

- M. **Kelly A. Daniel**, a person of the full age of majority residing in Lafayette Parish;
- N. **Katherine Duck**, a person of the full age of majority residing in Lafayette Parish;
- O. **Erin K. Dufour, RN**, a person of the full age of majority residing in Lafayette Parish;
- P.
- Q. **Charles Fontenot**, a person of the full age of majority residing in Lafayette Parish;
- R. **Rich Hargett, CRNA**, a person of the full age of majority residing in Lafayette Parish;
- S. **Diane Hendry, RN**, a person of the full age of majority residing in Lafayette Parish;
- T. **Abigail Mercer Johnson, RN**, a person of the full age of majority residing in Vernon Parish;
- U. **Katelynn Joubert, RN**, a person of the full age of majority residing in St. Landry Parish;
- V. **Jessica C. Koski, RN**, a person of the full age of majority residing in Lafayette Parish;
- W. **Tray A. LaCombe, Rad Tech**, a person of the full age of majority residing in St. Martin Parish;
- X. **Heather LeBeouf, RN**, a person of the full age of majority residing in Lafayette Parish;
- Y. **Karen Levine, RN**, a person of the full age of majority residing in Vermillion Parish;
- Z. **Rachel Meaders**, a person of the full age of majority residing in Acadia Parish;
- AA. **Diane O’Kelly-Farrell, RN**, a person of the full age of majority residing in St. Martin Parish;
- BB. **Katherine Connor Self, RN**, a person of the full age of majority residing in Vermillion Parish;
- CC. **Shali Sellers**, a person of the full age of majority residing in St. Landry Parish
- DD. **Jordan Smith, CRNA**, a person of the full age of majority residing in East Baton Rouge Parish;
- EE. **Celia Spallino**, a person of the full age of majority residing in Lafayette Parish;
- FF. **Melissa Stein**, a person of the full age of majority residing in Iberia Parish;
- GG. **Kyle Sweezy, RN**, a person of the full age of majority residing in Lafayette Parish;
- HH. **Kayla Trahan, RN**, a person of the full age of majority residing in Lafayette Parish;
- II. **J. Hollister Vincent, RN**, a person of the full age of majority residing in Lafayette Parish;
- JJ. **Dainelle Williams, RN**, a person of the full age of majority residing in Lafayette Parish; and
- KK. **Phoebe Wranosky**, a person of the full age of majority residing in Iberia Parish.

2.

Defendant, Our Lady of Lourdes Regional Medical Center, Inc., (“Our Lady of Lourdes”), is a private non-profit regional health system doing business in Lafayette Parish, with its corporate

office located at 4801 Ambassador Caffery Parkway, Lafayette, LA, 70508 and operating as Lafayette Surgicare, Lourdes Blood Donor Center, Lourdes Breast Center, Lourdes Cardiovascular Clinic, Lourdes Fitness Center, Lourdes Imaging – James Devin Moncus Medical Building, Lourdes Imaging – Kaliste Saloon, Lourdes Imaging – St. Anges Breast Center, Lourdes Imaging – St. Mary’s Imaging, Lourdes Neurology Center, Lourdes Physician Group, Lourde’s Physician Group – Orthopedic Surgery, Lourdes Physician Group – Physical Medicine and Rehabilitation, Lourdes Physician Group Pediatric Hematology Oncology Clinic – Lafayette, Lourdes Physician Group – Ray Quebedeaux, M.D., Lourdes Urgent Care – Breaux Bridge, Lourdes Urgent Care – Broussard, Lourdes Urgent Care – Carencro, Lourdes Urgent Care – Lafayette, Our Lady of Lourdes Center for Wound Care and Hyperbarics, Our Lady of Lourdes Emergency Center in Scott, Our Lady of Lourdes Heart Hospital, Our Lady of Lourdes JD Moncus Cancer Center, Our Lady of Lourdes Regional Medical Center, Our Lady of Lourdes RMC, Our Lady of Lourdes Sleep Disorders Center – Crowley Clinic, Our Lady of Lourdes Sleep Disorders Center – Lafayette Clinic, Our Lady of Lourdes Women’s & Children’s Hospital, Park Place Surgical Hospital, and St. Bernadette Clinic.

SUMMARY OF THE ACTION

3.

This litigation concerns two important principles, one a matter of settled Louisiana law and the other a matter of scientific consensus and now-common knowledge among all who have endured, and continue to endure, the pandemic.

4.

First, Louisiana citizens have a fundamental right to decide whether to obtain or reject medical treatment grounded in the state constitution, codified in statute, and long-recognized by the courts in the context of informed consent² and the tort of invasion of privacy.³

² See La. Const. art. I, § 5; La. R.S. 40:1159.7; *Hondroulis v. Schuhmacher*, 553 So. 2d 398, 414 (La. 1989) (holding that Article 1, § 5 establishes an “affirmative” right to decide whether to obtain or reject medical treatment) and its progeny.

³ See *Roshto v. Hebert*, 439 So. 2d 428, 430 (La. 1983) (“The right of privacy involves the basic right of a person to be let alone in his private affairs.”); *Tate v. Woman’s Hosp. Found.*, 2010-0425 (La. 1/19/11); 56 So. 3d 194 (“The tort of invasion of privacy is directed at redressing the damage which an individual suffers when legally recognized elements of his right to privacy have been violated”).

5.

