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 13 JAMES WILLIAMS and JEFFREY SMITH

14 UNITED STATES DISTRICT COURT  
 15 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 16 (San José Division)

17 UNIFYSCC, et al.,  
 18  
 19 Plaintiffs,  
 20  
 21 v.  
 22  
 23 SARA H. CODY, et al.,  
 24  
 25 Defendants.

No. 22-CV-01019 BLF

**DEFENDANTS' MOTION FOR CLASS  
 DECERTIFICATION**

Date: March 13, 2025  
 Time: 9:00 a.m.  
 Ctrm: 3, 5<sup>th</sup> Floor  
 Judge: The Honorable Beth Labson Freeman

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on **March 13, 2025**, at **9:00 a.m.**, or as soon thereafter as  
3 the matter may be heard, in **Courtroom 3, 5th Floor** of the above-entitled Court, located at 280  
4 South 1st Street, San José, California 95113, Defendants will, and hereby do, respectfully move this  
5 Court under Federal Rule of Civil Procedure 23 for class decertification.

6 Dated: December 4, 2024

Respectfully submitted,

7 TONY LOPRESTI  
8 COUNTY COUNSEL

9 By: /s/ Bryan K. Anderson

10 BRYAN K. ANDERSON  
11 Deputy County Counsel

12 Attorneys for Defendants  
13 COUNTY OF SANTA CLARA, SARA H.  
14 CODY, JAMES WILLIAMS, and JEFFREY  
15 SMITH  
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## I. INTRODUCTION

Defendants County of Santa Clara (“County”), Sara Cody, James Williams, and Jeffrey Smith bring this motion to decertify the class, to clarify the impact of such decertification on the pending motions for summary judgment, and to dismiss UnifySCC from this matter, as discussed at the October 25, 2024 hearing on the cross-motions for summary judgment. ECF 173 at 4:2-21, 10:21-11:6, 14:19-15:8, 16:11-17:22, 20:10-17, 23:16-24:8, 55:10-56:13, 71:14-72:22, 78:2-19.

This case currently involves a certified class of 463 County employees who received religious exemptions to the County’s August 5, 2021 vaccination policy, and who worked in high-risk jobs. Plaintiffs, through their class counsel, convinced the Court to certify this class based on the premise that the County put all class members on involuntary unpaid administrative leave. ECF 81 [Class Cert. Mot.] at 4 (“[T]he County ‘accommodated’ [class members] by relegating them to unpaid leave.”); *see also* ECF 141 [Pls.’ MSJ] at 13 (“Here, involuntary unpaid administrative leave was the only accommodation offered to Plaintiffs and Class members. The County did not provide any alternative form of accommodation.”). Based on that premise, the Court found that Plaintiffs had sufficiently identified a classwide injury, because the County’s vaccination policy “applied to every member of the same class in the same way.” ECF 125 at 8-9 (“It is sufficient that the Risk Tier System affected Class members in the same way—by putting them on leave because their roles were classified as high-risk.”). However, Plaintiffs were unable to defend their incorrect assertions that “involuntary unpaid administrative leave was the only accommodation offered to” class members in the summary judgment cross-motions record or at the hearing on those motions. ECF 141 at 13; ECF 173 at 9:12-22, 10:21-11:13 [MSJ hearing transcript]. As a result, the Court expressed concern that the fragmentation of the class illuminated by the summary judgment record impacted the Court’s ability to decide the cross-motions and invited a motion for class decertification. *Id.* at 4:2-21, 14:19-15:8, 17:4-14, 20:10-17, 23:16-24:8, 55:14-18, 56:3-7. This motion followed.

The uncontroverted evidence shows that the majority of class members *never went on leave* due to the vaccination policy. Those class members therefore suffered no injury. Moreover, of the minority of class members who did go on leave, their experiences with accommodations varied



1 Plaintiffs filed an amended complaint on August 23, 2022. The amended complaint added  
2 Plaintiff Elizabeth Baluyut, added a claim under Title VII, and added class allegations to support an  
3 intended motion for certification as a class action. *See* ECF 55 at 1, 9-10, 14.

4 Plaintiffs moved for class certification on July 14, 2023. The Court granted in part Plaintiffs'  
5 motion on January 29, 2024. *See* ECF 125 at 1, 25. The Court certified the following class, which  
6 Plaintiffs had proposed and defined:

7 All individuals who: 1) work or worked for the County and/or [] were subject to its  
8 vaccine policies and orders, including the Risk Tier System; 2) were forced by the  
9 County to choose between taking the vaccine to maintain their jobs and/or their  
10 employment-related benefits or being placed on unpaid leave; 3) were [] classified as  
11 working in high risk jobs pursuant to the County's Risk Tier System; and 4) received []  
12 a religious exemption from the County (the "Class") between August 5, 2021 and  
13 September 27, 2022 (the "Class Period").

