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7 **IN THE SUPERIOR COURT OF WASHINGTON**
8 **KING COUNTY**
9

10 KEN HOFSCHULTE, Class) Case No.:
11 Representative, RUSLAN)
12 CHERKASSIKH, Alternate Class) CLASS ACTION
13 Representative #1, RICARDO)
14 MARTINEZ, Alternate Class) VERIFIED COMPLAINT FOR
15 Representative #2, CHAD SNYDER,) DECLARATORY AND
16 Alternate Class Representative #3,) INJUNCTIVE RELIEF
17 ALISON HALLIFAX, Class)
18 Representative #4, FRANK)
19 DAHLQUIST, Class Representative #5,)
20 ET. AL,)
21)
22 Plaintiffs,)
23)
24 v.)
25)
26)

21 KING COUNTY FIRE CHIEFS
22 ASSOCIATION, KING COUNTY
23 MEDIC ONE, DR. THOMAS REA,
24 CHIEF JEFF CLARK, CHIEF ERIC
25 HICKS, CHIEF STEVE HEITMAN,
26 CHIEF BRUCE KROON, CHIEF
RANDY FEHR, CHIEF MATT
MORRIS, CHIEF MATT COWAN,

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28

VERIFIED COMPLAINT

1 DEPUTY CHIEF DOUG
2 MCDONALD, CHIEF JAY HAGEN,
3 CHIEF JOSEPH SANFORD, CHIEF
4 ADRIAN SHEPARD, CHIEF VIC
5 PENNINGTON, CHIEF JAY
6 WITTWER, CHIEF MICHAEL
7 MARRS, CHIEF BRAD THOMPSON,
8 CHIEF ALTON "BRIAN" CULP,
9 CHIEF RANDY KRAUSE, CHIEF
10 CHARLIE KRIMMERT, ASSISTANT
11 CHIEF TODD STARKEY, CITY OF
12 SHORELINE, NORTHSORE FIRE
13 DEPARTMENT, CITY OF
14 KENMORE, CITY OF BOTHELL,
15 CITY OF ISSAQUAH, CITY OF
16 BELLEVUE, CITY OF KIRKLAND,
17 CITY OF REDMOND, CITY OF
18 KENT, CITY OF FEDERAL WAY,
19 CITY OF TUKWILA, CITY OF
20 BURIEEN, CITY OF NORMANDY
21 PARK, CITY OF AUBURN, CITY OF
22 FALL CITY, CITY OF VASHON,
23 CITY OF ALGONA, CITY OF
24 KENMORE, CITY OF PACIFIC,
25 PORT OF SEATTLE, ET. AL,
26 Defendants.

27 I. INTRODUCTION

28 1.1 On August 20, 2021, the Governor for the State of Washington
issued Proclamation 21.14.1, which prohibited any Worker from engaging in
work for a State Agency after October 18, 2021 if the Worker has not been fully
vaccinated against COVID-19 ("Vaccine Mandate").

1.2 The Vaccine Mandate provides that “Workers for State Agencies ... are not required to get vaccinated against COVID-19 under this Order if they are unable to do so ... if the requirement to do so conflicts with their sincerely held religious beliefs, practice, or observance.” Thus, the Vaccine Mandate allows for a religious exemption for sincerely held religious beliefs under the law and as required by Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, 42 U.S.C. § 2000e et seq (“Title VII”) and the Washington Law Against Discrimination (“WLAD”), Revised Code of Washington (“RCW”) § 49.60.

1.3 Before providing an accommodation to the requirements of the Vaccine Mandate, individuals must document that the request of accommodation has been made and that the requirements of the Vaccine Mandate conflict with the sincerely held religious observance, practice, or belief of the individual. State Agencies are required to provide accommodations unless such accommodations would cause undue hardship to the State Agency.

1.4 Plaintiffs have documented their requests for accommodation (see **Exhibit B Religious Accommodation Requests**).

1.5 By this complaint, a class of State workers seek injunctive relief, in the form of a TRO/preliminary and permanent injunction, barring Defendants,

1 and all those in active concert, from abridging Plaintiffs' constitutionally
2 protected rights guaranteed to Plaintiffs, and all members of the class, by the First
3 and Fourteenth Amendments to the United States Constitution, Title VII, and the
4 WLAD through denial of reasonable accommodation for sincerely held religious
5 beliefs.
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7
8 1.6 Plaintiffs also ask this Court to declare that the denial of reasonable
9 accommodations is unconstitutional as applied and has a disparate impact on
10 Plaintiffs as a class and within the class.
11

