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10 Attorneys for **Plaintiffs and the Class**

11
12 **UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN JOSE DIVISION**

15 **UNIFYSCC**, an unincorporated California
16 association on behalf of employees in Santa Clara
County; **TOM DAVIS**, individually, and on
17 behalf of all others similarly situated; **MARIA**
RAMIREZ, individually, and on behalf of all
18 others similarly situated; **ELIZABETH**
BALAYUT, individually, and on behalf of all
19 others similarly situated;

20 Plaintiffs,

21 vs.

22 **SARA H. CODY**, in her official capacity as the
Santa Clara County Public Health Officer;
23 **JAMES WILLIAMS**, in his official capacity as
the County Counsel of Santa Clara County;
24 **JEFFREY SMITH**, in his official capacity as
the County Executive of Santa Clara County; and
25 **SANTA CLARA COUNTY**;

26 Defendants.

Case No.: 22-cv-01019 BLF

**DECLARATION OF BETHANY
ONISHENKO IN SUPPORT OF
PLAINTIFFS' MOTION FOR PARTIAL
SUMMARY JUDGMENT**

DATE: October 24, 2024
TIME: 9:00 a.m.
CTRM: 3, 5th Floor
JUDGE: Hon. Beth Labson Freeman

1 I, Bethany Onishenko, declare:

2 1. I am an attorney duly licensed in the State of Arkansas and am admitted to this matter
3 *pro hac vice*. I am counsel for Plaintiffs Unify Santa Clara County, Tom Davis, Maria Ramirez,
4 Elizabeth Baluyut, and the Class. I submit this declaration in support of Plaintiffs' Motion for Partial
5 Summary Judgment. I have personal knowledge of the matters set forth below and could and would
6 testify competently to them if called upon to do so.

7 2. Attached hereto as **Exhibit 1** is a true and correct copy of the Plaintiffs' Notice of
8 Deposition of Santa Clara County's Persons Most Knowledgeable pursuant to Federal Rule 30(b)(6).

9 3. Attached hereto as **Exhibit 2** is a true and correct copy of Santa Clara County's (the
10 "County") objections to the Rule 30(b)(6) notice. Santa Clara County subsequently designated Sarah
11 Rudman to testify concerning the scientific information supporting the County's vaccination policy.
12 During the Class Period, Dr. Rudman was Assistant Public Health Officer or Deputy Public Health
13 Officer of the County of Santa Clara's Public Health Department. *See* Exhibit 3 at 15:14-16:9; Exhibit
14 4 at ¶ 3.

15 4. Attached hereto as **Exhibit 3** are true and correct copies of excerpts of the certified
16 transcript of the deposition of Sarah Rudman, M.D., conducted on March 12, 2024.

17 5. Attached hereto as **Exhibit 4** is a true and correct copy of Exhibit 2 to the certified
18 transcript of the deposition of Sarah Rudman, M.D., conducted on March 12, 2024.

19 6. Attached hereto as **Exhibit 5** is a true and correct copy of Exhibit 3 to the certified
20 transcript of the deposition of Sarah Rudman, M.D., conducted on March 12, 2024.

21 7. Attached hereto as **Exhibit 6** is a true and correct copy of Exhibit 4 to the certified
22 transcript of the deposition of Sarah Rudman, M.D., conducted on March 12, 2024.

23 8. Attached hereto as **Exhibit 7** is a true and correct copy of Exhibit 5 to the certified
24 transcript of the deposition of Sarah Rudman, M.D., conducted on March 12, 2024.

25 9. Attached hereto as **Exhibit 8** is a true and correct copy of Exhibit 6 to the certified
26 transcript of the deposition of Sarah Rudman, M.D., conducted on March 12, 2024.

27 10. Attached hereto as **Exhibit 9** is a true and correct copy of Exhibit 7 to the certified
28 transcript of the deposition of Sarah Rudman, M.D., conducted on March 12, 2024.

1
2 11. Attached hereto as **Exhibit 10** is a true and correct copy of Santa Clara County's
3 COVID-19 Risk Tiers and Risk-Rating Criteria produced by Defendants in discovery and identified as
4 Bates Nos. County-UnifySCC_002035-36.

5 12. Attached hereto as **Exhibit 11** is a true and correct copy of relevant excerpts from the
6 certified transcript of the deposition of Megan Doyle taken on June 23, 2023.

7 13. Attached hereto as **Exhibit 12** is a true and correct copy of a Religious Exception
8 Request Form that County personnel filled out to request a religious exemption from the County's
9 COVID-19 vaccination requirements and which was marked as Exhibit 13 to the deposition of Megan
10 Doyle and Exhibit 2 to the deposition of Guy Nuzum. Ms. Doyle testified during her deposition that
11 this form was used by the County. *See* Exhibit 1112 at 143:13-20. Mr. Nuzum also testified during his
12 deposition that this form was used by the County. *See* Exhibit 21 at 23:1-10.

13 14. Attached hereto as **Exhibit 13** is a true and correct copy of relevant excerpts of the
14 certified transcript of the deposition of Lucinda Woodson taken on February 29, 2024.