Second, the vaccines for COVID-19 do *not* prevent transmission of the disease, as succinctly explained by Dr. Joseph A Ladapo, associate professor at UCLA's David Geffen School of Medicine, in a commentary published in The Wall Street Journal only three days ago.⁴ Dr. Ladapo makes the following observations relevant to these claims:

- There is an “*intellectual disconnect*” between COVID-19 mandates designed to promote public policy and the current state of medical science;
- “*As clinical studies from the U.S., Israel, and Qatar show--and many Americans can now personally attest--there is substantial evidence that people who are vaccinated can both contract and contribute to the spread of COVID-19[;]*”
- “*People who have recovered from COVID-19 appear to have the most protection of all[;]*”
- “*Coercion [of consent for vaccination] won't work because those without symptoms can still pass on infection[;]*”
- “*It isn't practical to punish adults who have no symptoms[;]*” and
- “*Vaccine mandates can't end the spread of the virus as effectiveness [of vaccines] decline[] and new variants emerge.*”

6.

There is no longer any serious argument that mandating vaccines will prevent transmission or eradicate the disease, as previously claimed.

7.

Nevertheless, Defendant is attempting to force Plaintiffs, and others,⁵ to undergo vaccination for COVID-19 over their personal objections and in disregard of their uniquely well-informed understanding of the virus and treatment options. In the best possible light, it is a misguided effort to protect unvaccinated persons from themselves and participate in a public policy designed to increase vaccinations at large. Viewed for what it is, Defendant is attempting to coerce Plaintiffs' consent to medical treatment by threatening to punish their exercise of a fundamental right under the pretext of workplace safety.

⁴ See Joseph A. Ladapo, MD., *Vaccine Mandates Can't Stop Covid's Spread*, THE WALL STREET JOURNAL (Sept. 17, 2021), <https://www.wsj.com/articles/vaccine-mandate-covid-19-unvaccinated-breakthrough-delta-boosters-fluvoxamine-antibodies-11631820572>.

⁵ Many additional Lourdes healthcare providers object to the mandate, but decline to join the Petition at this time for fear of reprisal.

8.

This litigation presents an unprecedented contest between the fundamental right of individuals under Louisiana law “to determine what shall be done to his or her own body”⁶ and the right of a *private* employer to use workplace restrictions designed to promote *public* policy, but lacking a reasonable workplace objective.

9.

Plaintiffs seek declaratory and injunctive relief to enjoin the unlawful mandate.

FACTS

A. From Novelty and Fear to Informed Decision-Making

10.

It is the legal and moral responsibility of medical providers workers to educate patients regarding the potential benefits and risks of medical treatment. This responsibility is required by statute (*See* La. R.S. 40:1159.1 *et seq*, Louisiana Medical Consent Law) and rooted in the right to individual privacy under Article I, Section 5 of the Constitution of Louisiana. La. Const. art. 1, § 5.

11.

Obtaining informed consent to medical treatment is an individualized process and cannot be accomplished by generalizations or mandates. As explained by the Louisiana Supreme Court, “Without pertinent case-specific information patients would lack the capacity to reason and make judgments on their own. They would therefore be deprived of the freedom to personally decide intelligently, voluntarily and without coercion whether to undergo the recommended treatment.” *Snider*, 130 So. 3d at 930 n.7.

12.

In the early phase of the “novel”⁷ COVID-19 pandemic, there was little information available to healthcare providers concerning the virus on which to advise patients. Thus, treatment

⁶ *Snider v. Louisiana Medical Mut. Ins. Co.*, 2013-0579 (La. 12/10/13); 130 So. 3d 922, 930 (“The informed consent doctrine is based on the principle that every human being of adult years and sound mind has a right to determine what shall be done to his or her own body.”).

⁷ COVID-19 was labeled “novel” soon after the first reports of infection, and the description became a fixture for describing the disease. FEMA now describes a “Novel Pandemic” as follows: “A novel (new) virus, like Coronavirus Disease of 2019 (COVID-19), can emerge from anywhere and quickly spread around the world. It is hard to predict when or where the next novel pandemic will emerge.” *Novel Pandemic*, FEDERAL EMERGENCY MANAGEMENT AGENCY, <https://community.fema.gov/ProtectiveActions/s/article/Novel-Pandemic-When> (last visited Sept. 16, 2021).

recommendations were heavily influenced by a better-safe-than-sorry approach, rather than a traditional risks-benefits analysis based on mature of medical science. This is no longer necessary.

13.

Information gained from over 225,000,000 cases of COVID-19 worldwide and a trove of authoritative sources has revealed certain indisputable truths about COVID-19:

- a. First and foremost, “*COVID-19 is an endemic respiratory virus, it cannot be eliminated or eradicated[;]*”⁸
- b. The virus is highly transmittable, spreading like wildfire around the globe despite unprecedented efforts to slow transmission;
- c. The severity of symptoms and the risk of severe disease from exposure vary by patient population and is largely dependent on individual health and resiliency;
- d. Immunity can be obtained naturally, by recovery from the virus, and by administration of vaccines; and
- e. There are multiple therapeutic options.

14.

Healthcare providers are now able to inform patients about the disease and treatment options based on *known* risks, benefits, and alternatives.

B. The COVID-19 Vaccines

15.

Among the open issues concerning COVID-19 is the subject of vaccines, including the individual benefits and risks in general and as measured against, and in addition to, natural immunity. There are thousands of authoritative opinions on the subject, many directly at odds. Although some healthcare experts and public officials appear to have made-up (if not closed) their minds regarding the benefits and risks of the vaccines, most have not. Suffice it to say, there is a raging debate and the outcome is uncertain at this time.

16.

