID-19 Vaccine administration fees."

224. These two provisions establish a specific monetary entitlement to the individual.

225. Agreement Requirement Number 5 states, "Before administering COVID-19 Vaccine, Organization must provide an approved Emergency Use Authorization (EUA) Fact Sheet or vaccine information statement (VIS), as required, to each vaccine recipient, the adult caregiver accompanying the recipient, or other legal representative."

226. Agreement Requirement Number Five complies with funding restrictions established by Congress in, 45 CFR §122 and 10 U.S.C. §980.

227. The compliance is found in the EUA Fact Sheet, notating the individual's right to refuse the administration of the product. This express right is the fundamental requirement in obtaining the legally effective informed consent of the individual.

228. Whether for civilians under 45 CFR § 46.122 or military personnel under 10 U.S.C. §980, Congress created a specific monetary entitlement for individuals considering whether or not to participate in a federally funded research activity. That entitlement means they have the explicit

right to be informed of the risks, benefits, and alternatives to the research product and then consider whether to participate without incurring a fee or being under outside pressure to participate.

229. This monetary entitlement is most apparent in the CDC COVID-19 Vaccination Program Provider Agreement. An individual can seek out a participating COVID-19 Program healthcare professional, obtain medical counseling, ask questions, and read literature. If they choose not to participate, they will not incur a fee from the professional for the administrative time spent considering whether or not to participate since the healthcare professional must inform them of their legal right to refuse under 21 U.S.C. §360bbb-3.

230. The healthcare professional agreed to comply with the legally effective consent requirements via Agreement Number 12 on the CDC COVID-19 Vaccination Program Provider Agreement mandating that (1) "Organization must comply with all applicable requirements as set forth by the U.S. Food and Drug Administration, including but not limited to requirements in any EUA that covers COVID-19 Vaccine," and (2) "Organization must administer COVID-19 Vaccine in compliance with all applicable state and territorial vaccination laws."

231. The "all applicable requirements as set forth by the U.S. Food and Drug Administration, including…any EUA" extends to 21 USC 360bbb-3 (Section 564), 45 CFR 46, the FWA, the IRB, the ICCPR Treaty, and the Scope of Authorization letter.

232. Therefore, the CDC COVID-19 Vaccination Program Provider Agreement, 21 U.S.C. §360bbb-3, 45 CFR § 46.122, and 10 U.S.C. §980 clearly and unambiguously create rights enforceable pursuant to 42 U.S.C. § 1983 when federal funds are expended under those provisions of law.

233. The Defendants' actions described above, individually and/or collectively, and in derogation of the Constitution and the above statutes and regulations, refused to obtain the legally

effective informed consent of the Plaintiffs in violation of spending legislation as described in the above facts, thereby causing them damages described in Paragraphs 273 through 280, *infra*.

COUNT SIX

Breach of Contract, Third Party Beneficiary

234. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 192, as if fully set forth herein.

235. The CDC COVID Vaccination Program Provider Agreement, and the implementing statutes and regulations found at 45 CFR 46, 21 U.S.C. §360bbb-3, Title 21 of the US Code, the EUA Scope of Authorization letter clearly and unambiguously create third-party beneficiary rights.

236. The primary third-party beneficiary right intended for Plaintiffs is the freedom to consider participation in a federally funded EUA (drug, biologic, or device), PREP Act, or other emergency medical countermeasure products or activities that are free from "sanctions," "coercion," "undue influence," "unjustifiable pressures to participate. The other third-party benefit intended for Plaintiffs is that they must not fear the loss of benefits to which they are otherwise entitled when considering participation.

237. The Defendants' actions described above, individually and/or collectively, and in derogation of the CDC COVID-19 Vaccination Program Provider Agreement, deprived the intended benefits conferred upon the Plaintiffs through the terms and conditions of the CDC COVID Vaccination Program Provider Agreement as described in the above facts, thereby causing them damages described in Paragraphs 273 through 280, *infra*.