14 *Id.* at 25. The Court certified the class with respect to five common questions regarding liability. *Id.*  
15 The Court did not certify the class with respect to questions of damages.

16 Plaintiffs moved for partial summary judgment on their Title VII, FEHA, and Free Exercise  
17 claims on July 11, 2024. *See* ECF 141. Defendants moved for summary judgment on all claims on  
18 August 8, 2024. *See* ECF 143. The summary judgment process made clear that the certified class  
19 cannot be maintained, because class members did not experience a uniform injury. In particular, the  
20 following facts were undisputed:

- 21 (i) 238 class members—more than half the class—never needed any accommodations,  
22 because they never went on leave due to the County's vaccination policy. Anderson  
23 Decl., Ex. 31 [Volk Decl.] ¶¶ 11-15 (unpaid leave data showing only 225 class  
24 members could potentially have damages because they went on leave, while 238 class  
25 members could not potentially have damages because they did not go on leave due to  
26 policy).
- 27 (ii) The County provided exempt employees who needed accommodations with various  
28 accommodations, including masking and testing for low- and intermediate-risk roles,

1 and paid leave, unpaid leave, and job transfers or modifications for exempt employees  
2 in high-risk roles. *Id.* Ex. 1 [Marquez Decl.], ¶ 37.

3 (iii) Also, of the 463 class members, 309 never applied for any alternative lower-risk  
4 positions within the County, and many refused to accept specific lower-risk positions  
5 the County offered to them. *Id.* Ex. 32 [Quon Decl.] ¶ 5; Ex. 6 [Fisk Decl.] ¶¶ 7-9;  
6 Ex. 7 [Grumbos Decl.] ¶¶ 7, 12; Ex. 4 [Menzie's Decl.] ¶ 17.

7 (iv) Individual experiences varied widely in the accommodations process. *See, e.g., id.*  
8 Exs. 2-8, 14, 24-26, 30, 25, 31-36.

9 Consider the following examples of class members' diverse experiences:

- 10 • **D.A.**, a Sheriff's Deputy, was granted a religious exemption on October 20, 2021.  
11 Anderson Decl. Ex. 36 . In the letter granting her exemption, the Sheriff informed  
12 her that she could not continue to work in her high-risk role, working inside the  
13 County's Main Jail and would need to go on leave as soon as November 1, 2021.  
14 *Ibid.* She then vaccinated on October 27, 2021, never went on leave, and therefore  
15 needed no accommodation. *Id.* Exs. 34, 35. As noted, over half the class falls into  
16 this category. *Id.* Ex. 31 [Volk Decl.], ¶¶ 11-15.
- 17 • **Declarant James Luna**, a Sheriff's Deputy, was out on worker's compensation leave  
18 during almost the entire class period for reasons unrelated to the County's vaccination  
19 policy. *Id.* Ex. 7 [Grumbos Decl.], ¶ 9. He returned to work for a total of four days  
20 while unvaccinated due to an administrative error, and then voluntarily retired. *Id.* ¶¶  
21 8-9. Luna therefore needed no accommodations due to his religious exemption.
- 22 • **Melanie Nguyen** worked as a Pretrial Services Officer III, which required her to  
23 work in high-risk facilities. *Id.* Ex. 6 [Fisk Decl.], ¶¶ 5-6. After being granted a  
24 religious exemption, she was offered an intermediate-risk job by her department as a  
25 Pretrial Services Officer II, without needing to apply. The position would have  
26 allowed her to work unvaccinated, but she declined the offer. *Id.*, ¶ 8. The County  
27 also identified several other positions for which Nguyen appeared qualified, but she  
28 did not apply for any of them. *Id.*, ¶ 9. Nguyen therefore rejected all the offered

1 accommodations.