There is no one-size-fits-all recommendation for patients contemplating vaccination for COVID-19. As explained by medical commentator Dr. Marc Siegel, “‘Follow the science’ is an expression that has been overused and misused by politicians and the news media during the COVID pandemic, even as they jump to non-scientific conclusions.” Dr. Marc Siegel, *Follow the*

⁸ Dr. Amesh Adalja, *Science prevailed in FDA advisers rejecting COVID-19 boosters for everyone*, MSN (Sept. 18, 2021), <https://www.msn.com/en-us/news/politics/science-prevailed-in-fda-advisers-rejecting-covid-19-boosters-for-everyone/ar-AAOAE6I>.

science’ is complicated when it comes to who gets a COVID vaccine and when, YAHOO! (Dec. 19, 2020), <https://ca.sports.yahoo.com/news/science-complicated-comes-gets-covid-100011510.html>.

17.

Blind or biased advocacy is irresponsible and threatens the public’s confidence in the relationship between healthcare providers and patients. *See* Alex Berezo, PhD, and Josh Bloom, “Coronavirus: Five Reasons Public Health Experts Have Lost Credibility,” AMERICAN COUNCIL ON SCIENCE AND HEALTH (July 16, 2020), <https://www.acsh.org/news/2020/07/16/coronavirus-five-reasons-public-health-experts-have-lost-credibility-14915>.

18.

In 2020, the United States Food and Drug Administration (FDA) granted “Emergency Use Approval” (EUA) for three COVID-19 vaccines currently available in the United States.

Pfizer-BioNTech (two-dose vaccine)

Moderna (two-dose vaccine)

Janssen (Johnson & Johnson, one-dose vaccine)

(Collectively, the “COVID Vaccines”).⁹

19.

Early promotions about the benefits of the COVID Vaccines were overstated.

20.

First, contrary to early reports, it has been proven beyond doubt that the COVID Vaccines do *not* prevent transmission of the virus.¹⁰ President Biden’s hasty assurance earlier this year that “If you’re fully vaccinated you can take your mask off” quickly unraveled after several high-profile outbreaks involving vaccinated persons. One of those outbreaks, reported by the CDC involved 346 fully vaccinated persons (of a total of 469),¹¹ leading the CDC to issue “updated guidance” on

⁹ On August 23, 2021, the FDA granted full approval of the Pfizer-Comirnaty vaccine marketed in Europe, and declared it “interchangeable” with the Pfizer-BioNTech marketed in the U.S. Pfizer-BioNTech, itself, has not been fully approved and continues under the EUA designation. It is not clear how the Pfizer-Comirnaty “full approval” actually impacts the Pfizer-BioNTech EUA designation. *See* Glenn Kessler, *The False Claim that Fully Approved Pfizer Vaccine Lacks Liability Protection*, THE WASHINGTON POST (Aug. 30, 2021), <https://www.washingtonpost.com/politics/2021/08/30/false-claim-that-fully-approved-pfizer-vaccine-lacks-liability-protection/>.

¹⁰ *See* Joseph A Ladapo, MD., *Vaccine Mandates Can’t Stop Covid’s Spread*, THE WALL STREET JOURNAL (Sept. 17, 2021), <https://www.wsj.com/articles/vaccine-mandate-covid-19-unvaccinated-breakthrough-delta-boosters-fluvoxamine-antibodies-11631820572>.

¹¹ *See* Catherine M. Brown, DVM, Johanna Vostok, MPH, *et al.*, *Outbreak of SARS-CoV-2 Infections, Including COVID-19 Vaccine Breakthrough Infections, Associated with Large Public*

July 27 recommending that everyone—vaccinated and unvaccinated—wear a mask in high transmission areas.¹² On August 26, the CDC issued guidance on the “Delta variant,” reporting that “[f]ully vaccinated people with Delta variant breakthrough infections can spread the virus to others.”¹³

21.

Public officials quickly responded to CDC’s call for retreat on claiming vaccines prevent transmissions. On August 2, 2021, Louisiana Governor Jon Bel Edwards re-instituted a mask mandate in Louisiana. At the new conference, the Governor emphasized that the COVID Vaccines do not prevent transmission, stating: “Based on recent CDC data, vaccinated people who do get infected have just as much virus in their systems as unvaccinated people, meaning they can likely spread the virus simply because of the power of the delta variant.” The Governor’s top health advisor, Dr. Joseph Kanter, added: “[I]f you are fully vaccinated and do become infected, then you can still relatively transmit the virus” and that “you will have just as much virus in your body as the early days of the pandemic as someone who was unvaccinated.”¹⁴

22.

Second, early reports about the efficacy and durability of the COVID-19 Vaccines have been called into question. By most accounts, the vaccines are not as effective as originally promoted and “booster” shots may be needed to bolster durability. As explained by Dr. Ladapo: “The data show that vaccine effectiveness for infection protection fell from roughly 91% to 66% after emergence of the Delta variant, according to a recent CDC report. Data from Israel show rates of protection have declined to less than 40% of some patients.”¹⁵

Gatherings — Barnstable County, Massachusetts, July 2021, CENTERS FOR DISEASE CONTROL AND PREVENTION (July 30, 2021), <https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm>.

¹² See *Interim Public Health Recommendations for Fully Vaccinated People*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html> (last updated Sept. 1, 2021).

¹³ See *Delta Variant: What We Know About the Science*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html> (last visited Sept. 16, 2021).

¹⁴ See *Gov. Edwards Press Conference 08/02/2021*, LOUISIANA PUBLIC BROADCASTING (AUGUST 2, 2021), <https://www.youtube.com/watch?v=UzxWZ8qe0oU>.

¹⁵ Ladapo, *supra* at n.7. See also *COVID-19 vaccine effectiveness changing with Delta predominance*, MEDICAL XPRESS, <https://medicalxpress.com/news/2021-09-covid-vaccine-effectiveness-delta-predominance.html> (last visited Sept. 16, 2021); Kevin Stankiewicz, *Pfizer’s CEO says Covid vaccine effectiveness drops to 84% after six months*, CNBC (July 28, 2021), <https://www.cnbc.com/2021/07/28/pfizers-ceo-says-covid-vaccine-effectiveness-drops-to-84percent-after-six-months.html>; Dr. Catherine Schuster-Bruce, *Moderna says a study showed falling*

23.

