IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

MICHAEL CORRIN STRONG, Plaintiff

vs.

HOWARD ZUCKER, MD, in his official capacity as Commissioner of the New York State Department of Health, Defendant

Case No. 21-CV-6532

# RESPONSE TO DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S LAWSUIT FOR FAILURE TO STATE A CLAIM

Submitted Electronically by

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February 26, 2022

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# I. Summary of the Case

1. Plaintiff originally filed this action on August 10, 2021 with a *pro se* complaint charging that certain regulations of the State requiring only unvaccinated people to wear masks were in violation of the Equal Protection Clause under the 14th Amendment and thus a violation of 42 U.S.C. § 1983. Subsequently, when informed in September that those regulations had been quietly repealed and replaced on Aug. 27, 2022, Plaintiff filed an Amended Complaint on Oct. 13, 2021.

2. In the Amended Complaint, Plaintiff continued to complain of unequal and discriminatory regulations, but he also raised the issue of illegal coercion of citizens of New York to take an experimental medical treatment without informed consent. He tied the two issues together by alleging that the State was using the discrimination as part of a vaccine coercion campaign.

3. In addition, Plaintiff has made allegations concerning the safety and effectiveness of the vaccines. These are relevant to his case as tending to show the seriousness of the issue. He also presents in Sec. III herein recently uncovered evidence of scientific fraud in the approval and regulation of the vaccines, as well as failure of government agencies to disclose the true facts about the treatment.

4. As a *pro se* litigant with no federal litigation experience, Plaintiff admits that his complaint could probably have been drafted more artfully, but it should not be that difficult for the Defendant to decipher what he is arguing.

5. Plaintiff is asking that all regulations that discriminate against the unvaccinated be eliminated, firstly because they are a violation of Equal Protection, and secondly, because they are part of an illegal coercive scheme to try to force a dangerous and ineffective experimental medical treatment on citizens without "informed consent," which is illegal under federal law. And finally, because that "informed consent" has been eviscerated by scientific fraud and the failure of government agencies to fully disclose the data on vaccine safety and effectiveness.

## II. All Allegations in Complaint Presumed True

6. Under existing federal rules and precedent, for purposes of this motion the court should accept as true all factual allegations that the Plaintiff made in his Amended Complaint of Oct. 13, 2021. The fact that the Defendant has filed voluminous Declarations, Affidavits and Exhibits with its Motion, apparently attempting to challenge some of the factual allegations made by Plaintiff, is not sufficient to remove that presumption, and all the Defendant's "evidence" is not properly before the court.

7. Consider paragraph #58 of the Amended Complain quoted in full:
"*As of Sept. 10, 2021, VAERS (the Vaccine Adverse Event Reporting System) run by the CDC has had 559,462 adverse events including 6,756 deaths from the Covid vaccines reported in the United States alone. Scientists such as Dr. Jessica Rose, PhD, MSc, Bsc who have studied the VAERS system estimate that these numbers may be underreported by a factor of 30."* (As of Feb. 4, 2022, the VAERS system is now showing over 1,100,000 adverse reports while reported deaths now total over 12,000 in the U.S. alone.)

8. If the statements in that paragraph are taken as true, including Dr. Rose's factor, that means that approximately 360,000 people may have died in the United States alone from direct vaccine side effects in the past 14 months. Many more may die in the coming years from longer-term side effects that were never studied since the vaccines were developed and released at "warp speed" without full clinical trials that usually take years.

9. Plaintiff points this out to bring to the court's attention the gravity of the harm being caused by the currently used Covid-19 vaccines. It is also now becoming clear in the Omicron era, as Plaintiff's proposed witness cardiologist and Covid expert Dr. Peter McCullough will testify, that being vaccinated provides little protection from becoming infected with the new variety and may actually increase the risk of contracting it.[1]

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*1 Documentation of new allegations (such as this claim) that have not been previously documented will appear in Appendix 1 of footnotes filed with this document.*

10. Recent research has also indicated that Covid-19 vaccinations can cause long-term damage to the immune system, making people more susceptible to cancer and other serious diseases in a way similar to AIDS. This immuno-erosion has been dubbed VAIDS (Vaccine Acquired Immune Deficiency).[2]

11. Plaintiff realizes that the statements in paragraphs # 8-10 above are counter to the prevailing narrative pushed by public health officials and reported in the Main Stream Media. Unfortunately, they are also true. We have been "through the looking glass " in this country for the last two years. What is being promoted by non-stop propaganda as the truth, is false, and what is true has been censored. Big Pharma's narrative which has been adopted by high government officials and agencies, and reinforced by false Main Stream Media reporting and High Tech censorship, has been based on lies and fraudulent scientific research. The bottom line is that Covid-19 vaccines are not fully safe or effective for everyone, and the decision whether to take them should not be coerced as discussed in more detail below.

12. First, consider some of the other factual allegations which Defendant has not yet denied and should be presumed to be true: (Paragraph # are from Plaintiff's Amended Complaint)

A. #16. *"It is now well established by evidence-based science that the vaccines available to protect against SARS-CoV-2 are not able to provide sterilizing immunity. From the beginning, public health officials acknowledged that SARS-CoV-2 vaccines ... were not designed to stop infection and transmission of the virus."*

B. #17. *"The Centers for Disease Control ("CDC") recently released the findings of a study that confirms the Vaccinated are as infectious as the Unvaccinated. The study also showed the Vaccinated are as likely to contract COVID-19 as the Unvaccinated."*

C. #18. *"Further, a study recently published in Israel, which exclusively uses the same Pfizer vaccine used in the US, found that the Unvaccinated who were*

*Covid survivors were 13 times less likely to get Covid than those who were "fully Vaccinated" and not Covid survivors."* This study pre-dated the Omicron variety which is discussed in Paragraphs # 65-68 below.