- 2 • **Plaintiff Maria Ramirez** is a clinical nurse on an acute care medical unit, who cares  
3 for significantly ill patients who are extremely vulnerable to other infections. Upon  
4 being invited to apply for lower-risk positions, she stated that “[a]pplying for open  
5 vacancies [within the County] is not an adequate accommodation.” Anderson Decl.  
6 Ex. 4 [Menzie’s Decl.], ¶ 17 0273-274. Ramirez then never applied for any alternative  
7 lower-risk positions within her department or the County, despite the County’s efforts  
8 to assist her in doing so. *Id.* ¶¶ 15-21. Ramirez thus rejected all the offered  
9 accommodations.
- 10 • **Adam Valle**, a Sheriff’s Deputy, was provided with a list of vacant and available  
11 positions in the Sheriff’s Office. *Id.* Ex. 7 [Grumbos Decl.], ¶ 12. He declined to  
12 pursue any of them. *Id.* Valle went on paid administrative leave on February 2,  
13 2022. *Id.* ¶ 13. Valle was then given a three-week, special, paid assignment from  
14 February 22 to March 11, 2022, that did not require him to enter correctional  
15 facilities. *Id.* ¶ 14. Valle vaccinated and returned to work on May 31, 2022. *Id.* ¶ 15.  
16 Valle was paid during the entirety of the approximately three months he was on leave,  
17 as he was permitted to use his accrued sick leave and Safety CLC 4850 leave during  
18 that time. *Id.* Ex. 34 [Leave Banks Used spreadsheet]. Valle thus accepted the  
19 accommodations offered to him, including paid leave and a special assignment.
- 20 • **M.L.**, a social worker, was permitted to transition to low-risk office work, which  
21 allowed her to continue working. *Id.* Ex. 33 [Doyle Decl. Ex. 9] at  
22 County\_Unify\_032774; Ex. 35. She then vaccinated. *Ibid.* She thus accepted the  
23 reasonable accommodations offered to her. The County provided such job  
24 modifications to other class members. *Id.* Ex. 34 [placement spreadsheet].

25 As a result of such diverse experiences, the majority of class members suffered no injury, and  
26 the class members who can claim injury were not all injured in the same way. Plaintiffs therefore do  
27 not meet the requirements of Rule 23(a), including the requirement that “the class members have  
28 suffered the same injury” “of such a nature that it is capable of classwide resolution—which means

1 that determination of its truth or falsity will resolve an issue that is central to the validity of each one  
2 of the claims in one stroke.” *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349 (2011).

### 3 III. LEGAL STANDARD

4 “Even after a certification order is entered, the [Court] remains free to modify it in the light  
5 of subsequent developments in the litigation.” *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 160  
6 (1982); see also Fed. R. Civ. P. 23(c)(1) (C) (“An order that grants or denies class certification may  
7 be altered or amended before final judgment.”). “A district court may exercise its sound discretion  
8 to decertify a class.” *Ser Lao v. H&M Hennes & Mauritz, L.P.*, No. 5:16-CV-00333-EJD, 2019 WL  
9 7312623, at \*2 (N.D. Cal. Dec. 30, 2019). “The standard used by the courts in reviewing a motion  
10 to decertify is the same as the standard when it considered Plaintiffs’ certification motions.” *Ries v.*  
11 *Ariz. Beverages USA LLC*, No. 10–01139 RS, 2013 WL 1287416, at \*3 (N.D. Cal. Mar. 28, 2013).  
12 Certification orders, however, are not altered “‘except for good cause,’ such as ‘discovery of new  
13 facts or changes in the parties or in the substantive or procedural law.’” *Morales, et al. v. Kraft*  
14 *Foods Grp., Inc.*, 2017 WL 2598556, at \*20 (C.D. Cal. June 9, 2017) (quoting *Ramirez v. Trans*  
15 *Union, LLC*, No. 12-CV-00632-JSC, 2016 WL 6070490, at \*2 (N.D. Cal. Oct. 17, 2016)). Good  
16 cause includes development of the factual record bearing on class certification. *See Heredia*, 2020  
17 WL 127489, at \*4–5 (decertifying class because a majority of class members were not injured).

18 Rule 23(a) requires that (1) the members of the class must be so numerous that joinder is  
19 impracticable, (2) there must be questions of law or fact common to the class, (3) the  
20 representative’s claims and defenses must be typical of the class members’ claims and defenses, and  
21 (4) the representative must fairly and adequately protect the interests of the class. The class must  
22 also meet one of the requirements of Rule 23(b). Here, Plaintiffs seek to maintain the Class subject  
23 to Rule 23(b)(3)’s requirements that “the questions of law or fact common to class members  
24 predominate over any questions affecting only individual members, and that a class action is  
25 superior to other available methods for fairly and efficiently adjudicating the controversy.” *Id.*

### 26 IV. ARGUMENT

27 The Court should decertify the class for four reasons: (1) the basic premise that led to  
28 certification—that all class members were put on unpaid leave—is incorrect; (2) the class is not

1 ascertainable because a majority of the class members were not injured; (3) there is no common  
2 injury; and (4) conflicting evidence and individualized inquiries favor decertification.

3 **A. THE BASIC PREMISE THAT LED TO CERTIFICATION IS INCORRECT**

4 The Court certified the class based on the premise (advanced by Plaintiffs) that “Plaintiffs’  
5 claims against the Risk Tier System and the prioritization of medical and disability exemptions are  
6 against the county’s Policy—which applied to every member of the class in the same way . . . the  
7 Risk Tier System affected Class members in the same way—*by putting them on leave because their*  
8 *roles were classified as high-risk.*” ECF 125 at 8 (emphasis added).