Most recently (September 20, 2021), the widespread use of boosters encountered a setback when an FDA committee voted 16-2 to limit boosters to patients 65 and older. As reported in the Washington Post:

The recommendation to target shots primarily to older adults is far narrower than what the companies and top officials in the Biden administration had sought: a blanket approval to boost anyone 16 and older. The panel voted resoundingly against a broadly available booster. Many committee members said they felt uncomfortable about whether the benefits outweighed the risks to younger adults, citing the lack of robust safety data.¹⁶

24.

Additionally, the majority of emerging data clearly supports that natural immunity may provide superior protection than the COVID Vaccines, contrary to earlier reports. Last month, the CDC reported that a study from Kentucky involving 246 patients demonstrated that vaccinated patients are 2.34 times *less* likely to be reinfected than persons with natural immunity.¹⁷

25.

However, two weeks later, a study from Israel involving 74,000 cases reported just the opposite, that “natural immunity confers longer lasting and stronger protection against infection, symptomatic disease and hospitalization caused by the Delta variant of SARS-CoV-2, compared to the BNT162b2 two-dose vaccine-induced immunity.”¹⁸ According to the Israeli study, a person with natural immunity is *27 times* less likely to be reinfected than a vaccinated person. *Id.*

COVID-19 immunity over time and a need for boosters - even though most 'breakthrough' infections weren't severe, MSN, <https://www.msn.com/en-us/health/medical/moderna-says-a-study-showed-falling-covid-19-immunity-over-time-and-a-need-for-boosters-even-though-most-breakthrough-infections-werent-severe/ar-AAOvzNi?li=BBnb7Kz> (last visited Sept. 16, 2021). See also Jo Craven McGinty, *Some vaccines last a lifetime. Here's why COVID-19 vaccines don't*, WALL STREET JOURNAL, <https://www.wsj.com/articles/some-vaccines-last-a-lifetime-heres-why-covid-19-shots-dont-11631266201> (last updated Sept. 10, 2021).

¹⁶ Carolyn Y. Johnson, *FDA panel endorses coronavirus boosters for older adults and those at risk of serious illness*, THE WASHINGTON POST (Sept. 17, 2021), <https://www.washingtonpost.com/health/2021/09/17/covid-booster-shots-fda-recommendation/>.

¹⁷ See *New CDC Study: Vaccination Offers Higher Protection than Previous COVID-19 Infection*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/media/releases/2021/s0806-vaccination-protection.html> (last updated Aug. 6, 2021).

¹⁸ Sivan Gazit, Roi Shlezinger, *et al.*, *Comparing SARS-CoV-2 natural immunity to vaccine-induced immunity: reinfections versus breakthrough infections*, MEDRXIV (Aug. 30, 2021), <https://www.medrxiv.org/content/10.1101/2021.08.24.21262415v1>.

26.

In addition, a recent study by Rockefeller University supports that natural immunity has superior durability when comparing “memory B” cells produced in response to both infection and the vaccines. As explained by Dr. Michel C. Nussenzweig, Senior Physician Investigator at the Howard Hughes Medical Institute: “Vaccination produces greater amounts of circulating antibodies than natural infection. But [the Rockefeller] study suggest that not all memory B cells are created equal. While vaccination gives rise to memory B cells that evolve over a few weeks, natural infection births memory B cells that continue to evolve over several months, producing highly potent antibodies adept at eliminating even viral variants.”¹⁹

27.

These authoritative reports reflect that “[p]eople who have recovered from COVID-19 appear to have the most protection of all.” Lapado, *supra* at n.7.

28.

The CDC has been ambivalent regarding natural immunity, leading to harsh criticism in the medical community and by public officials.²⁰

29.

There are three tiers for vaccine effectiveness, as explained in *Some vaccines last a lifetime. Here’s why COVID-19 vaccines don’t*:

The goal of a vaccine is to provide the protection afforded by natural infection, but without the risk of serious illness or death. “A really good vaccine makes it so someone does not get infected even if they are exposed to the virus,” said Rustom Antia, a biology professor at Emory University who studies immune responses. “But not all vaccines are ideal.” The three tiers of defense, he said include full

¹⁹ See Dr. Michel C. Nussenzweig, Senior Physician, *Natural infection versus vaccination: Differences in COVID antibody responses emerge*, THE ROCKEFELLER UNIVERSITY (Aug. 24, 2021), <https://www.rockefeller.edu/news/30919-natural-infection-versus-vaccination-differences-in-covid-antibody-responses-emerge/>. See also, *Natural Immunity After Covid-19 Found Durable and Robust*, PRECISION VACCINATIONS, <https://www.precisionvaccinations.com/natural-immunity-after-covid-19-found-durable-and-robust> (last updated Aug. 2, 2021); *Lasting immunity found after recovery from COVID-19*, NATIONAL INSTITUTE OF HEALTH (Jan. 26, 2021), <https://www.nih.gov/news-events/nih-research-matters/lasting-immunity-found-after-recovery-covid-19>.

²⁰ See Marty Makary, *Covid Confusion at the CDC*, THE WALL STREET JOURNAL (Sept. 13, 2021), <https://www.wsj.com/articles/covid-19-coronavirus-breakthrough-vaccine-natural-immunity-cdc-fauci-biden-failure-11631548306>; see also U.S. Senator Ron Johnson, Letter to Anthony S. Fauci, M.D., Rochelle P. Walensky, M.D., MPH, and Janet Woodcock, M.D. (Sept. 1, 2021), https://www.scribd.com/document/525650771/2021-09-15-Letter-From-Sen-Johnson-to-Drs-Fauci-Walensky-And-Woodcock#from_embed. (“This administration’s decision to disregard the effectiveness of natural immunity and demand vaccination ignores current data and is an assault on all American’s civil liberties”).

protection against infection and transmission; protection against serious illness and transmission; or protection against serious illness only.²¹

30.