12 II. JURISDICTION AND VENUE

13 2.1 This Court has jurisdiction over this action pursuant to RCW
14 §2.08.010 as it relates to claims arising from Washington law in King County
15 and amongst its employees in the cities and surrounding counties.
16

17 2.2 This Court has supplemental and concurrent jurisdiction to hear
18 Federal claims brought before the Court.
19

20 2.3 Plaintiffs' claims for declaratory and injunctive relief are authorized
21 by RCW §7.24, Civil Rules 57 and 65, and the general legal and equitable powers
22 of this Court, which empower this Court to grant the requested relief.
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2.4 This Court has the authority to award Plaintiffs' attorneys' fees and costs associated with this action pursuant to RCW §4.84 and other applicable laws.

2.5 Venue is proper within this judicial district and division, pursuant to RCW §36.01.050, because the relevant events have occurred and are threatened to occur in this jurisdictional district.

2.6 Certain Plaintiffs and Defendants within the class are located within the Kent Case Assignment Area of this County's Jurisdiction under LCR 82 as multiple parties are south of Interstate 90. In the interest of adjudicating the claims of the class as a whole and to avoid repetitive litigation , varying precedent, and appeals, the Plaintiff class has filed this case in King County Superior Court, Seattle Case Assignment Area.

III. PARTIES

PLAINTIFFS

3.1 Plaintiff Employee 1, Ken Hofschulte (“Employee 1”), is a fire fighter employed at Northshore Fire Department of Issaquah, Washington with sincerely held religious beliefs who was granted a religious exemption removing the requirements of obtaining the COVID-19 vaccine and subsequently denied

1 an accommodation to perform his job. Employee 1 is the Plaintiff Class
2 Representative.

3 3.2 Plaintiff Employee 2, RUSLAN CHERKASSIKH ("Employee
4 2"), is employed at Shoreline Fire Department. Employee 2 is the alternative
5 Plaintiff Class Representative. Plaintiff Alternative Class Representative, who
6 holds sincere religious beliefs which prevent him from obtaining a COVID-19
7 vaccine, was granted an exemption, but denied an accommodation to perform his
8 job.
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10
11 3.3 Plaintiff Employee 3, Ricardo "Rocky" Martinez ("Employee 3"),
12 is employed at East Side Fire and Rescue servicing six communities including
13 Issaquah, Sammamish, and North Bend among others. Employee 3 is the
14 alternative Plaintiff Class Representative #2, who holds sincere religious beliefs
15 that he cannot obtain the COVID-19 vaccine. He was granted an exemption, but
16 subsequently denied a reasonable accommodation to perform his job.
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19 3.4 Plaintiff Employee 4, CHAD SNYDER, is employed by South King
20 County Fire Department ("Employee 4"), and the Alternative Class
21 Representative 3. Alternate Plaintiff Class Representative 3 holds sincere
22 religious beliefs which prevent him from obtaining the COVID-19 vaccine. He
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1 was granted an exemption, but was subsequently denied a reasonable
2 accommodation to perform his job.

3 3.5 Plaintiff Employee 5, ALISON HALLIFAX, ("Employee 5") is
4 employed by Redmond Fire Department and is the Alternative Class
5 Representative 4 and. Alternative Plaintiff Class Representative 4 has sincerely
6 held religious beliefs which prevent her from obtaining the COVID-19 vaccine.
7 She was granted a religious exemption, but denied an accommodation to perform
8 her job.
9

10 3.6 Plaintiff Employee 6, FRANK DAHLQUIST, ("Employee 6"), is
11 the Alternative Class Representative 5 and is employed by East Side Fire and
12 Rescue. Alternate Plaintiff Class Representative 5 holds sincere beliefs which
13 prevent him from obtaining the COVID-19 vaccine. He was approved for a
14 religious exemption, but denied an accommodation to perform his job.
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16 3.7 ET. AL,
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18 John Henson	Shoreline	20	Firefighter/EMT
19 Ryan Burgess	Shoreline	14	Firefighter/EMT
20 Mark Merlino	Shoreline	11	Firefighter/EMT
21 Michael Coolidge	Shoreline	30	Firefighter/EMT
22 Moses Cochran	Shoreline	6	Firefighter/EMT