D. All of Paragraphs #26-39 detailing the history of the International codes and treaties, as well as Federal and State laws and regulation against the use of coercion in experimental medical treatment and the paramount importance of "informed consent" in all medical treatments. There has been a tendency to highlight the citing of the Nuremberg Code to try to discredit this argument, as if Plaintiffs are equating modern medicine with the horrors inflicted by Nazi doctors on prisoners in World War II. The argument for "informed consent" starts with the Nuremberg Code's first principle that, "The voluntary consent of the human subject is absolutely essential," but it certainly doesn't end there.

E. # 41. That, *"Pursuant to Title 21 of the United States Code, products and devices authorized under an EUA must be optional to the user as the basic standards for testing, evaluation, and approval have been bypassed by the FDA due to an emergency. Title 21 United States Code, Section 360bbb-3(e)(1)(A)(ii)."*

F. # 43. *"The FDA has not approved any existing vaccine intended to be used against SARS- CoV-2 other than through an EUA. Although the FDA recently rushed through "approval" of a prospective COVID-19 vaccine, it is not actually one of the vaccines that are currently publicly available. The vaccines in general use remain under a EUA."* This statement about the Pfizer vaccine, remains true despite the fact that the FDA also recently gave "full approval" to a version of the Moderna vaccine.[3] None of the vaccines currently available from either Pfizer or Moderna is the "approved" version and likely will not be, since if the vaccine is not given under a EUA, drug companies would lose their liability shield. Also, if either one of the "approved" vaccines were actually in use, then all the other EUA vaccines would have to be discontinued, as you can only have a EUA when there is no effective alternative.

G. #45. *"It is unlawful under a EUA to even represent that the vaccines are safe*

*or effective, leave aside to mandate or coerce them. All these vaccines (currently in use), whether approved or available, are still in the experimental phase and will be for many years to come and cannot be mandated."* This was also true of the commonly used PCR Covid test, which was also being given under a EUA until removed from the market on Dec. 31 2021 and other tests still being used under EUAs.[4]

H. # 49. *"...the COVID-19 vaccines employ a novel mRNA technology that has not previously ever been able to pass the trial phase and become licensed for use in human beings due to significant safety problems identified in animal and other trials. These "vaccines" are in fact not traditional vaccines at all, but a variety of gene therapy."* It is for this and many other reasons that, as argued in Plaintiff's Legal Memorandum in support of his Motion for a TRO/Preliminary Inunction, (herein referred to simply as Plaintiff's "Legal Memorandum") the court should take a new look at the outdated Jacobsen precedent which should only apply to traditional "sterilizing" vaccines and not modern gene therapy technology that could not have been foreseen in 1905. If the current vaccines were in fact able to prevent catching or spreading the virus, then Jacobsen might apply, but they don't.

I. #55. *"... more severe cases of Covid are almost exclusively found in those of advanced years or among those who have pre-existing medical morbidities such as obesity, diabetes, heart disease or a compromised immune system. In fact, studies have estimated that the survival rate from Covid for people under Age 50 who don't have any of those co-morbidities is over 99.9%, less deadly than the common flu for that cohort."*

J. #57. *"... some studies have estimated that among young healthy people, the chances of dying from the vaccine are higher than the risk of dying from Covid, not to mention the possibility of long-term debilitating side effects."* In fact, Plaintiff's proposed expert witness, Dr. Peter McCullough, recently testified in a U.S. Senate hearing that nobody under the age of 50 should take the vaccine due to the risk being worse than the benefit.[5]

K. #72. "*Official statistics have been corrupted to increase the public fear in two main ways. First, deaths "from" the virus have been compounded with deaths "with" the virus. This inflates the total number of alleged deaths because people who have died of other causes are counted as "Covid" deaths."* Also the CDC has reported that only 6% of Covid deaths were without other co-morbidites. [6]

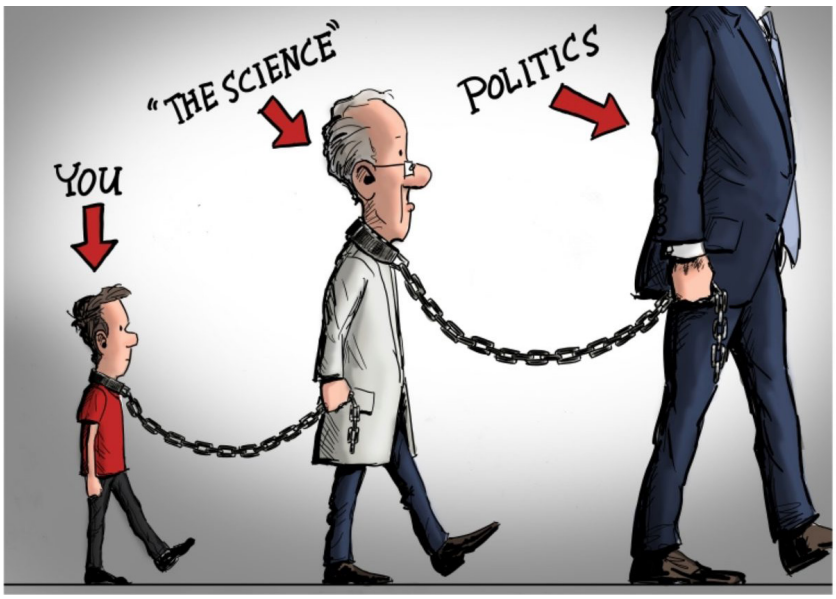
L. #73. *"...the PCR tests which were touted as the "gold standard" for confirming infection with Covid were misused to create a large number of false positives, adding to the fear factor. The CDC has acknowledged this and recently modified the number of "PCR cycles" recommended to be used in the test."*