Initial reports placed the COVID Vaccines in the middle tier—protection against serious illness and transmission. But it is now clear they belong in the lower tier—protection against serious illness only. This classification matters greatly for purposes of the Lourdes Vaccination Mandate, which relies primarily on safety in the workplace as a pretext.

31.

On the other side of the benefits-risks scale, the COVID Vaccines pose certain risks that vary from patient to patient depending on many factors, like all vaccines. Most are non-life threatening and considered mild, but some are severe. Gross percentages are misleading, because the risk of an adverse reaction is always 100% for the unfortunate patient who actually suffers an adverse reaction.

32.

In 1990, Congress created the Vaccine Adverse Events Reporting System (VAERS) to track reports of adverse reactions resulting from vaccination. According to VAERS, the reports of adverse reactions to the COVID Vaccines *in only eight months* is disproportionately higher—by far—than for all other vaccines since 1990:

Event	COVID-19 Vaccine	All other vaccines	TOTAL	Percentage of total events attributed to Covid-19 Vaccine
Total Adverse Events	538,304	719,012	1,257,316	42.81%
Deaths	6,549	5,108	11,657	46.18%
Life Threatening	8,259	9,699	17,958	45.99%
Hospitalizations	30,394	38,100	68,494	44.37%
Permanent Disabilities	7,618	12,412	20,030	38.03%
Office Visits	99,471	41,506	140,977	70.56%
ER Visits	67,960	200,635	268,595	25.30%

See *About the Vaccine Adverse Event Reporting System (VAERS)*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://wonder.cdc.gov/vaers.html> (last visited Sept. 16, 2021).

²¹ Jo Craven McGinty, *Some vaccines last a lifetime. Here's why Covid-19 Shots Don't*, THE WALL STREET JOURNAL, *supra*.

33.

VAERS provides important information regarding the risks of vaccinations by giving perspective to boilerplate language like “safe and effective” and “rare side effects,” as assured by Our Lady of Lourdes regarding the COVID Vaccines.

C. The Lourdes Vaccination Mandate

34.

On August 3, 2021, Our Lady of Lourdes, through its parent health system Franciscan Missionaries of Our Lady Health System, announced a mandatory vaccination requirement for all employees and members of its staff (the “Lourdes Vaccination Mandate”). Under the mandate, all “team members, including employed providers in addition to residents, contract staff, volunteers, students in clinical rotations and volunteers are required to receive the [Covid-19] Vaccine.” *See* Frequently Asked Questions (FAQ) at 2. Exhibit A. “Leaders, employed providers and residents have until **October 31** to complete the [Covid-19] vaccination series. All other team members, including contract staff, volunteers have until **November 30**.” *Id.* at 3 (emphasis added). Failure to comply will result in job loss, suspension, loss of benefits, and stigma. *Id.*

35.

To meet the October 31 deadline, leaders, employed providers and residents must receive the first shot by **October 10, 2021**. To meet the November 30 deadline, team members, contract staff, volunteers, and students in clinical rotations must receive the first shot by **November 9, 2021**. *See Covid-19 Vaccines That Require 2 Shots*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/second-shot.html>, (last updated Sept. 13, 2021) (“Timing of your Second Shot: Pfizer-BioNTech Covid-19 Vaccine Get Your second shot 3 weeks (or 21 days) after your first.”).

36.

The Lourdes Vaccination Mandate allows medical and religious exemptions, but does not provide a clear deadline for submission. Rather, the instructions are at best vague and at worst intentionally evasive to discourage use:

Timing Considerations to remember when applying for exemptions:

- There is a 10 day review period to receive an answer on your exemption status.
- Requests must be submitted by Thursdays at 4 p.m., in order to be reviewed the following week. Any submissions received Thursday after 4 p.m. would be deferred two weeks.

- The review committee may request additional documentation or information from you as they consider your request, which could result in delays in determining your exemption status.
- There is a three week waiting period in between doses if you choose to receive Pfizer or Moderna vaccines. You must receive both doses by the deadline to be considered compliant.

Exhibit A, FAQs at 8-9. It appears—although not clearly—that exemptions must be submitted for consideration by **September 30, 2021** for leaders, employed providers, and residents, and by **October 28, 2021** for team members, contract staff, volunteers, and students in clinical rotations.

37.

The stated reasons for the Lourdes Vaccination Mandate are as follows:

Why is FMOLHS requiring team members be fully vaccinated?

We believe the COVID-19 vaccine is safe and effective and is the quickest way to save lives and end the pandemic. Louisiana and Mississippi are facing another surge that is creating tremendous stress and strain on our health system resources and caregivers. The delta variant is much more transmissible, and patients are younger and sicker. As leaders in healthcare, **it is important we preserve our ability to provide care as well as set the example for our communities.**

Id. at 1 (emphasis added).

38.

A more revealing statement of intent was issued by Defendant’s president and CEO, Richard Vath, when announcing the Lourdes Vaccination Mandate:

We must act now to protect each other from spreading the delta variant and protect vulnerable patients from exposure. . . . Vaccines are the best means of accomplishing this and more important than ever as the lasting step to end this pandemic. We should not wait any longer.

Our health system is not alone in its decision to require a vaccine and joins many other healthcare organizations and expect others to follow. As a healthcare leader we believe we must take this step now for everyone’s safety and long-term community well-being.²²

39.