9 The record now shows that that premise is incorrect. Namely, *238 class members (the*  
10 *majority) never went on leave due to the County’s vaccination policy*, while other class members  
11 (the minority) declined to vaccinate and had highly individualized experiences with respect to  
12 accommodations, including paid leave, unpaid leave, job modifications that allowed them to  
13 continue working, and unique circumstances such as extended worker’s compensation leave or  
14 special assignments. *See supra*, Section II.

15 This record supports decertification. The fact of individualized and varied experiences, and  
16 the absence of a uniform policy and practice that placed all class members on leave, means that  
17 Plaintiffs have failed to demonstrate that common questions of law or fact predominate over  
18 questions affecting only individual members: “It is doubtful that the Court would have certified the  
19 class [when it did] had it understood that” the key premise underlying certification was false,  
20 because “[i]t is no longer accurate to say that this case involves ‘a uniform policy consistently  
21 applied’ throughout the class period” in the manner claimed by Plaintiffs. *In re Autozone, Inc. Wage*  
22 *and Hour Employment Practices Litig.*, No. 3:10-md-02159-CRB, 2016 WL 4208200, at \*10 (N.D.  
23 Cal. Aug. 10, 2016) (decertifying a class because there was no common policy in place during the  
24 class period); *Heredia*, 2020 WL 127489, at \*4.

25 **B. THE CLASS IS NOT ASCERTAINABLE**

26 The Court should decertify the class because the class is not ascertainable. A class is not  
27 ascertainable if it includes members who have “no injury and no standing to sue.” *Heredia*, 2020  
28 WL 127489, at \*5; *Hovsepian v. Apple, Inc.*, No. 08-5788 JF (PVT), 2009 WL 5069144, at \*6 (N.D.

1 Cal. Dec. 17, 2009) (finding a class not ascertainable because it included members who had “no  
 2 injury and no standing to sue”); *In re AutoZone, Inc., Wage & Hour Employment Practices Litig.*,  
 3 289 F.R.D. 526, 545 (N.D. Cal. 2012) (finding a class definition that included employees who were  
 4 not injured and had “no standing to sue” overbroad and thus, not ascertainable).

5 Here, over half the class lacks standing. 238 class members never went on leave (primarily  
 6 because they vaccinated), and therefore cannot allege any injury due to the County’s policy.  
 7 Anderson Decl. Ex. 31 [Volk Decl.] ¶¶ 11-15; *see, e.g., Donovan v. Biden*, 603 F.Supp.3d 975, 982  
 8 (E.D. Wash. 2022) (finding that “[p]laintiffs who have been vaccinated or provided accommodations  
 9 cannot allege any actual or imminent harm”), *aff’d in part*, 70 F.4th 1167 (9th Cir. 2023); *Andre-*  
 10 *Rodney v. Hochul*, 618 F.Supp.3d 72, 76 (N.D.N.Y. 2022) (finding plaintiffs who vaccinated and  
 11 returned to work lacked standing). In addition, 309 class members never sought job transfers and  
 12 therefore cannot allege any injury due to any alleged “preferential consideration” in job transfers  
 13 given to other employees. Anderson Decl. Ex. 32 [Quon Decl.] ¶ 5. The precise level of job transfer  
 14 assistance simply did not matter for employees who never sought a job transfer. Furthermore,  
 15 employees who received accommodations, such as paid leave, cannot allege injury because paid  
 16 leave is not an adverse employment action. *See Longmire v. City of Oakland*, No. C 10-01465 JSW,  
 17 2011 WL 5520958, at \*5 (N.D. Cal. Nov. 14, 2011) (“[P]aid administrative leave . . . [is] not  
 18 considered [an] adverse employment action[.]”), *aff’d*, 584 F. App’x 623 (9th Cir. 2014); *Gannon v.*  
 19 *Potter*, No. C 05-2299SBA, 2006 WL 3422215, at \*5 (N.D. Cal. Nov. 28, 2006) (same), *aff’d*, 298  
 20 F. App’x 623 (9th Cir. 2008); *Green v. Safeway Stores*, No. C 96-03471 CRB, 1998 WL 898366, at  
 21 \*3 (N.D. Cal. Dec. 14, 1998) (“Plaintiff has not cited any case which holds that *paid leave*  
 22 constitutes an adverse employment action. In fact, the case law holds to the contrary.”).

23 Accordingly, the class is not ascertainable. *See Heredia v. Eddie Bauer LLC*, No. 16-CV-  
 24 06236-BLF, 2020 WL 127489, at \*4–5 (N.D. Cal. Jan. 10, 2020) (finding class overbroad and not  
 25 ascertainable, where majority of class members not injured by challenged policy).