15 15. Attached hereto as **Exhibit 14** is a true and correct copy of Exhibit 1 to the certified
16 transcript of the deposition of Lucinda Woodson, taken on February 29, 2024.

17 16. Attached hereto as **Exhibit 15** is a true and correct copy of relevant excerpts of the
18 certified transcript of the deposition of Miguel Marquez taken on March 21, 2024. During the Class
19 Period, Mr. Marquez was the Chief Operating Officer of the County of Santa Clara. *See* Exhibit 15 at
20 15:12-18; Exhibit 17 at ¶¶ 1-2.

21 17. Attached hereto as **Exhibit 16** is a true and correct copy of Exhibit 2 to the certified
22 transcript of the deposition of Miguel Marquez taken on March 21, 2024.

23 18. Attached hereto as **Exhibit 17** is a true and correct copy of Exhibit 3 to the certified
24 transcript of the deposition of Miguel Marquez taken on March 21, 2024.

25 19. Attached hereto as **Exhibit 18** is a true and correct copy of Exhibit 4 to the certified
26 transcript of the deposition of Miguel Marquez taken on March 21, 2024.

27 20. Attached hereto as **Exhibit 19** is a true and correct copy of Exhibit 8 to the certified
28 transcript of the deposition of Miguel Marquez taken on March 21, 2024.

1 21. Attached hereto as **Exhibit 20** is a true and correct copy of Exhibit 10 to the certified
2 transcript of the deposition of Miguel Marquez taken on March 21, 2024.

3 22. Attached hereto as **Exhibit 21** is a true and correct copy of relevant excerpts of the
4 certified transcript of the deposition of Guy Nuzum taken on March 21, 2024.

5 23. Attached hereto as **Exhibit 22** is a true and correct copy of Exhibit 2 to the certified
6 transcript of the deposition of deposition of Guy Nuzum taken on March 21, 2024.

7 24. Attached hereto as **Exhibit 23** is a true and correct copy of Exhibit 6 to the certified
8 transcript of the deposition of deposition of Guy Nuzum taken on March 21, 2024.

9 25. Attached hereto as **Exhibit 24** is a true and correct copy of Exhibit 9 to the certified
10 transcript of the deposition of deposition of Guy Nuzum taken on March 21, 2024.

11 26. Attached hereto as **Exhibit 25** is a true and correct copy of Exhibit 10 to the certified
12 transcript of the deposition of deposition of Guy Nuzum taken on March 21, 2024.

13 27. Attached hereto as **Exhibit 26** is a true and correct copy of Exhibit 11 to the certified
14 transcript of the deposition of deposition of Guy Nuzum taken on March 21, 2024.

15 28. Attached hereto as **Exhibit 27** is a true and correct copy of relevant excerpts of the
16 certified transcript of the deposition of Terry Chavarria taken on March 27, 2024.

17 29. Attached hereto as **Exhibit 28** is a true and correct copy of Exhibit 2 to the certified
18 transcript of the deposition of Terry Chavarria taken on March 27, 2024.

19 30. Attached hereto as **Exhibit 29** is a true and correct copy of Exhibit 5 to the certified
20 transcript of the deposition of Terry Chavarria taken on March 27, 2024.

21 31. Attached hereto as **Exhibit 30** is a true and correct copy of Exhibit 6 to the certified
22 transcript of the deposition of Terry Chavarria taken on March 27, 2024.

23 32. Attached hereto as **Exhibit 31** is a true and correct copy of Exhibit 7 to the certified
24 transcript of the deposition of Terry Chavarria taken on March 27, 2024.

25 33. Attached hereto as **Exhibit 32** is a true and correct copy of Exhibit 8 to the certified
26 transcript of the deposition of Terry Chavarria taken on March 27, 2024.

27 34. Attached hereto as **Exhibit 33** is a true and correct copy of relevant excerpts of the
28 certified transcript of the deposition of Sarah Rudman, M.D. taken on June 13, 2024.

1 35. Attached hereto as **Exhibit 34** is a true and correct copy of relevant excerpts of Exhibit
2 16, including the expert report of Dr. Ram Duriseti, M.D., to the certified transcript of the deposition
3 of Sarah Rudman, M.D. taken on June 13, 2024.

4 36. Attached hereto as **Exhibit 35** is a true and correct copy of Exhibit 17 to the certified
5 transcript of the deposition of Sarah Rudman, M.D. taken on June 13, 2024.

6 37. Attached hereto as **Exhibit 36** is a true and correct copy of relevant pages of the notes
7 of Sarah Rudman, M.D. concerning the expert report of Dr. Ram Duriseti, M.D., produced by
8 Defendants and identified as Bates Nos. County-UnifySCC_034862-83. *See* Exhibit 33 at 8:4-14.

9 38. Attached hereto as **Exhibit 37** is a true and correct copy of relevant excerpts of the
10 certified transcript of the deposition of Arthur Reingold, M.D. taken on June 26, 2024.

11 39. Attached hereto as **Exhibit 38** is a true and correct copy of Exhibit 19 to the certified
12 transcript of the deposition of Arthur Reingold, M.D. taken on June 26, 2024.