Mr. Vath is simply wrong, vaccines are not “the best means” of preventing the spread of the virus. In fact, as explained supra, the overwhelming weight of science demonstrates that vaccines do *not* prevent transmission, particularly the Delta variant. Defendant’s decision appears rooted in a now-disproven hypothesis. Further, protecting the “long-term community well-being” is the role of public officials and public policy-makers, not private employers.

²² See William Potter, *Our Lady of Lourdes, Franciscan Missionaries requiring Covid-19 vaccine for employees*, DAILY ADVERTISER (Aug. 3, 2021), <https://www.theadvertiser.com/story/news/2021/08/03/our-lady-health-system-covid-19-vaccines-employees-acadiana/5470233001/>.

40.

The lack of a relationship between the Lourdes Vaccination Mandate and the risk of workplace transmission is demonstrated by the absurd inclusion of *remote* workers. Lourdes vaguely attempts to explain this requirement as follows:

Why do I need to be vaccinated since I work remotely?

FMOLHS has committed from the beginning of the pandemic to care for all of our team members in a fair and equitable manner regardless of their work location. Our team members working remotely provide and integral service to our organization to support all those on the front lines of clinical care. In addition, community spread of the virus is rampant. Ensuring our entire workforce is healthy and able to serve their important role informed our decision. Exhibit A, FAQs at 4.

41.

Further, the Lourdes Vaccination Mandate makes no exception for employees who have already recovered from the virus and are thus naturally immune. On the contrary, Defendant relies on the heavily-criticized CDC recommendation to reject basic immunology, while disregarding the growing body of science to the contrary.

42.

Mandating persons to undergo vaccination for a disease they have already survived is unprecedented and reckless.

43.

Finally, the information provided by Defendant regarding the benefits and risks of the COVID Vaccines is incomplete and partially inaccurate. While emphasizing that the vaccines are safe and effective (*see* FAQ at 9), Defendant omits any mention of the VAERS data, the lack of long-term trials or potential for long-term risks, or the many anecdotal accounts of adverse reactions.

44.

For these reasons, Plaintiffs object to Our Lady of Lourdes Mandatory Vaccination Plan. But to be clear, this objection is directed to the mandate itself, not to the COVID Vaccines.

45.

Whether or not to vaccinate for COVID-19 is a personal decision, not a matter to be decided by a private employer attempting to drive public policy.

D. Request for Withdrawal of Mandate and Notice of Intent to Seek Injunctive Relief

46.

On September 1, 2021, Plaintiffs, through counsel, provided Defendant written objection to the Lourdes Vaccination Mandate and requested that it be voluntarily withdrawn on or before close of business September 17, 2021, in lieu of a request for injunctive relief.

47.

Defendant has refused to withdraw the Lourdes Vaccination Mandate.

COUNT I - DECLARATORY JUDGMENT

48.

Plaintiffs adopt and re-urge the allegations and information in paragraphs 1-47, above.

49.

“Courts of record within their respective jurisdiction may declare rights, status, and other legal relations whether or not further relief is or could be claimed.” La. C.C.P. art. 1871. Declaratory judgment is proper to determine “any question of construction or validity arising under the ... statute ... and obtain a declaration of rights, status, or other legal relations thereunder” (La. C.C.P. art. 1872) in order to “remove the uncertainty or terminate the dispute.” *Louisiana Associated Gen. Contrs. v. State ex rel. Div. of Admin., Office of State Purchasing*, 95-2105 (La. 3/8/96); 669 So. 2d 1185, 1191.

50.

Plaintiffs have a clearly established right to refuse medical treatment rooted in the constitution, codified by statute, and recognized by the courts.

51.

Article 1, § 5, of the Louisiana Constitution, titled “Right to Privacy,” provides: “Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy.” La. Const. art. I, § 5. It has been well-settled for over thirty years that this provision includes the affirmative right to decide whether to obtain or reject medical treatment, as expressly held by *Hondroulis v. Schuhmacher*, 553 So. 2d 398, 414 (La. 1989); *Snider v. Louisiana Med. Mut. Ins. Co.*, 2013-0579, p. 8 (La. 12/10/13); 130 So. 3d 922, 930 (“The informed consent doctrine is based on the principle that every human being of adult years and sound mind has a right to determine what shall be done to his or her own body.”).

See also, *Lemann v. Essen Lane Daiquiris, Inc.*, 05-1095 (La. 3/10/06); 923 So. 2d 627, 635-36 (“Louisiana recognizes the right of an adult to refuse to consent to medical or surgical treatment of his own person.”).

52.

Notwithstanding the Louisiana Supreme Court’s recognition of this “affirmative right to privacy impacting non-criminal areas of law” (*Hondroulis*, 553 So. 3d at 415), some courts have resisted recognizing a cause of action under Article 1, § 5 against private defendants.²³ This case does not require the Court to resolve that issue, because Defendant has expressly declared that the mandate is intended to drive public policy. In other words, Defendant is expressly attempting to accomplish a governmental objective that the government itself is prohibited from accomplishing. Effectively, Defendant is acting as a government surrogate, bringing itself squarely into conflict with Article 1, § 5.

53.

The Louisiana Medical Consent Law expressly preserves this right:

Right of adult to refuse treatment as to his own person not abridged

Nothing contained herein shall be construed to abridge any right of a person eighteen years of age or over to refuse to consent to medical or surgical treatment as to his own person.

La. R.S. 40:1159.7. See *Lemann v. Essen Lane Daiquiris, Inc.*, 05-1095 (La. 3/10/06); 923 So. 2d 627, 635-36; *Roberson v. Provident House*, 576 So. 2d 992 (La. 1991); *Manuel v. State*, 95-2189, p. 17 (La. 3/8/96); 692 So. 2d 320, 331, n.10.²⁴

54.