### 26 **C. NO COMMON INJURY**

27 Decertification is also warranted because claims of class members cannot be resolved “in one  
 28 stroke,” and, again, the class includes employees who did not suffer any harm or injury.

1 “[C]ommonality requires that the class members’ claims depend upon a common contention such  
2 that determination of its truth or falsity will resolve an issue that is central to the validity of each  
3 claim in one stroke.” *Jimenez v. Allstate Ins. Co.*, 765 F.3d 1161, 1165 (9th Cir. 2014) (citations and  
4 internal quotation marks omitted). In other words, “the key inquiry is not whether the plaintiffs have  
5 raised common questions, ‘even in droves,’ but rather whether class treatment will ‘generate  
6 common answers apt to drive the resolution of the litigation.’” *Abdullah v. U.S. Sec. Assocs., Inc.*,  
7 731 F.3d 952, 957 (9th Cir. 2013) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350  
8 (2011)).

9 In its certification order, the Court found that five common questions existed:

- 10 1. Whether Defendants violated Plaintiffs’ right to free exercise and equal protection  
11 of the law by prioritizing medical exemptions over religious exemptions in high-  
12 risk settings;
- 13 2. Whether Defendants’ Risk Tier System violated the Free Exercise Clause and  
14 Equal Protection Clause because it relegated Plaintiffs and the Class members to  
15 unpaid leave but allowed some unvaccinated or non-boosted employees to  
16 continue to work;
- 17 3. Whether the County’s religious exemption and/or accommodation procedure was  
18 either non-neutral or not generally applicable such that it constitutes an  
19 individualized assessment under *Fulton v. City of Philadelphia, Pennsylvania*,  
20 593 U.S. 522 (2021), and is thereby subject to strict scrutiny;
- 21 4. Whether Defendants provided Individual Plaintiffs and the Class members with  
22 reasonable accommodation as required under FEHA and Title VII; and
- 23 5. Whether Defendants violated the Establishment Clause by demonstrating hostility  
24 towards religion.

25 ECF 125 at 25.

26 Under the current record, however, individualized inquiries are required to answer the first  
27 certified question because, as discussed, few (if any) Plaintiffs can even allege injury based on  
28 “preferential consideration” in job transfers given to other employees. Plaintiffs who never went on

1 leave and needed no job transfer, Plaintiffs who never sought a job transfer or declined an offered  
2 job transfer, Plaintiffs who received paid leave, and Plaintiffs with special circumstances such as  
3 extended worker’s compensation leave, all cannot allege any injury. Thus, the question of whether  
4 “preferential consideration” in job transfers provided to some employees, as required by state and  
5 federal disability laws, injured each class member cannot be resolved in one stroke.

6 Individualized inquiries are required to answer the second certified question for similar  
7 reasons. Plaintiffs who never went on unpaid leave were obviously not injured by being “relegated .  
8 . . to unpaid leave.” See *Donovan*, 603 F.Supp.3d at 982; *Andre-Rodney*, 618 F.Supp.3d at 76. Nor  
9 were other employees who received accommodations such as paid leave and job modifications so  
10 relegated. See *Longmire*, 2011 WL 5520958, at \*5.

11 The third certified question regarding strict scrutiny is a preliminary legal determination that  
12 would not resolve a single claim of a single class member, much less “drive the resolution of the  
13 litigation” by resolving claims on a classwide basis. *Wal-Mart*, 564 U.S. at 350. And again, the  
14 majority of class members have no standing to even seek this preliminary determination.

15 Individualized inquiries are also required to answer the fourth certified question because, as  
16 discussed, class members had diverse experiences with the County’s accommodations. Most class  
17 members (238) needed no accommodations at all. Anderson Decl., Ex. 31 [Volk Decl.] ¶¶ 11-15.  
18 Others received accommodations such as paid leave, job modifications, or special assignments. *Id.*  
19 Ex. 1 [Marquez Decl.] ¶ 37. Others were offered job transfers by their departments, without needing  
20 to apply, but they declined. *Id.* Ex. 6 [Fisk Decl.] ¶¶ 5-9; Ex. 7 [Grumbos Decl.] ¶ 12. Others were  
21 offered assistance in applying to lower-risk positions, but they also declined to apply. *Id.* Ex. 4  
22 [Menzies Decl.] ¶¶ 15-21. Others (111) resigned, retired, or left County employment for other  
23 reasons. *Id.* Ex. 35. Assessing whether the accommodations provided to these employees were  
24 reasonable involves quintessentially fact-specific, individualized inquiries that cannot be resolved in  
25 one stroke. See *Nunes v. Wal-Mart Stores, Inc.*, 164 F.3d 1243, 1247 (9th Cir. 1999) (finding that  
26 “[d]etermining whether a proposed accommodation (medical leave in this case) is reasonable,  
27 including whether it imposes an undue hardship on the employer, requires a fact-specific,  
28 individualized inquiry”); *U.S. Equal Emp. Opportunity Comm’n v. MJC, Inc.*, 400 F. Supp. 3d 1023,

1 1036 (D. Haw. 2019) (same).