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Ruslan Cherkasskikh	Shoreline	7	Lieutenant
Scott T. Johnson	Shoreline	14	Firefighter/EMT
Levi J. Keller	Tukwila	7	Firefighter/EMT
Ted Kocher	Valley Regional	27	Firefighter
Nathan Schaefer	Bellevue	7	Firefighter/EMT
Aaron Keller	Bellevue	10	Firefighter/EMT/Engineer
Taylor Konkright	Bellevue	3	Firefighter/EMT
Justin Jones	Bellevue	18	Firefighter/Engineer
Mark H. Anderson	Bellevue	19	Chief
Johan S. Friss	Valley Regional	12	Firefighter?
Troy Kilcup	Valley Regional	17	Captain
Justin Rusler	Valley Regional	12	Firefighter/EMT
Adam Hubbard	Shoreline	17	Firefighter/EMT
Artem Teterin	Redmond	9	Firefighter/EMT
Tyler Parnell	Redmond	6	Firefighter
Matthew Peterson	Redmond	23	Firefighter
Alison Hallifax	Redmond	22	Lieutenant
Scott Carlson	Redmond	13	Lieutenant
S. La Fond Davis	Redmond	30	RFD Medic
Josh Frei	Redmond	13	Lieutenant
Mitchell Pearson	Redmond	6	Firefighter

VERIFIED COMPLAINT

1	John Doe	Redmond	2 Firefighter
2	Brian C. Robillard	Redmond	28 Training Lieutenant
3	Thomas Carlo		
4	Gegen	PSF	13 Engineer
5	Raquel Brunson	PSF	2 Firefighter/EMT
6	Paul Conan	PSF	12 Engineer
7	Jeromy Waddel	PSF	12 Engineer
8	Earl Bush	PSF	17 Captain
9	David W. Johnson	PSF	22 Engineer/Firefighter
10	Brent Flatness	PSF	14 Captain
11	Devin Thomas	Bellevue	6 Firefighter/EMT
12	Eric Keenan	Bellevue	28 Captain
13	Russell J. Petrick	Bothell	11 Lieutenant
14	Morgunn Ewing	Bothell	3 Firefighter/EMT
15	Colby Ryan Cruz	Burien	11 Firefighter
16	Tyler P. Griffith	Bothell	9 Firefighter/EMT
17	Michael Bayne	Eastside	23 Firefighter/EMT
18	Frank Dahlquist	Eastside	15 Captain
19	Jason N. Bresler	Eastside	10 Firefighter/EMT
20	Chad DeVlieger	Eastside	22 Firefighter/EMT
21	Cheyenne Dixon	Issaquah	5 Firefighter
22	Danny Evanger	Eastside	20 Captain
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VERIFIED COMPLAINT

1	Kyle Felmley	Eastside	21	Firefighter/EMT
2	Zachary Zwaller	Eastside	3	Firefighter/EMT
3	Michael Woods	Eastside	14	EMT
4	Kody M. Vanhoof	Eastside	14	Firefighter/EMT
5	Lucas Storey	Eastside	2	Firefighter/EMT
6	Jeff D. Storey	Eastside	25	Firefighter/EMT
7	Joseph A. Stone	Eastside	2	Firefighter/EMT
8	Jason Stearns	Eastside	5	Firefighter/EMT
9	Ricardo Martinez	Eastside	18	Lieutenant
10	Jack Lewis	Eastside	13	Firefighter
11	Dylan Lindberg	Fall City	1	Firefighter/EMT
12	Ken Hofschulte	Northshore	20	Firefighter/EMT
13	Christopher Keith	Port of Seattle	5	Firefighter/EMT
14	Coubertier	PSF	20	Firefighter
15	Brady Hansen	PSF	20	Firefighter
16	Kenneth J. Doran	Bothell	24	Senior Firefighter/EMT
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3.8 Remainder Plaintiff Employee(s) are John and Jane Does respectively and represent the known and unknown remainder of those King County Fire Fighters and EMS who are not named and/or have not yet received

1 notice of denial of their accommodation(s) or whose temporary accommodation
2 will expire in the future.

3 **DEFENDANTS**

4
5 3.9 Defendant King County Fire Chiefs Association ("KCFCA") is a
6 public service organization tasked with the oversight and implementation of
7 Proclamation 21-14.1 and vaccination policy administration within the greater
8 King County area emergency response departments.
9

10 3.10 King County Medic One Emergency Medical Services is a public
11 service organization that is tasked with the oversight and implementation of
12 policies and procedures relating to the implementation of Proclamation 21-14.1
13 and vaccination exemptions amongst emergency medical service providers.
14

15 3.11 Defendant Jeff Clark is the Fire Chief for East Side Fire & Rescue
16 and is a member of the Executive Board of King County Fire Chiefs Association
17 ("KCFCA"). Defendant Clark is tasked with enforcing the Vaccine Mandate and
18 carrying out the reasonable accommodation process at EF&R and policy amongst
19 other Fire Departments as the Executive Director of KCFCA .
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22 3.12 Defendant City of Sammamish employs and/or utilizes the services
23 of East Side Fire District and is responsible for policies implemented therein.
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1 3.13 Defendant City of Issaquah employs and/or utilizes the services of
2 East Side Fire District and is responsible for policies implemented therein.