N. #85. that, *"... studies have shown that those who have already had the virus may be as much as four times more likely to have a bad reaction to the vaccine."*

13. Taken all together, these facts, presumed true, provide ample evidence that there is no greater risk from the Unvaccinated than the Vaccinated to spread the virus, and therefore there is no rational basis to discriminate against the Unvaccinated. Further, with the addition of new information that has come to light since the Amended Complaint was filed in October described below, Plaintiff will show that there is something very rotten in the state of the medical profession and government health regulatory agencies. Sub-paragraphs K & L above which greatly exaggerated the real risks of Covid-19, were part of an internationally coordinated and very successful media propaganda campaign to create a "pandemic of fear" within the population. Once they succeeded in putting most of the population into a state of panic, they could sell disinformation because people had lost their capacity for reason. This fear helped the State conduct a campaign of coercion to take the vaccine because the public had been convinced by constant media brainwashing that they would face a grave danger if they didn't take the vaccine, even though for most of the younger, healthier cohort the actual risk was minimal, as stated in Paragraph 12J above.

## III. The Greatest Scientific Fraud in History

14. This cartoon may be worth 1,000 words in locating the source of the problem:




15. As argued in Plaintiff's Legal Memorandum, what is wrong here is that bureaucratic decisions and guidelines pushing the vaccines, are being made by International, National and State agencies, that are influenced more by political than medical considerations.

16. The court in Jacobsen was no doubt right in presuming that in 1905 the State of Massachusetts had the best interests of its citizens health in mind when they adopted a small pox vaccine requirement. Unfortunately, in today's environment, no such presumption of integrity should be extended to any government organization. From the World Health Organization, to the CDC, the FDA and other federal agencies quarterbacked by the infamous Dr. Anthony Fauci, politics and the influence of Big Pharma money, has corrupted all levels of policy making.

17. Emails released in Dec. 2021 show that Dr. Fauci, head of the National Institute of Allergy and Infectious Diseases (NIAID) conspired in October 2020 with his boss, Francis Collins, head of the National Institute of Health (NIH) to discredit three of the world's foremost epidemiologists who had come out with the Great Barrington

Declaration which advocated a more traditional and balanced public health response to the pandemic.[7] That Declaration, which was subsequently signed by thousands of doctors and scientists around the world, stated that lockdowns were not needed for the average person and the focus instead should be put on protecting the elderly and those with weakened immune systems. Hindsight has revealed that those lockdowns caused far more damage than they prevented.

18. By leading an effort to have the Declaration discredited by government health agencies, attacked in controlled media articles, censored from social media and banned from search engines, Dr. Fauci was able to preserve the status of the still-in-development vaccines as the one and only official strategy for dealing with Covid-19.

19. Former Harvard Prof. Martin Kulldorff, one of the authors of the Declaration, said in a recent interview that, "'Science and public health are broken." [8] He left Harvard in November of 2021. He points out that Dr. Fauci, as head of NIAID, has control of a $6 billion budget that includes funding many grants for scientific research. Kulldorff claimed that Dr. Fauci uses this financial leverage to control not only who gets money for research, but also what gets published in scientific journals.

20. Prof. Kulldorff himself had difficulty having a scientific paper published early on in the pandemic in April of 2020. Finding no scientific journals willing to buck the narrative, he published, "Covid-19 Counter Measures should be Age Specific," on his Linked-In page. This later caused Linked-In, a professional social network owned by Microsoft, to at least temporarily delete the article and delete his whole account. This is the type of Big Tech censorship that has become common in the last two years.

21. Particularly at the federal level, there is a "revolving door " for officials who go back and forth between high paying jobs in the drug industry to positions of high regulatory authority in the government. In this manner, the CDC, the FDA and other agencies have been "captured" by Big Pharma who are making billions of dollars from the fraudulently approved and illegally coerced use of the Covid-19 vaccines. (Pfizer alone recently reported 2021 vaccine sales of $36 billion. [9])

22. A great deal of money is also spent on lobbying activities to insure that Congress maintains a friendly stance on drug regulation. The pharmaceutical industry is the largest lobbyist in Washington D.C. estimated to have spent $4.95 billion on lobbying and political contributions in the 23 years between 1998-2021, an average of $215 million a year.[10]

23. There is a further conflict of interest because drug companies also pay large "user fees" to the FDA to help cover the cost of reviewing a new drug or vaccine. As disclosed in a hidden camera interview of FDA Executive Officer Chris Cole released on Feb. 16, 2022 by Project Veritas, these fees totals almost $1 billion a year, to the agency, whose total budget is $ 5.5 billion.[11] This influence understandably discourages FDA employees from wanting to "rock the boat," according to Cole.

24. The corruption is perhaps best illustrated by the coordinated effort to prevent the use of effective drugs such as the anti-malarial Hydroxychloroquine and the anti-parasitic drug Ivermectin in the early treatment of Covid-19, a conspiracy that Dr. Fauci also played a major role in. Dr. Peter McCullough has charged that "academic fraud" was committed in scientific papers used to discredit Hydroxychloroquine. He has calculated that the use of rejected early treatment protocols could have reduced the total number of deaths from Covid-19 by 85%.[12]

25. This effort to prevent the use of these effective early treatments included a massive public propaganda campaign against Ivermectin. The FDA itself tweeted a bizarre message in which they derided the life-saving drug as a horse de-wormer. (Right) Doctors who advocated for the use of the drug have been censored, canceled, fired and threatened with loss of their medical license.

26. With a total death toll of Covid to date in the United States of over 900,000, that's hundreds of thousands of people who may have died needlessly or suffered more severe illness due to bad public health policy. (Because deaths from Covid have been exaggerated due to miscounting as stated above, not all those lives would have been saved, however, it is still a significant number of people affected.)