2 As became clear during the summary judgment process, Plaintiffs have not articulated a  
3 viable claim under the Establishment Clause, much less explained how they can maintain this case as  
4 a class action based on the fifth certified question. *See, e.g.*, ECF 173 [MSJ transcript] at 32:2-3,  
5 37:22-24.

6 Accordingly, “this case does not present a close call [regarding common injury] where the  
7 majority of the class members are not harmed.” *Heredia*, 2020 WL 127489, at \*6.

#### 8 **D. CONFLICTING EVIDENCE AND INDIVIDUALIZED INQUIRIES**

9 Finally, the fact that an individualized effort was undertaken to accommodate each class  
10 member, and the possible need to resolve conflicting evidence regarding each of those individualized  
11 efforts, warrant decertification. Class actions are not appropriate where the resolution of the case  
12 would require numerous mini trials. *See, e.g., Soares v. Flowers Foods, Inc.*, 320 F.R.D. 464, 484  
13 (N.D. Cal. 2017) (“Put simply, [i]f each class member has to litigate numerous and substantial  
14 separate issues to establish his or her right to recover individually, a class action is not ‘superior.’”).

15 Here, several issues regarding individualized accommodation efforts may involve conflicting  
16 and disputed evidence. For instance, whether the County sufficiently engaged in the interactive  
17 process in its communications with exempt employees may involve a factual dispute that depends on  
18 the content of the County’s communications with each employee. While the County indisputably  
19 took the initial step towards accommodation, the County acknowledges that after this initial step the  
20 content of communications with each employee varied, based for example on the level of employee  
21 engagement in the interactive process and the response time of County staff. *See, e.g., Anderson*  
22 *Decl.*, Ex. 26 at 63:7-65:5 (Baluyut deposition, alleging that County staff sometimes took too long to  
23 get back to respond to her job search questions, until she found an appropriate person to contact);  
24 Ex. 6 [Fisk Decl.] (interactive process with Pretrial Services personnel); Ex. 7 [Grumbos Decl.]  
25 (interactive process with Sheriff’s deputies); Ex. 4 [Menzie’s Decl.] (interactive process with hospital  
26 staff); Ex. 2 [Ortega Decl.] (interactive process with Fleet and Facilities personnel). As another  
27 example, for those exempt employees who applied for lower-risk jobs, the reason some employees  
28 were not offered some jobs (such as the employees’ lack of qualifications or quality of references)

1 may involve conflicting and disputed evidence. As a third example, some exempt employees do not  
2 appear to have sincerely held religious beliefs and sought religious exemptions for secular reasons  
3 such as a belief that Covid-19 vaccines were not effective. Anderson Decl., Ex. 8 [Luna Tr.] at  
4 17:12-18:2. The County may raise this issue on an individual basis at trial.

5 Based on the current record, at trial, the jury would necessarily have to decide whether the  
6 County sufficiently engaged in the interactive process with, and offered reasonable accommodations  
7 to, each exempt employees with sincerely held religious beliefs. But class actions are not  
8 appropriate where the resolution of the case would require numerous mini trials like this. *See, e.g.,*  
9 *Soares v. Flowers Foods, Inc.*, 320 F.R.D. 464, 484 (N.D. Cal. 2017) (“Put simply, [i]f each class  
10 member has to litigate numerous and substantial separate issues to establish his or her right to  
11 recover individually, a class action is not ‘superior.’”); *Heredia*, 2020 WL 127489, at \*6.

12 For the above reasons, the Court should decertify the class. Next, the County briefly explains  
13 how decertification should affect the parties’ pending summary judgment motions.

#### 14 **V. THE IMPACT OF DECERTIFICATION ON SUMMARY JUDGMENT**

15 If the Court decertifies the class, the Court should still grant summary judgment to the  
16 County on all claims, for the following reasons.