COUNT SEVEN

Washington State Common Law Employment Torts

238. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 192, as if fully set forth herein.

239. The Supremacy Clause, PREP Act, and 21 U.S.C. §360bbb-3 preempt State laws conflicting with the United States Government's emergency medical countermeasure objectives, including Washington State's at-will employment laws.

240. Defendants lacked authority to condition employment upon Plaintiffs participating in a 21 U.S.C. §360bbb-3 medical countermeasure or any product or activity under PREP Act authority.

241. Defendants intentionally and unlawfully misrepresented their authority to Plaintiffs to cause them to surrender their constitutional and statutory rights.

242. Defendants engaged in acts of coercion, undue influence, and retaliation, creating a hostile work environment.

243. Defendants placed Plaintiffs under moral duress[64], knowing they exclusively relied on Defendants for access to living wages.

244. Defendants segregated Plaintiffs under discriminatory acts upon Plaintiffs exercising their absolute right to refuse investigational new drugs.

245. Defendants unlawfully altered Plaintiffs' employment schedules under coercive acts to punish them for exercising their absolute right to refuse investigational new drugs.

[64] Moral duress consists of imposition, oppression, undue influence, or the taking of undue advantage of the business or financial stress or extreme necessity or weakness of another. *Lafayette Dramatic Productions v. Ferentz*, 306 Mich. 193, 9 N.W.2d 57, 66; See also Black's Law Dictionary, Sixth Edition, p. 1008.

246. Defendants attempted to coerce Plaintiffs to waive their federally secured right to refuse EUA investigational products and engage in a legally binding agreement under the terms and conditions (21 U.S.C. §360bbb-3 and PREP Act) established by the United States Congress outside their free will and voluntary consent.

247. Defendants' actions demonstrate moral turpitude against Plaintiffs' rights, safety, and health.

248. Defendants willfully and intentionally placed Plaintiffs under historic public and private pressure to enter into a legally binding agreement outside of their free will and voluntary consent.

249. Defendants unlawfully terminated Plaintiffs' employment when Plaintiffs exercised a legal right or privilege.[65]

250. Defendants have, willfully and with the intent to deprive, failed to pay wages to Plaintiffs since the date Defendants unlawfully placed Plaintiffs on administrative leave.

251. The plaintiffs did not knowingly submit to the deprivation of labor, wages, or employment.

252. In addition to other damages listed below, Plaintiffs are entitled to double damages, costs of suit, and reasonable attorney's fees pursuant to Washington Rev. Code § 49.520.070.

253. PeaceHealth engaged in retaliatory acts when reporting to Washington State Security Department that some of the Plaintiffs engaged in misconduct when exercising a legal right.[66]

[65] *Becker v. Community Health Systems*, 184 Wn.2d 252, 359 P.3d 746 (2015); *Rose v. Anderson Hay & Grain Co*., 184 Wn.2d 268, 358 P.3d 1159 (2015), and *Rickman v. Premera Blue Cross*, 184 Wn.2d 300, 358 P.3d 1153 (2015)
[66] *Id*.

254. The Defendants' actions, individually and/or collectively, and in derogation of Washington State's common laws, deprived the intended benefits conferred upon the Plaintiffs when enjoying employment in the State of Washington as described in the above facts, thereby causing them damages described in Paragraphs 273 through 280, *infra*.

COUNT EIGHT

Outrage

255. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 192, as if fully set forth herein.

256. When the United States Congress refused to allow, Defendants, to apply consequences to Plaintiffs refusing to participate in the use of COVID-19 investigational drugs, Defendants engaged in a scorched earth policy and inflicted with malicious intent severe emotional distress to the fullest extent that one in their positions of authority and power could inflict to the detriment of Plaintiffs' emotional well-being.