27. As a result, many patients, some here in New York State, have had to go to court to try to force doctors and hospitals to give this life saving treatment. (See *Dickinson v. Rochester General* in which an Orleans County Supreme Court Judge ordered the hospital to administer Ivermectin. Index # 47013). The patient subsequently recovered after receiving the treatment.

28. Both Hydroxychloroquine and Ivermectin are listed in the WHO list of essential medicines and have been found to be extremely safe for human use. However, some pharmacies have refused to fill prescriptions for Covid-19 use, and some hospitals have refused to administer the drugs even if a prescription has been written.

29. Why are these safe and beneficial drugs met with such hostility? Sadly, you need only follow the money to realize that if these early treatment protocols had been shown to be effective, the FDA would not have been able to issue an Emergency Use Authorization for the Covid-19 vaccines. By law, EUAs can only be granted when there is no other effective treatment available. No EUA equals no vaccines, no liability protection, no billions of dollars in revenues to the drug manufacturers and the medical institutions that administer the only "approved" treatment.

30. The medical fraud used to get the Covid-19 EUAs approved may also have included the clinical trials conducted before the vaccines were approved. In Nov. 2021, the highly respected British Medical Journal (BMJ) published an article about whistle blower Brook Jackson who worked for a Texas company conducting clinical trials on Covid-19 vaccines for Pfizer. [13] She alleges that the company was not following FDA protocols including, but not limited to: (1) enrollment and injection

of ineligible trial participants; (2) falsification of data, poor record keeping, and deficiency of documentation of "quality control"; (3) deficiencies in and failure to obtain informed consent from trial participants; (4) inaccurate adverse event capture and reporting; (5) failure to preserve blinding and other irregularities.

31. That there may be a lot to hide in Pfizer's clinical trial data, is indicated by the fact that the FDA has been fighting a Freedom Of Information request to release the data. They told a federal court that they would need 55 years to release all the data that it took them less than a year to analyze. (See *Public Health and Medical Professionals for Transparency vs. FDA*, Northern District of Texas Case # 4:21-cv-01508-P) Despite the government's claim that they could only release 500 pages a month, the court ordered an expedited release of 10,000 pages a month.

32. Dr. Peter McCullough charged at his recent U.S. Senate testimony on Jan. 25, 2022, that CDC studies that claimed to show a reduction in hospitalizations from those receiving a booster were also fraught with "academic fraud."[14]

33. There is a further problem with the CDC refusing to release data that might put the effectiveness of the vaccines in question. As reported in a recent New York Times story[15], the CDC admitted that they have been compiling data on so-called "breakthrough infections" where people get Covid despite vaccination, but they are refusing to release it. The justification given was that the data might be "misinterpreted" and increase "vaccine hesitancy." The fear of creating "vaccine hesitancy" by telling people the truth is the standard reason given by social media and other high tech companies for wholesale censorship of opposing views. This failure to disclose important information makes a mockery of "informed consent."

34. Deception by Government agencies is not just a Federal problem. Defendant NYS Health Commissioner Marry Basset recently admitted in a press conference that her Department had overstated the amount of children hospitalized from Covid in New York City in order to "encourage" parents to get their children vaccinated.[16]

35. In summary, there are allegations of fraud in the discrediting of alternatives to the vaccine, fraud in the clinical trials that resulted in the issuing of a EUA for the vaccines, fraud in CDC studies attempting to establish the effectiveness of the vaccines and withholding of clinical trial data and data that would show that vaccines are ineffective. While Plaintiff realizes that some of this involves new matters not plead in the Amended Complaint, these allegations have only recently come to light, but are pertinent to the case.

36. Plaintiff realizes that this court is not the proper forum to bring the perpetrators of these crimes to justice, but they should and will pay a steep price if it is proven that they acted illegally in pursuit of political advantage and the Almighty Dollar. At that time, it will not be a defense for people who should have known better to say that they were "only following the guidelines" of the FDA, the CDC and other corrupt government agencies.

## IV. Evidence of Discrimination and Coercion

37. Defendant has also not yet denied the allegation in Paragraphs #89-90 of the Amended Complaint that there is a purpose of coercion behind all their discriminatory policies. This will be difficult for them to maintain since the State has been illegally mandating these experimental vaccines for many of its own state workers. Although this case is not about employer mandates in general, they are clearly illegal under all "informed consent" federal rules for experimental drugs when ordered by the State, the Jacobsen case notwithstanding. Jacobsen may allow broad latitude to individual states to adopt legitimate public health policies, but it doesn't license states to break federal laws and regulations.

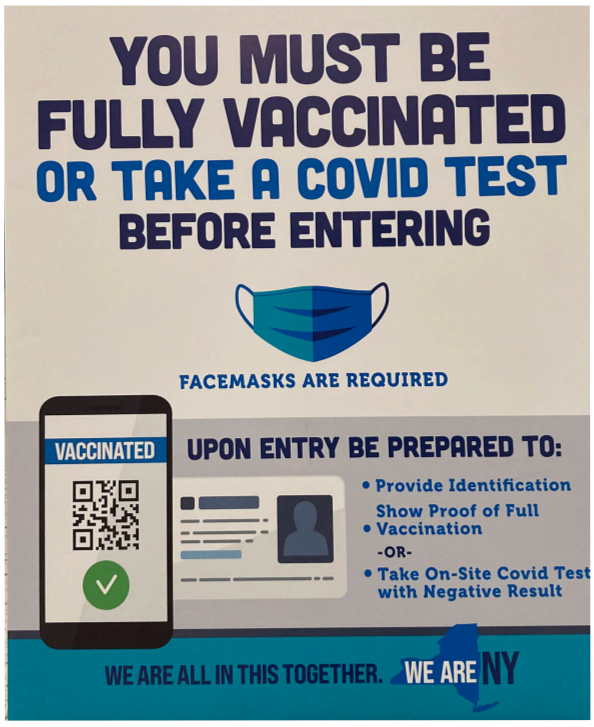
38. Some of the cases recently decided upholding employer mandates by federal district courts, have been based on the fact that employer mandates are not "state action." (See *Bridges vs. Houston Methodist Hospital,* Case # 4:21-CV-1774, currently under appeal in the 5th Circuit) These cases should be distinguished from this case in which the State is directly attempting to coerce its citizens into taking an

experimental medical treatment in violation of federal law and regulations.