Moreover, Louisiana law recognizes a cause of action for invasion of privacy based on the “right to be let alone.” *Tate v. Woman’s Hosp. Found.*, 2010-0425 (La. 1/19/11); 56 So.3d 194, 197 (emphasis added). Violation of this right may occur in multiple ways, including “by unreasonably intruding on [a person’s] physical solitude or seclusion” and by the “unreasonable disclosure of private facts.” *Id.* The reasonableness of the defendant's conduct is determined by balancing the conflicting interests at stake, the plaintiff's interest in protecting his privacy from

²³ See e.g. *Brennan v. Bd. Of Trustees for University of Louisiana System*, 691 So. 3d 324 (La. App. 1 Cir. 1997).

²⁴ This right is also codified in the Louisiana Advanced Directive statute, La. R.S. 40:1151.2, the Louisiana Military Advance Medical Directive statute, La. R.S. 40:1153.2, and the Nursing Home Bill of Rights, La. R.S. 40:2010.8(6).

serious invasions, and the defendant's interest in pursuing his course of conduct. *Jaubert v. Crowley Post-Signal, Inc.*, 375 So. 2d 1386 (La. 1979).

55.

Employers, on the other hand, have a right to regulate the workplace measured by reasonableness. *See* La. R.S. 23:1 (requiring employers to furnish a “reasonably safe” workplace and “do every other thing reasonably necessary to protect the life, health, safety and welfare” of employees). This provision does not grant license to violate an employee’s affirmative rights. *See Newsom v. Glob. Data Sys., Inc.*, 2012-412, p. 4 (La. App. 3 Cir. 12/12/12); 107 So. 3d 781, 785, *writ denied*, 2013-0429 (La. 4/5/13); 110 So. 3d 595 (An employer may terminate an at-will employee provided such action “does not violate any statutory or constitutional provision.”); *see also State v. Surtain*, 2009-1835, p. 7 (La. 3/16/10); 31 So. 3d 1037, 1042 (A warrantless search is “per se unreasonable” under federal and state constitutions).

56.

Defendant’s mandatory vaccine policy violates Plaintiffs’ constitutional and general right to privacy by punishing Plaintiffs’ exercise of the right to make informed personal health decisions. Simply put, Defendant is overtly attempting to coerce Plaintiffs’ informed consent to medical treatment; to wrongly manipulate a right firmly recognized as fundamental.

57.

Ultimately, the question before the Court is follows: **Does the Lourdes Vaccination Mandate *unreasonably* interfere with Plaintiffs’ fundamental right to decide whether to receive or refuse medication?** The answer is clearly yes.

58.

Defendant’s stated reasons for the policy are unreasonable. First and foremost, protecting an employee from the consequences of his or her own healthcare decision is patently unreasonable. There is no legitimate interest in an employer attempting to override a personal healthcare decision of an employee. Second, vaccinations will not prevent the spread of the virus in the workplace, according to overwhelming *current* medical science and proven by the continuance of government mask mandates for everyone. Third, Lourdes’ high-minded view of its civic responsibility does not provide a reasonable basis for threatening to punish employees for exercising a clearly established legal right. The good intentions of a *private* employer to influence *public* policy—right or wrong—must yield to the fundamental rights of its employees.

59.

Plaintiffs request a judgment declaring Our Lady of Lourdes Mandatory Vaccination Plan unlawful and unenforceable.

**COUNT II – INJUNCTIVE RELIEF: TEMPORARY RESTRAINING ORDER,
PRELIMINARY INJUNCTION, AND PERMENANT INJUCTION**

60.

Plaintiffs adopt and re-urge the allegations and information in paragraphs 1-59, above.

61.

Under La. C.C.P. art. 3601, “[a]n injunction shall be issued in cases where irreparable injury, loss, or damage may otherwise result to the applicant[.]” *Newburger v. Orkin, L.L.C.*, 2019-383, p. 7 (La. App. 3 Cir. 11/6/19); 283 So. 3d 549, 554. “Irreparable harm or injury generally refers to a loss that cannot be adequately compensated in money damages or measured by a pecuniary standard.” *Id.*

62.

“A petitioner is entitled to injunctive relief without the requisite showing of irreparable injury when the conduct sought to be restrained is unconstitutional or unlawful, i.e., when the conduct sought to be enjoined constitutes a direct violation of a prohibitory law and/or a violation of a constitutional right. *South Cent. Bell Tel. Co. v. Louisiana Pub. Serv. Comm'n*, 555 So. 2d 1370 (La. 1990). “Once a plaintiff has made a prima facie showing that the conduct to be enjoined is reprobated by law, the petitioner is entitled to injunctive relief without the necessity of showing that no other adequate legal remedy exists.” *Jurisich v. Jenkins*, 99-0076, p. 4 (La. 10/19/99); 749 So. 2d 597, 599–600.

A. Temporary Restraining Order

63.

Louisiana Code of Civil Procedure article 3603 provides for issuance of a temporary restraining order without notice when:

(1) It clearly appears from specific facts shown by a verified petition or by supporting affidavit that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and

(2) The applicant's attorney certifies to the court in writing the efforts which have been made to give the notice or the reasons supporting his claim that notice should not be required.

...

B. The verification or the affidavit may be made by the plaintiff, or by his counsel, or by his agent.

64.