13 40. Attached hereto as **Exhibit 39** is a true and correct copy of Exhibit 20 to the certified
14 transcript of the deposition of Arthur Reingold, M.D. taken on June 26, 2024.

15 41. Attached hereto as **Exhibit 40** is a true and correct copy of Exhibit 21 to the certified
16 transcript of the deposition of Arthur Reingold, M.D. taken on June 26, 2024.

17 42. Attached hereto as **Exhibit 41** is a true and correct copy of Exhibit 22 to the certified
18 transcript of the deposition of Arthur Reingold, M.D. taken on June 26, 2024.

19 43. Attached hereto as **Exhibit 42** is a true and correct copy of Exhibit 23 to the certified
20 transcript of the deposition of Arthur Reingold, M.D. taken on June 26, 2024.

21 44. Attached hereto as **Exhibit 43** is a true and correct copy of the declaration of Daniel
22 Kacir.

23 45. Attached hereto as **Exhibit 44** is a true and correct copy of the declaration of Melanie
24 Nguyen.

25 46. Attached hereto as **Exhibit 45** is a true and correct copy of the declaration of Adam
26 Valle.

27 47. Attached hereto as **Exhibit 46** is a true and correct copy of the declaration of James
28 Luna.

1 48. Attached hereto as **Exhibit 47** is a true and correct copy of the declaration of Jorge
2 Alvarez.

3 49. Attached hereto as **Exhibit 48** is a true and correct copy of a document produced by
4 Defendants in discovery and bates stamped County_UnifySCC_001852-53, which states that exempt
5 employees in high-risk roles were placed on administrative leave as an “accommodation,” and the
6 County “assist[ed] them in seeking reassignment or transfer to lower or intermediate-risk positions.”
7 The Employee Services Agency (ESA) “established a specific, dedicated team to work with any
8 employee exempted from COVID-19 vaccination for any reason, to help to identify and potentially
9 recommend vacant positions with the County for which the employee may consider applying,” but
10 employees “who obtained an exemption based on a disability or medical contraindication vaccination
11 are encouraged to work with” the Equal Opportunity Division (EOD), “which can assist them with
12 transfers.”

13 50. Attached hereto as **Exhibit 49** is a true and correct copy of a document produced by
14 Defendants in discovery and bates stamped County_UnifySCC_013586-87 reflecting County
15 vaccination rates as of March 1, 2022.

16 51. Attached hereto as **Exhibit 50** is a true and correct copy of an email Defendants produced
17 in discovery and identified as Bates Nos. County_UnifySCC_005640-41.

18 52. Attached hereto as **Exhibit 51** is a true and correct copy of an Excel spreadsheet
19 Defendants produced in discovery listing all employees with jobs categorized by Defendants as “high-
20 risk” and to whom Defendants granted a religious exemption from the County’s COVID-19 vaccination
21 requirements, identified as Bates Nos. County_UnifySCC_003575-82.

22 53. Attached hereto as **Exhibit 52** is a true and correct copy of a document produced by
23 Defendants in discovery and bates stamped County_UnifySCC_006176-79, which demonstrates that
24 the County did not accommodate religiously exempt employees in “high-risk” jobs but instead placed
25 them on unpaid administrative leave.

26 54. Attached as **Exhibit 53** is a true and correct copy of a document produced by Defendants
27 in discovery and bates stamped County_UnifySCC_006192-95, which reflects the County denying
28 requests for accommodation in favor of unpaid administrative leave.

1 55. Attached hereto as **Exhibit 54** is a true and correct copy of a document produced by
2 Defendants in discovery and bates stamped County_UnifySCC_007060–61, which is email
3 correspondence from a County employee classified as high-risk and which includes an email dated
4 March 29, 2022 stating, “[T]he Fire Department and Police Department unvaccinated workers were
5 able to return to work 2 weeks ago.”

6 56. Attached hereto as **Exhibit 55** is a true and correct copy of the declaration of Brandon
7 Lim.

8 57. Attached as **Exhibit 56** are true and correct copies of excerpts of the certified transcript
9 of the deposition of Gina Donnelly conducted on June 28, 2023.

10 58. Attached as **Exhibit 57** is a true and correct copy of Exhibit 16 to the certified transcript
11 of the deposition of Gina Donnelly taken on June 28, 2023.

12 59. Attached hereto as **Exhibit 58** is a true and correct copy of Defendant County of Santa
13 Clara’s Second Supplemental Response to Plaintiff Tom Davis’s Interrogatory No. 4 (Set One) served
14 by the County on March 8, 2024.

15 60. Attached hereto as **Exhibit 59** is a true and correct copy of a document produced by
16 Defendants in discovery and bates stamped County_UnifySCC_0012548 reflecting County vaccination
17 rates as of August 31, 2021.

18 61. Attached hereto as **Exhibit 60** is a true and correct copy of a document produced by
19 Defendants in discovery and bates stamped County_UnifySCC_27755, which is a County spreadsheet
20 reflecting approximately 52 employees with medical exemptions in high-risk positions.

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

23 Executed this 11th day of July 2024, at Rogers, Arkansas.

24
25
26
27 /s/ Bethany Onishenko
BETHANY ONISHENKO