39. Defendants recently promulgated "emergency regulations" on Dec.10, 2021 in effect from Dec. 13, 2021 through Feb. 10, 2022 that allowed and encouraged businesses to discriminate against the Unvaccinated by barring entry into "indoor spaces." (Full discussion of this issue is found in the Plaintiff's TRO motion, Legal Memorandum and his Reply to Defendant's Answer to that.)

40. Although the Dec. 10 regulations were not included in the Amended Complaint, because they had not yet been issued, it is a further example of the State's continuing pattern of coercive discrimination against the Unvaccinated, dating back to before Plaintiff filed his original complaint in August of 2021. In his Amended Complaint, Plaintiff did make objection to the underlying regulation cited as the authority for the Dec. 10 regulations. In Paragraph # 10 he wrote that, *"He also objects to the language in the new 10 NYCRR Sec. 2.60 allowing the Commissioner to make distinctions between Vaccinated and Unvaccinated people in certain "settings", as such distinctions have no scientific or rational basis and would represent further violations of the right to Equal Protection under the 14th Amendment."*

41. In addition to many businesses requiring "Vaccinated only" for entry (See Appendix 2), some elected to require either proof of vaccination or a recent Covid test as a condition of entry. This policy was recently adopted by the NYS Capitol to prohibit entry of citizens who wanted to lobby their representatives, infringing on the 1st Amendment right to redress grievances.




*Right: Sign at the entrance to the State Capitol in Albany on Jan. 5, 2022.*

42. Many businesses and venues continue to keep discriminatory policies in place even though the regulations were allowed to expire on Feb. 10, a phenomena Plaintiff calls "Ghost Regulation." For example, the Rochester Institute of Technology continued to say that high school cheerleaders must be vaccinated to participate in the State Championships to be held on their campus on March 5. On Feb. 18, however, they changed their policy and said that the Unvaccinated could compete, but limited the number of people in the venue to 400 at any one time. This means parents and other spectators will not be allowed to attend. Do a few unvaccinated cheerleaders constitute such a threat to the public health that spectators must be banned? This is evidence of a mass psychosis that some psychology experts believe has overtaken the American public.[17]

43. It is worth noting that the underlying regulations, 10NYCRR§2.60, that the Defendant relied on in adopting the Dec. 10 "emergency regulation" remain in place and more such discriminatory "emergency regulations" could be brought back at any time unless this court finds these kinds of regulations unconstitutional under federal law. (The final result of the State's appeal of the Nassau County Supreme Court decision that found 10NYCRR§2.60 in full to be unconstitutional, null and void is probably months away.)

44. On Dec. 1, 2021, the NYS Health Department added a new regulation 10NYCRR§2.62, dealing with Covid-19 testing. Under this regulation, entities requiring routine Covid-19 testing, "may accept documentation demonstrating full vaccination in lieu of imposing such testing requirements." Following this rule, many employers, both public and private, continue to apply unequal testing protocols on the Unvaccinated vs. the Vaccinated. These rules apply to many employees who are not subject to a vaccine mandate, including state correctional offices, teachers, and in some cases, students in local school districts. Also, those who have been granted Religious or Medical Exemptions from Vaccine mandates by their employer, or in the case of students, by their college, are being subjected to punitive testing regimes.

45. The Defendant has also promulgated discriminatory rules for the quarantine of people who may have been exposed to a Covid-19 positive person based on Vaccination status. According to the NYS Health Dept. web site, as of Feb. 19, 2022, if you are not fully vaccinated and are exposed to someone who tested positive, you must quarantine by wearing a "tight-fitting mask" for 10 days and take a Covid test at least 5 days after your last close contact with the Covid positive person. If you are fully vaccinated, these quarantine rules do not apply. Since both vaccinated and unvaccinated people are at least equally likely to contract the virus from such close contact, these rules are again clearly discriminatory.

46. On that same website, different rules are recommended for (K-12) students who may be exposed to Covid, also according to vaccination status. Fully vaccinated students who have been exposed are allowed to continue to attend school during their quarantine period and also work at school or participate in extracurricular activities. Unvaccinated students must quarantine.

47. In many of these cases, no efforts are made to preserve the medical privacy of the Unvaccinated, as their vaccination status is publicly disclosed subjecting them to further stigma and prejudice. It has been reported, for example, that in some school districts, Unvaccinated students are required to line up in the hall for weekly testing, a procedure that causes those students to be easily identified by fellow students and staff as Unvaccinated and may subject them to being stigmatized by teachers and classmates. This violation of privacy, public shaming and the cost, inconvenience and possible health risk of frequent testing is apparently intended to increase the coercive pressure on the Unvaccinated.

48. Such a policy of mandating Covid tests in many circumstances is itself illegal since all Covid test are only approved for use under a EUA, as stated in Paragraph #12 G above. This means that there has not been sufficient scientific testing to prove that the tests are either safe or accurate, and the long-term health affects of frequent testing are not known. Despite that, many people, including public school teachers, have lost their jobs or been suspended without pay for refusing to test regularly.