3 3.14 Defendant City of North Bend employs and/or utilizes the services
4 of East Side Fire District and is responsible for policies implemented therein.
5

6 3.15 Defendant Chief Eric Hicks is a member of the Board of KCFCA
7 and the Chief of King County Fire District #20.
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9 3.16 Defendant Chief Bruce Kroon is a member of the Executive Board
10 of KCFCA and is the Bothell Fire Department Chief.
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12 3.17 Defendant City of Bothell employs and/or utilizes the services of the
13 Bothell Fire Department and is responsible for policies implemented therein.

14 3.18 Defendant Chief Steve Heitman is a member of the Executive Board
15 of KCFCA and is the Chief of Renton Regional Fire Authority.
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17 3.19 Defendant Chief Matt Morris is a member of the Executive Board
18 of KCFCA and is the Chief of Puget Sound Regional Fire Authority.
19

20 3.20 Defendant Puget Sound Regional Fire Authority is a fire and rescue
21 department senior that provides services to the residents of cities, including Kent,
22 Maple Valley, Covington, Sea Tac, and King County Fire Districts #37 and #43
23 and representative of the policies and procedures of those unnamed cities.
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1 Plaintiffs reserve the right to name individuals representative of these Cities as
2 information becomes known. (see Defendant Does).

3
4 3.21 Defendant Dr. Thomas Rea is the Chief Medical Director of King
5 County Medic One Emergency Medical Services.

6 3.22 Defendant Chief Matt Cowan is the Fire Chief for Shoreline Fire
7 Department and is tasked with enforcing the Vaccine Mandate and carrying out
8 the reasonable accommodation process.
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10 3.23 Defendant City of Shoreline employs and implements policies and
11 procedures through the Department (Fire) under its control.
12

13 3.24 Defendant Chief Joseph Sanford is the Fire Chief for the Kirkland
14 Fire Department and is tasked with enforcing the Vaccine Mandate and carrying
15 out the reasonable accommodation process.
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17 3.25 Defendant City of Kirkland employs and implements policies and
18 procedures through the Department (Fire) under its control.
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20 3.26 Defendant Deputy Chief Doug McDonald is the interim Fire Chief
21 for North Shore Fire Department and is tasked with enforcing the Vaccine
22 Mandate and carrying out the reasonable accommodation process.
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3.34 Defendant Chief Jay Hagen is the Fire Chief of Bellevue Fire Department and is tasked with carrying out the policy of the City of Bellevue and the reasonable accommodation process.

3.35 Defendant City of Bellevue employs and implements policies and procedures through the Department (Fire) under its control.

3.36 Defendant Chief Michael Marrs is the Fire Chief of King County Fire District #2 and is tasked with carrying out the policies of the Cities of Burien and Normandy Park and the reasonable accommodation process.

3.37 Defendant City of Burien employs and implements policies and procedures through the Department (Fire) under its control.

3.38 Defendant City of Normandy Park employs and implements policies and procedures through the Department (Fire) under its control.

3.39 Defendant Assistant Chief Todd Starkey is the Assistant Fire Chief of the Port of Seattle Fire Department and is tasked with carrying out the policy of the Port of Seattle and the reasonable accommodation process.

3.40 Defendant Port of Seattle employs and implements policies and procedures through the Department (Fire) under its control.

3.41 Defendant Chief Charles H. Krimmert is the Fire Chief of Vashon Island Fire and Rescue and is tasked with carrying out the policy of the City of Vashon and the reasonable accommodation process.

3.42 Defendant City of Vashon, Vashon Island employs and implements policies and procedures through the Department (Fire) under its control.

3.43 Defendant Chief Alton “Brian” Culp is the Fire Chief for Fall City Fire Department and is tasked with enforcing the Vaccine Mandate and carrying out the reasonable accommodation process.

3.44 Defendant City of Fall City employs and implements policies and procedures through the Department (Fire) under its control.

3.45 Defendant Chief Vic Pennington is the Fire Chief for South King Fire District #39 and is tasked with enforcing the Vaccine Mandate and carrying out the reasonable accommodation process.