257. Outrage[67] is proven by (1) demonstrating that Defendants engaged in extreme and outrageous conduct, (2) Defendants' actions caused severe emotional distress, (3) Defendants intentionally or recklessly caused the emotional distress, (4) that Plaintiffs are the direct recipients of the conduct.[68]

258. The facts and the Defendants' conduct committed with gross negligence, reckless, or intent, as described above in the complaint, give rise to a claim of Outrage under the common

[67] "Outrage" and "intentional infliction of emotional distress" are synonyms for the same tort. See *Snyder v. Med. Serv. Corp*., 145 Wn.2d 233, 250, 35 P.3d 1158 (2001); *Kloepfel v. Bokor*, 149 Wn. 2d 192, 194 n.1 (Wash. 2003)
[68] *Kloepfel v. Bokor*, 149 Wn.2d 192, 195, 66 P.3d 630 (2003); *Robel v. Roundup Corp*., 148 Wn.2d 35, 64, 59 P.3d 611 (2002); *Reid v. Pierce County*, 136 Wn.2d 195, 202, 961 P.2d 333 (1998) (citing *Dicomes v. State*, 113 Wn.2d 612, 630, 782 P.2d 1002 (1989)); *Kirby v. City of Tacoma*, 124 Wn.App. 454, 473, 98 P.3d 827 (2004).

law of the State of Washington against the Defendants for the damages described in Paragraphs 273 through 280, *infra*.

COUNT NINE

Invasion of Privacy and Defamation of Character

259. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 192, as if fully set forth herein.

260. In *Reid v. Pierce County*, 136 Wn. 2d 195, 136 Wash. 2d 195, 961 P.2d 333 (Wash. 1998), the court held:

(1) The RESTATEMENT (SECOND) OF TORTS § 652D (1977) provides the general rule for invasion of privacy. It states:

> RESTATEMENT (SECOND) OF TORTS § 652H (1977) provides for damages available to one who establishes a cause of action for invasion of privacy: "One who has established a cause of action for invasion of his privacy is entitled to recover damages for (a) the harm to his interest in privacy resulting from the invasion; (b) his mental distress proved to have been suffered if it is of a kind that normally results from such an invasion; and (c) special damage of which the invasion is a legal cause."

(2) "In *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 580 P.2d 246 (1978), we indicated that a tort action for invasion of the right of privacy exists in Washington."

(3) "the tort right is the most widely recognized and established definition of the legal right of privacy"

(4) "So that no further confusion exists, we explicitly hold the common law right of privacy exists in this state and that individuals may bring a cause of action for invasion of that right."

261. PeaceHealth established an identification system (badges) denoting employees' private health information (use of investigational drugs) and forced employees to wear or not to wear the badge under threat of penalty.

262. PeaceHealth painted in a false light employees who were not wearing a badge.

263. PeaceHealth staff informed the public that the badge, or absence of one, disclosed the private health information about each staff member, including Plaintiffs.

264. The public disclosure of the private health information painted Plaintiffs in a false light leading to malicious harassment by staff and patients.

265. PeaceHealth implied that a person wearing a badge was immunized from the COVID-19 virus and thus unable to transmit it to other persons, which was, and still is, unlawful to convey to the public as well as being factually incorrect.

266. PeaceHealth defamed the character of Plaintiffs when fraudulently informing Washington State Employment Security Department that Plaintiffs engaged in misconduct and, therefore, should be denied unemployment benefits leading to economic damages.

267. PeaceHealth openly disclosed and publicly displayed private health information, employment records, and other private information about Plaintiffs throughout its facilities with malicious intent to punish Plaintiffs for exercising a right secured for them by a valid act of Congress.

268. Defendants intentionally violated the privacy rights of Plaintiffs to inflict severe emotional stress, publicly humiliate them under a false light, and rob them of their peace and feelings of being treated equally before the law for the express purpose of causing them to surrender their constitutional and statutory rights to refuse investigational drugs without consequence.