49. Although not directly within the Defendant's jurisdiction, the NYS Department of Social Services has also in effect imposed vaccination requirements on people seeking assistance after losing a job for failure to comply with a vaccination mandate. Under an advisory sent out under 18NYCRR385.11-13, social workers are instructed not to process applications for Temporary Assistance or SNAP food stamp benefits to those who left employment for that reason. When you couple that with the denial of Unemployment Benefits to those in similar situations, you have the worst kind of coercion against those who are most in need of help and evidence of a unified State policy to discriminate and coerce across Departments.

50. Discrimination against the Unvaccinated is like a cancer that steadily invades the body politic and metastasizes in all areas. One of the more deadly forms of this cancer exists in the growing discrimination in the provision of medical services. Recently reported cases[2] of medical discrimination include Doctors refusing to accept new patients who are not vaccinated or refusing to prescribe medications to the Unvaccinated. Plaintiff also has reports of doctors who refuse to see Unvaccinated patients in person, but will only see them remotely by Zoom. For more serious health issues, this can not be as effective a method of diagnosing a patient than seeing them in person and performing physical tests on them. These are not just minor inconveniences, but potentially life threatening restrictions.

51. In addition, unvaccinated patients who have been admitted to hospitals report that they are subject to harassment by many of the medical staff, including being constantly pressured to get the vaccine, or even told they are required to take the vaccine to receive medical treatment. This is hardly "informed consent."

52. In other cases, unvaccinated patients report receiving sub-standard care on account of their vaccination status. They report being put in semi-solitary confinement in the hospital where they do not even receive help with routine

2 Although some of the examples given in this medical section are anecdotal, the sources are cited in the attached Appendix 2.

personal hygiene. This is apparently another form of coercion to try to force patients to submit to the vaccine.

53. The right of friends and family to visit their loved ones in medical institutions and nursing homes is also being denied or impaired. In many nursing homes, unvaccinated family members are not allowed to visit loved ones unless they have had a recent Covid test, while vaccinated visitors are allowed in without a test. Whether this is the result of current State regulation or the lingering "ghost" of prior regulations does not really make any practical difference if you are barred or required to take additional testing to see your loved one.

54. Some of these medical discriminations may not be the result of current State regulation, but rather exist as echoes of "ghost regulations" that live on after the actual regulation has expired or been changed. What is the state doing to prevent this kind of continuing discrimination? The Defendant's actions in creating an atmosphere of discrimination against the Unvaccinated has added to the prejudice and stigma against those who are unvaccinated for any reason, including legitimate medical or religious ones and thus allows these ghosts to continue to exist.

## V. Difficulty of Identifying all Discriminatory Regulations

55. Admittedly, it is difficult to bring a specific case against a Defendant that plays hide and seek with their regulations by changing them on a regular basis. During the pendency of this suit, the Defendant has adopted a number of different regulatory positions. For the Defendant to complain that Plaintiff  does not state a claim that is specific enough to be identified, is like the child who murders his parents and then begs the court for mercy because he is an orphan.

56. According to their own website, Defendant employs over 5,000 people and regulates a vast number of health related matters. It would be a full-time job for Plaintiff to examine all the regulations and guidance that the Health

Department is constantly issuing and revising. The examples given in this Reply probably represent a small fraction of the number of discriminatory policies and regulations that the Defendant has issued. Once the Defendant answers Plaintiff's complaint, perhaps Discovery can be used to unravel all of the myriad regulations and guidance that involves discrimination against the Unvaccinated in the many settings that the Department of Health oversees.

## VI. State has Created Two Classes of Citizenship

57. By discriminating against the Unvaccinated in so many ways, the State has created a Two-Class system of citizenship in society, where, in addition to direct discrimination by the State, private discrimination is tolerated and tacitly encouraged. This has been done by:

A. Enacting discriminatory regulations on masking in June 2021, that were quietly repealed in August of 2021. By failing to announce or publicize the end of those regulations, this kept the public following them to this day.

B. Enacting discriminatory "emergency regulations" effective from Dec. 13, 2021 through Feb. 10, 2022 allowing owners and managers of all "indoor spaces" to bar the Unvacccinated entirely with no mask option, as discussed in Plaintiff's Reply to Defendant's PTO Answer. This was well after the science had become clear that there was no greater risk from the Unvaccinated to spread the virus. Again, many businesses and venues continue to enforce the ban even after the regulations expired.

C. Enacting a large number of additional regulations discriminating against the Unvaccinated, some of which are outlined in this filing, which discrimination continues even after those regulations are withdrawn or modified.

D. By prejudicial statements from public officials from the Governor on down belittling the Unvaccinated and trying to turn public opinion against them by falsely stating that the Unvaccinated alone were causing the epidemic to spread, were to blame for a shortage of hospital beds, etc.

58. Introduction of the State's Excelsior Pass in March of 2021 was designed for no other purpose than to create two classes of citizens. It is disingenuous for the Defendant to claim that the Excelsior Pass is "a totally voluntary" program. It is clear that the state has vast regulatory power over many industries, that in effect includes the power to regulate them out of existence. When the State "suggests" that businesses might want to use the Pass, it's kind of like the local mobster asking for protection money. The implication is clear, "You have a nice business here, it would be too bad if something happened to it."

59. Further, by retaining the right to decide which medical tests qualify to be included in the electronic Pass record, the State increases its power over individual health decisions. For example, by refusing to include the results of an Antibody test as proof of "Natural Immunity" for Covid, the State is casting all those who have such immunity into second class citizenship who, at the next stroke of a regulator's pen, can be banned from a growing list of facilities. If the Pass was truly designed to be equitable, the State would also allow the registration of those who have received religious or medical exemptions from being vaccinated.