“A TRO serves only as a temporary restraint on the defendant until the propriety of granting a preliminary injunction may be determined, objectively preserving the status quo until that determination. *Powell v. Cox*, 228 La. 703, 83 So. 2d 908, 910 (1955). It is issued preliminary to a hearing and wholly independent from the hearing on a preliminary injunction. *Id.* A TRO does not determine any controverted right, but issues as a preventative to a threatened wrong and operates as a restraint to protect the rights of all parties involved until issues and equities can be resolved in a proper subsequent proceeding. *Id.*” *Dauphine v. Carencro High Sch.*, 2002-2005, p. 6 (La. 4/21/03); 843 So. 2d 1096, 1102.

65.

Entry of a TRO without formal notice is warranted in this instance. First, Defendant was provided written notice of Plaintiffs’ objection on September 1 and requested to withdraw the mandate in lieu of Plaintiffs seeking injunctive relief. Second, the deadlines for exemption requests is confusing, at best, and may deprive Plaintiffs of their right to timely request medical and religious exemptions. Third, delays for formal service and for responsive pleadings may prevent Plaintiffs from complying with the October 31 deadline under the mandate due to the required vaccination dose schedules. Finally, the balance of interests favors issuance of a TRO in this instance, as relieving Plaintiffs of Defendant’s oppressive demands will cause no harm to Defendant during the duration of the TRO.

66.

A bond should not be required in this instance, as entry of a TRO poses no threat of damage or hardship to Defendant.

B. Preliminary and Permanent Injunction

67.

“The purpose of a preliminary injunction is to preserve status quo until trial on merits[.]” *Broadmoor, L.L.C. v. Ernest N. Morial New Orleans Exhibition Hall Auth.*, 2004-0211, p. 5 (La. 3/18/04); 867 So. 2d 651, 655.

“A moving party is entitled to a preliminary injunction upon showing: (1) that the injury, loss, or damage he will suffer if the injunction is not issued may be irreparable; (2) that he is entitled to the relief sought; and (3) that he will be likely to prevail on the merits of the case.” *Succession of Smith v. Portie*, 2019-283, p.4 (La. App. 3 Cir. 12/30/19); 289 So. 3d 77, 80 (quoting *St. Raymond v. City of New Orleans*, 99-2438, p. 3 (La. App. 4 Cir. 5/17/00); 769 So. 2d 562, 564 *rehearing denied* 99-2438 (La. App. 4 Cir. 8/2/00), 775 So. 2d 31, *writ denied* 00-2565 (La. 9/13/00), 767 So. 2d 697). Because it involves temporary relief pending a full trial on the merits, a “preliminary injunction requires less proof than is required in an ordinary proceeding for permanent injunction.” *Succession of Smith*, 289 So. 3d at 80 (quoting *Breaud v. Amato*, 94-1054, p. 5 (La. App. 5 Cir. 5/30/95); 657 So. 2d 1337, 1339). Plaintiff need only demonstrate “a prima facie showing” that he is entitled to relief. *Mary Moe, L.L.C. v. Louisiana Bd. of Ethics*, 03–2220 (La. 4/14/04); 875 So. 2d 22.

Plaintiffs request entry of a preliminary injunction following a hearing on the matter and, in due course, a permanent injunction following trial on the merits.

WHEREFORE, Plaintiffs pray as follows:

1. For entry of a Temporary Restraining Order, in the form presented herewith, enjoining Defendant from enforcing the Lourdes Vaccination Mandate against the Plaintiffs;
2. That this Petition be served on Defendant, Our Lady of Lourdes, through its Chief Executive Officer Kathleen Healy-Collier;
3. That Defendant, Our Lady of Lourdes, be cited to appear, answer and respond to the same;
4. That after due proceedings had, for a Declaratory Judgment in favor of Plaintiffs and against Defendant, Our Lady of Lourdes, declaring the Lourdes Vaccination Mandate unlawful and unenforceable against Plaintiffs;
5. For the issuance of a Preliminary Injunction, and thereafter a Permanent Injunction, prohibiting enforcement of the Lourdes Vaccination Mandate against Plaintiffs;
6. That there be trial by jury on all issues as permitted by law.

Respectfully submitted,

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Through its Chief Executive Officer:

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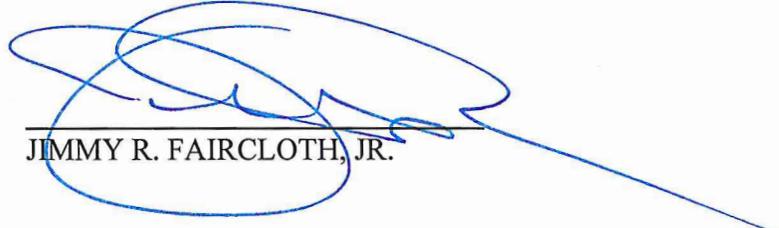
15TH JUDICIAL DISTRICT COURT
PARISH OF LAFAYETTE
STATE OF LOUISIANA

DEANA AGUILLARD, ET AL)
) DOCKET NO. _____
)
)
VERSUS)
) DIVISION _____
)
)
OUR LADY OF LOURDES REGIONAL)
MEDICAL CENTER, INC.) JUDGE _____

AFFIDAVIT OF VERIFICATION

PARISH OF RAPIDES
STATE OF LOUISIANA

BEFORE ME, the undersigned Notary Public, came and appeared JIMMY R. FAIRCLOTH, JR., counsel for Plaintiffs in the above-captioned matter, who being duly sworn did depose and state that he prepared the foregoing Petition for Temporary Restraining Order, Preliminary and Permanent Injunctions, and Declaratory Judgment, and all statements of fact contained therein are true and correct to the best of his knowledge and belief.



JIMMY R. FAIRCLOTH, JR.

SWORN TO AND SUBSCRIBED BEFORE ME, Notary Public, this 20th day of September, 2021, in Alexandria, Louisiana.



NOTARY PUBLIC
LBRN - 38576