17 Plaintiffs’ constitutional claims present a facial challenge to the County’s vaccination policy  
18 (with the possible exception of the “preferential consideration” issue as noted below). As a result,  
19 how the policy applied to individual plaintiffs does not matter for purposes of summary judgment.  
20 The County’s vaccination policy was unquestionably rationally related to the compelling interest of  
21 stemming the spread of a novel, deadly disease. *See Seaplane Adventures, LLC v. Cnty. of Marin*,  
22 71 F.4th 724, 730 (9th Cir. 2023) (finding under highly deferential rational basis review standard  
23 that “[T]he actions of the County meet the rational basis standard as it took actions to mitigate the  
24 damage of the COVID-19 virus. . . . Rational basis review does not require the County to behave  
25 optimally, but only rationally.”); *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19  
26 (2020) (“Stemming the spread of COVID–19 is unquestionably a compelling interest.”). The  
27 opinion of Plaintiffs’ expert cannot change this fact, both because he admits that vaccination  
28 provides individual and group protection against COVID-19 and because he offered no opinion on

1 Plaintiffs proffered alternatives, and because even if he had not, the existence of a contrary expert  
2 opinion cannot negate a rational basis. *See Guilfoyle v. Beutner*, No. 221CV05009VAPMRWX,  
3 2021 WL 4594780, at \*15 (C.D. Cal. Sept. 14, 2021) (stating that “Plaintiffs’ experts have little  
4 bearing on the question before this Court” because the constitutional claims at issue did “not require  
5 that government [actions] be supported by scientific consensus—or even the most reliable scientific  
6 evidence” because the claims were subjected to rational basis review”) (citation omitted); *Kheriaty v.*  
7 *Regents of Univ. of California*, No. SACV2101367JVSKESEX, 2021 WL 4714664, at \*8 (C.D. Cal.  
8 Sept. 29, 2021) (“But merely drawing different conclusions based on consideration of scientific  
9 evidence does not render the Vaccine Policy arbitrary and irrational.”). Therefore, the Court should  
10 grant summary judgment to the County on Plaintiffs’ constitutional claims.

11 On the issue of “preferential consideration” in job transfers, the Court should grant summary  
12 judgment to the County, because the County had no choice but to follow state and federal law in  
13 providing such “preferential consideration” to disabled persons, and the County could not provide  
14 “preferential consideration” based on religion because doing so would violate the Establishment  
15 Clause. *See* ECF 143 at 10-11, 18-19; ECF 161 at 2-4, 7-8. If the Court declines to grant summary  
16 judgment to the County, the Court should deny Plaintiffs’ motion for summary judgment on that  
17 issue, because no plaintiff has shown that he or she was injured as a result of that policy. Maria  
18 Ramirez declined to apply for any jobs, so the precise level of job transfer assistance simply did not  
19 matter for her. Anderson Decl. Ex. 4 [Menzie’s Decl.] ¶¶ 15-21. While Tom Davis and Elizabeth  
20 Baluyut applied for jobs, they admitted that they are unaware of anyone at the County with a  
21 religious exemption (including themselves) who missed out on a job due to favorable treatment  
22 being given to individuals with medical exemptions. *Id.* Ex. 31 [Davis Tr.] at 40:13-41:3, 49:11-24;  
23 Ex. 26 [Baluyut Tr.] at 88:17-22. Plaintiffs submitted no evidence of such injury at summary  
24 judgment.

25 Second, the Court should still grant summary judgment to the County on Plaintiffs’ Title VII  
26 and FEHA claims, even if the Court decertifies the class. Plaintiffs have failed to genuinely dispute  
27 that their proffered accommodations would have imposed an undue hardship on the County.  
28 Namely, Plaintiffs fail to genuinely dispute the extensive evidence that their proffered

1 accommodations—masking, testing, social distancing, and ending the County’s vaccine policy in  
2 March 2022—would have significantly increased deaths and serious illnesses from Covid-19. *See*  
3 ECF 143 at 23-25; ECF 161 at 13-15. Plaintiffs’ sole expert submitted no opinion whatsoever on  
4 those issues. Title VII does not require compromising the health and safety of vulnerable residents  
5 by forcing the County to allow hundreds of unvaccinated staff members to continue working with  
6 them. Furthermore, plaintiff Maria Ramirez’s Title VII and FEHA claims are barred by her decision  
7 not to pursue transfers or reassignments within the County. *See* ECF 143 at 21; Anderson Decl. at  
8 0273-274.

9 Finally, regardless of the Court’s decertification decision, it is undisputed that the Court  
10 should dismiss the individual defendants Sara H. Cody, James Williams, and Jeffrey Smith from this  
11 lawsuit because they are redundant and unnecessary. *See* ECF 143 at 25; ECF 161 at 15. The Court  
12 should also dismiss UnifySCC from this lawsuit, as explained next.

## 13 VI. UNIFYSCC LACKS STANDING

14 At the summary judgment hearing, the Court requested briefing on whether plaintiff  
15 UnifySCC has standing in light of the Ninth Circuit’s recent opinion in *Arizona Alliance for Retired*  
16 *Americans v. Mayes*, No. 22-16490, 2024 WL 4246721 (9th Cir. Sept. 20, 2024), and the U.S.  
17 Supreme Court’s decision in *Food and Drug Administration v. Alliance for Hippocratic Medicine*  
18 (“*FDA*”), 602 U.S. 367 (2024). The parties agreed to brief this issue in conjunction with class  
19 decertification.