269. The facts and the Defendants' conduct committed with gross negligence, reckless, or intent, described above give rise to a claim of Invasion of Privacy under the common law of the

State of Washington against the Defendants for the damages described in Paragraphs 273 through 280, *infra*.

COUNT TEN

Implied Private Right of Action 21 U.S.C. §360bbb-3

270. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 192, as if fully set forth herein.

271. Should the court not agree that PeaceHealth was engaged in State Action, Plaintiffs claim that 21 U.S.C. §360bbb-3 contains an implied private right of action pursuant to *Cannon v. University of Chicago*, 441 U.S. 677 (1979), *Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498 (1990), and *Cort v. Ash*, 422 U.S. 66 (1975).

272. The Defendants' actions described above, individually and/or collectively, and in derogation of the Constitution and the above statutes, regulations, and treaty have deprived the Plaintiffs of their explicit right to refuse the administration of an emergency use authorized drug and/or medical product without penalty as described in the above facts, thereby causing them damages described in Paragraphs 273 through 280, *infra*.

VII. Damages Recoverable and Demanded

273. The following paragraphs are hereby incorporated by reference into Counts One through Ten, as if set forth there *in extenso*.

274. As a direct and proximate result of the Defendants' unreasonable and unlawful actions, Plaintiffs have suffered past damages and will suffer future damages, both compensatory and general, including, but not limited to, front and back pay; loss of benefits; loss of accumulated sick pay; loss of retirement accounts; lost earnings on retirement funds; vacation time, compensatory time, and paid time off; negative tax consequences (in the event of a lump sum

award), including related accountant fees; attorney's fees; emotional distress; mental, psychological and physical harm; loss of income; loss of enjoyment of life; for which defendants are liable in compensatory, punitive, exemplary, legal, equitable, and all other damages that this Court deems necessary and proper.

275. When the Defendants' behavior reaches a sufficient threshold, punitive damages are recoverable in § 1983 cases. *Smith v. Wade*, 461 U.S. 30 (1983). Because Defendants' actions were intentional and willful, Plaintiffs are entitled to, and hereby demand, an award of punitive damages against each and every Defendant in an amount sufficient to deter them, individually and collectively, from repeating their unconstitutional actions. *Smith v. Wade*, 461 U.S. 30 (1983)

276. Because Defendants' actions involved reckless or callous indifference to the Plaintiffs' federally protected rights, Plaintiffs are entitled to, and hereby demand, an award of punitive damages against each and every Defendant in an amount sufficient to deter them, individually and collectively, from repeating their unconstitutional actions. *Smith v. Wade*, 461 U.S. 30 (1983)

277. Because Defendants' actions were motivated by evil motive or intent, Plaintiffs are entitled to, and hereby demand, an award of punitive damages against each and every Defendant in an amount sufficient to deter them, individually and collectively, from repeating their unconstitutional actions. *Smith v. Wade*, 461 U.S. 30 (1983)

278. Plaintiffs seek recovery of attorney's fees under the Civil Rights Attorney's Fees Awards Act of 1976 and 42 U.S.C. § 1988, and under any other provision of law or basis.

279. Plaintiffs seek recovery of all court costs and out-of-pocket litigation expenses, including but not limited to expert fees, and legal interest on any amount of damages awarded.

280. Plaintiffs are entitled to double damages, costs of suit, and reasonable attorney's fees pursuant to Washington Rev. Code § 49.520.070

VIII. Jury Trial Demand

281. Plaintiffs are entitled to, and hereby demand, a trial by jury on all issues of fact herein.

WHEREFORE, Plaintiffs pray that Defendants be served with a copy of this Complaint and be duly cited to appear and answer same, and after due proceedings are had, there be judgment herein against the Defendants awarding Plaintiffs all damages claimed herein, plus legal interest, taxable costs, expert fees, and attorney's fees, and all other relief determined to be just and equitable by this Court.

Respectfully submitted,

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