60. Far from being a benign voluntary system, the Excelsior Pass represents a great step forward in dictatorial powers for the State, which once it is firmly established, can be used to coerce citizens to follow the latest dictate of a growing medical and government tyranny. This is just the kind of tyranny that our Founding Fathers fought a Revolutionary War to escape and drafted the Bill of Rights to protect us from.

## VII. Dangers of Medical Tyranny

61. We need only look to our neighbors to the North to see how quickly a medical tyranny can turn into a totalitarian state. In the last few weeks, we have seen the issue of overbearing Covid-19 regulations tear apart what was thought to be one of the most stable democracies in the Western World. A State of Emergency was declared in Canada last week under which non-violent protesters against vaccine mandates were tear-gassed and assaulted by baton-wielding police. Perhaps even more troubling, banks followed government orders to freeze without a warrant the accounts of people who supported

those dissenters, even if they only made a modest donation of cash or goods, thus criminalizing dissent. This brutality and blatant illegality could only be tolerated in a population that has been conditioned by propaganda to hate the Unvaccinated.

62. Of course, similar conditioning has been going on in this country and dissent is also in danger of being criminalized here. On Feb. 7, 2022, the Department of Homeland Security issued a National Terrorism Bulletin[18] in which they stated that the country faces a heightened threat from, "an online environment filled with false or misleading narratives and conspiracy theories." Further they identified one of the key factors as , "the proliferation of false or misleading narratives, which sow discord or undermine public trust in U.S. government institutions: For example, ...widespread online proliferation of false or misleading narratives regarding ... COVID-19."

63. It wouldn't be too great a stretch to think that this legal filing in which Plaintiff openly questions the government narrative on Covid-19 and the integrity of government agencies could be classified as seeking to "undermine public trust in U.S. government institutions." Will Plaintiff be arrested and have his bank accounts frozen for daring to bring a legal action and state his position on matters of great public importance, just because he differs from the official narrative? We are on a slippery slope indeed. Will the Judge be similarly punished if he finds for the Plaintiff? And this raises a ticklish question: Can any federal judge render a fair decision? [19]

64. The federal courts, who are guardians of our most sacred rights under the Constitution, may be the last, best hope to preserve our own Republic, which is being divided along similar lines that we are see in Canada. Evidence that the storm clouds are gathering include the fact that President Biden just extended the National State of Emergency on account of the Covid pandemic that was due to expire on March 1, 2022 for an indefinite period, despite the fact that the Omicron cases are not causing any great public health problems and many states and cities are rapidly discontinuing Covid passports, masking rules and other regulations. That ongoing "Emergency" gives the President similar powers as the Canadian act. [20]

## VIII. Omicron and the End of the Pandemic

65. The emergence of the Omicron variety as the dominant strain in the last few months has to some degree lessened the effectiveness of "Natural Immunity" in preventing re-infection. A recent study at the Cleveland Clinic[21] indicated that those who survived infection from the original variety had a very low chance of contracting a re-infection with the Delta variety that was predominant for most of 2021. The study found that Natural Immunity started to fade against Omicron about 6 months after a previous infection. More than 12 months after a previous infection, people only had a 50% reduction in likelihood of catching Omicron, which was still better protection than those who had two doses of the vaccine.

66. This fact is balanced out by the fact that the Omicron variety is generally agreed to be much less virulent and thus less likely to cause severe illness or death. There are a lot of challenges with calculating the Case Fatality Rate (CFR) for Omicron, first because it is a fairly recent variety and also because, due to its mild nature, many people may never be tested for it. Researchers in California[22] have suggest it may be more than 90% less fatal than the Delta variety which would indicate a CFR somewhat less than the .1 % rate of the common flu. These calculations are also complicated by the fact that people who contract Omicron have different immunity based on Natural Immunity from previous infection, the amount of time since the previous infection or a variety of vaccination statuses.

67. This low overall mortality argues even more strongly against the application of the Jacobsen precedent in this case. As noted in Plaintiff's discussion of Jacobsen in his Legal Memorandum, smallpox in 1905 killed up to 30% of those who got the disease. The *de minimis* threat of the current Omicron variety doesn't represent a medical emergency of any sort, as it has a mortality similar or less than the common flu for all age groups. When this small risk is contrasted to the major infringement of so many fundamental civil rights of the Unvaccinated, the situation calls out for stricter scrutiny and federal court redress of discrimination.

68. One of the unique features of Omicron is that it is by far the most highly contagious strain of Covid-19 yet.[23] Coupled with its low mortality, this may be a blessing in disguise. With so many people getting the virus in the last few months, a big step has been made toward reaching herd immunity. This is no doubt why the infection has dropped off sharply in the last few weeks. Gov. Hochul cited that drop in cases in allowing the Emergency Regulations to expire on Feb. 10, while falsely trying to credit her masking and discriminating rules as helping. In reality, they probably had little or nothing to do with the natural waning process of the pandemic.

## IX. Another Look at the Standard of Review

69. The court in its memorandum decision denying the TRO/Preliminary Injunction noted that, "*A Westlaw search for "Covid" yields 897 decisions in the month of December 2021 alone."* Instead of assuming that all these plaintiffs were wrong in their arguments, perhaps the court should consider that this outpouring of legal cases is because there is something fundamentally wrong with coercive government policies trying to force a dangerous experimental treatment. Every case is unique and Plaintiff is unaware of any case arguing all of the points that he is raising. All of the Covid cases cited in the court's decision on the TRO/ Preliminary Injunction can be clearly distinguished from this case.