20 To establish Article III standing to sue, a plaintiff must show “(i) that she has suffered or  
21 likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the  
22 defendant, and (iii) that the injury likely would be redressed by the requested judicial relief.” *FDA*,  
23 602 U.S. at 380; *Arizona All. for Retired Americans*, 117 F.4th at 1171. “Organizations may have  
24 standing to sue on their own behalf for injuries they have sustained. In doing so, however,  
25 organizations must satisfy the usual standards for injury in fact, causation, and redressability that  
26 apply to individuals.” *FDA*, 602 U.S. at 393-94 (quoting *Havens Realty Corp. v. Coleman*, 455 U.S.  
27 363, 379, n.19 (1982)). UnifySCC indisputably lacks standing under this test. UnifySCC admits  
28 that it has not suffered an injury. Anderson Decl. Ex. 31 [Davis Tr.] at 82:18-24 (UnifySCC

1 30(b)(6) representative “can’t speak to” whether UnifySCC suffered an injury); UnifySCC  
2 Objections to 30(b)(6) Notice at 4 (“UnifySCC is an entity and not a person and the entity itself has  
3 not suffered injury.”). UnifySCC therefore lacks the most basic requirement of standing and should  
4 be dismissed.

5 At the summary judgment hearing, Plaintiffs asserted that UnifySCC has “representational”  
6 standing under *Hunt v. Washington State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977). ECF  
7 173 at 40:7-23. Plaintiffs are incorrect. As an initial matter, *Hunt’s* theory of representational  
8 standing may no longer be viable in light of *FDA*. *Hunt* is based on a 1963 case holding that “[e]ven  
9 in the absence of injury to itself, an association may have standing solely as the representative of its  
10 members.” *Id.* at 342. That holding runs contrary to the Supreme Court’s decision in *FDA*, which  
11 rejected a similar representational standing argument, stating that “even when we have allowed  
12 litigants to assert the interests of others, the litigants themselves still must have suffered an injury in  
13 fact.” *FDA*, 602 U.S. at 393 n.5. As UnifySCC admits that it has not suffered an injury itself, it  
14 cannot “shoehorn [it]self into Article III standing simply by showing that” its members have suffered  
15 injuries. *Id.*; *see also id.* at 398 (highlighting problems with associational standing based on *Hunt*)  
16 (Thomas, J., concurring).

17 Regardless, UnifySCC lacks standing even under the *Hunt* test. Under *Hunt*, “an association  
18 has standing to bring suit on behalf of its members when: (a) its members would otherwise have  
19 standing to sue in their own right; (b) the interests it seeks to protect are germane to the  
20 organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the  
21 participation of individual members in the lawsuit.” 432 U.S. at 343. The Court elaborated on the  
22 third requirement as follows: “in all cases in which we have expressly recognized standing in  
23 associations to represent their members, the relief sought has been” a request for “a declaration,  
24 injunction, *or some other form of prospective relief.*” *Id.* (emphasis added). By contrast, “no federal  
25 court has allowed an association standing to seek monetary relief on behalf of its members.” *United*  
26 *Union of Roofers, Waterproofers, & Allied Trades No. 40 v. Ins. Corp. of Am.*, 919 F.2d 1398, 1400  
27 (9th Cir. 1990); *see also Lake Mohave Boat Owners Ass’n v. Nat’l Park Serv.*, 78 F.3d 1360, 1367  
28 (9th Cir. 1995); *Garcia v. Spun Steak Co.*, 998 F.2d 1480, 1484 (9th Cir. 1993); *Williams v. Alameda*

1 *Cnty.*, No. 3:22-CV-01274-LB, 2024 WL 4050393, at \*6 (N.D. Cal. Sept. 3, 2024). Here, the  
2 County’s vaccination policy ended in September 2022. Doyle Decl. ¶ 16, Ex. 10. Plaintiffs cannot  
3 and do not seek prospective relief, as they previously admitted. *See* ECF 114 at 1 n.1; Dec. 20, 2023  
4 Hrg. Tr. at 5:6-9, 12:4-5, 19:16-25. This is a damages case. Thus, even if *Hunt* remained good law,  
5 it would not provide a basis for associational standing here.

6 **VII. CONCLUSION**

7 For the above reasons, the Court should decertify the class, dismiss UnifySCC and the  
8 individual Defendants from this case, and grant the County’s motion for summary judgment.

9  
10 Dated: December 4, 2024

Respectfully submitted,

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