70. In this court's decision, the recent Supreme Court decision in *Roman Catholic Diocese v. Cuomo (__ U.S. __, 141 S. Ct. 63, 70 (2020)* was cited as supporting a "Rational basis" standard for judging the State's actions. As Justice Gorsuch pointed out in his concurring opinion, however, at the time the Jacobsen case was decided in 1905, modern strict scrutiny analysis had not yet been invented. Justice Gorsuch goes on to say that, "Jacobson didn't seek to depart from normal legal rules during a pandemic, and it supplies no precedent for doing so. Instead, Jacobson applied what would become the traditional legal test associated with the right at issue—exactly what the Court does today. Here, that means strict scrutiny..."

71. While the *Roman Catholi*c case involved a 1st Amendment claim of infringement of religious freedom, Justice Gorsuch also suggested that "strict scrutiny" tests could be applied in other Covid related cases noting, "Rational basis review is the test this Court normally applies to Fourteenth Amendment challenges, so long as they do not involve *suspect classifications based on race or some other ground, or a claim of fundamental right*." (Emphasis added.)

72. This case does involve both claims of at least "semi-suspect" classification and also the infringement of fundamental rights. The door has been opened to stricter scrutiny of Covid-19 cases by the *Roman Catholic* case in the 2nd Circuit, and it only requires an intrepid judge to walk through it.

73. With respect to "fundamental rights ," Plaintiff is aware that numerous courts have found that the right to refuse an employer vaccine mandate does not constitute a fundamental right. Plaintiff argues here, however, that although losing your job because of failure to comply with a mandate is harsh, it is not as harsh or insidious as the discrimination against the Unvaccinated perpetrated by the Defendant. A person who loses their job can find other employment. A person who finds society closing many doors to him, can not find another society to live in without leaving the state. Isn't there a fundamental right not to be forced to flee?

74. As argued in Plaintiff's Legal Memorandum, when a group is being discriminated against by regulations, as well as being persecuted by reason of public bias and hostility in part created by prejudicial statements made by high State public officials, and that group is a political minority with no effective power to protect itself from the unjust and unconstitutional tyranny of the majority, the federal courts must step in to protect fundamental civil rights. Rational basis is too low a standard when the lives, health and freedom of millions of New Yorkers are at risk.

## X. Conclusion

75. After you sift through all the Exhibits and Declarations, the Defendants entire case basically rests on one assertion made in the Department of Health Declaration

of  Emily Lutterloh MD, MPH that "vaccination remains the only recommended way to gain immunity from COVID-19." This stubborn, one-size-fits-all policy has not only been ineffective, it has been deadly.

76. Between the hazards of adverse vaccine reactions and the failure to provide early treatment, perhaps as many as 1 million people in the United States alone may have died unnecessarily in the last two years because of faulty medical and health regulatory policies. Millions more, no doubt, have suffered serious non-fatal vaccine side effects or had their Covid recovery hindered by failure to be offered early treatment. In the future, perhaps many millions more will die or be damaged from the unknown long-term effects of the vaccine that are only now starting to be seen. How many have to die or be injured before the State gives up this damaging policy?

77. Plaintiff notes that some fun was had by the court in its decision on his application for a TRO/Preliminary Injunction questioning his ability to tolerate a mask while working out at the gym and minimizing any irreparable harm he might of suffered without an injunction. This type of death and damage for millions of people, however, is not a laughing matter. I implore the court to look beyond any technical faults in this *pro se* pleading and get to the equities of the situation.

78. In regard to the Court's decision, Plaintiff was convinced by the argument that he did not meet the standard of irreparable harm and therefore hereby withdraws his request for a Preliminary Injunction.

79. All discriminatory measures designed to coerce people into getting a Covid-19 vaccine by treating the Unvaccinated unequally must be stopped. This does not mean that consenting adults may not continue to choose to take a Covid-19 vaccine based on their own risk assessment and the advice of their personal physician. For the many people whose risk/benefit analysis or religious objections causes their personal "informed consent" to come down against taking the vaccine, however, the State needs to back off, allow personal freedom of choice and stop the coercive discrimination.

80. At this point, almost everyone who wanted to voluntarily take the gene therapy treatment has already done so (as well as a great many more who have been coerced.) Every additional person coerced into taking the vaccine by the State's harassing policies now, undertakes an unnecessary risk against their will and personal choice. Given the known safety and effectiveness issues of the vaccines and their legal status as an experimental treatment, there is no justification for this continuing coercion. It is illegal, immoral and Unconstitutional and violates every part of the fundamental freedoms that this country was founded on.

81. When the Defendant eventually answers Plaintiff's complaint, they will no doubt raise the issue of Plaintiff's standing to complain of all these myriad ways in which the Defendant is discriminating against the Unvaccinated. Any single Unvaccinated person can not know when discrimination will raise its ugly head in his own case, but he can be certain that it eventually will, and when it does, it will be often be hard to litigate.

82. Plaintiff's health is fairly good now, but at age 71, who knows how long that will continue? He could need specialized medical care at any time, be hospitalized or even end up in a nursing home. When you need relief from discrimination it may already be an emergency. Beyond that there is a real injury to all of society when even one member is discriminated against. As the poet John Donne said, "No man is an island... never send to find out for whom the bell tolls. It tolls for thee."

83. As a *pro se* litigant, Plaintiff acknowledges he could have crafted his legal arguments with more precision if he were an experienced federal litigator. He is, however, an experienced journalist, having published and edited a weekly paper in Geneseo for 18 years. He knows how to research a story and assess the veracity of sources. Based on his journalistic background, Plaintiff has a good nose for distinguishing between objective news and propaganda, which in his estimate is approaching 100% of what is being reported in the Main Stream Media today. Plaintiff apologizes if his legal filings read more like journalism than legal argument. Old habits die hard.

February 26, 2022

By
s/Michael Corrin Strong

Plaintiff, Pro Se