3.46 Defendant City of Federal Way employs and implements policies and procedures through the Department (Fire District #39) under its control.

3.47 The true names and capacities, whether individual, corporate, associate, or otherwise, of DOES 1-50, inclusive are unknown to Plaintiff Class at this time, who therefore sues said Defendants by such fictitious names. Plaintiffs are informed and believe and thereon allege that each of the fictitiously

1 named Defendants is in some way responsible for, or participated in or
2 contributed to, the matters and things complained of herein, and is legally
3 responsible in some manner. Plaintiffs will seek leave to amend this Complaint
4 when the true names, capacities, and responsibilities have been ascertained.
5

6 3.48 Plaintiffs are informed and believe, and thereon allege, that at all
7 times herein mentioned, the Defendants named in this action, as well as the
8 fictitiously named Defendants, and each of them, were agents and employees of
9 the remaining Defendants, and in so doing the things hereinafter complained of,
10 were acting within the course and scope of such agency and/or employment and
11 with the knowledge and consent of the remaining Defendants.
12
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14 IV. CLASS ACTION ALLEGATIONS

15 4.1 Plaintiff Class Representatives, Employees 1, 2, 3, 4 and 5, bring
16 this action for a class of persons defined as follows: All fire fighter
17 workers/employees employed in the State of Washington, County of King,
18 having sincerely held religious beliefs preventing them from taking COVID-19
19 vaccinations, each of whom have submitted a request for a religious
20 accommodation with their employer under Title VII and WLAD as required of
21 them by Proclamation 21-14.1.
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25 4.2 These persons are collectively referred to as the "Plaintiff Class".
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1 4.3 The Plaintiff Class satisfies the numerosity, commonality,
2 typicality, and adequacy prerequisites for suing as a representative party under
3 Civil Rule 23.
4

5 4.3.1 **Numerosity:** The proposed class is in excess of fifty (50)
6 employees of fire districts located in and throughout King County.
7

8 4.3.2 **Commonality:** There are questions of law or fact common
9 to all named Plaintiffs as well as to all members of the class, to wit: whether the
10 Defendants' implementation of the Vaccine Mandate is unlawful and fails to
11 comply with the required reasonable accommodation process as required by law.
12 Such activities violate WLAD, Title VII, and the First Amendment liberty to the
13 free exercise of religion as well as Due Process under the XIV Amendment to the
14 Constitution.
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17 4.3.3 **Typicality:** The class representative's claims are typical of
18 the Plaintiff Class in that: (1) each Plaintiff holds religious beliefs that will not
19 allow Plaintiff to receive COVID-19 vaccines; (2) the beliefs are sincerely held;
20 (3) each Plaintiff has requested a religious accommodation from Plaintiff's
21 employer pursuant to WLAD and Title VII; (4) the request has been approved,
22 but Defendants have stated that no reasonable accommodation can be made
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1 without unduly burdening or creating a hardship to Defendants that is more than
2 de minimus.

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4 **4.3.4 Adequacy of Representation:** The Class Representative
5 will fairly and adequately protect the interests of the proposed Class. The Class
6 Representative's interests do not conflict with class members' interests, and he
7 has retained counsel experienced in successful class action litigation to
8 vigorously prosecute this action on behalf of the Class Commonality. The Class
9 Representative raises predominantly common factual and legal questions that can
10 be answered for all Class members through a single class-wide proceeding. For
11 example, to resolve any Plaintiff Class members' claims, it will be necessary to
12 answer the following four (4) questions:

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14 (a) Whether Defendants' denial of their employees'
15 request for reasonable accommodation under Title VII (42 U.S.C. § 2000e) is
16 violative of the supremacy clause. U.S. Const. Art. VI, and the Washington State
17 Constitution Article I Section 11.

18
19 (b) Whether Defendants' denial of an employee's ability
20 to request reasonable accommodation violates the free exercise of religion. U.S.
21 Const. Amend. I.

1 (c) Whether Defendants' denial of Plaintiffs' requests for
2 reasonable accommodation is violative of the WLAD.

3 (d) Whether Defendants' denial of Plaintiffs' requests for
4 reasonable accommodation is violative of Due Process under the XIV
5 Amendment.
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7 V. FACTS 8

9 5.1 The Constitution was adopted on June 21, 1788, and subsequently
10 amended.

11 5.2 The Constitution upholds and buttresses all other laws which have
12 followed.
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14 5.3 The Gutenberg or 42 line Bible was first published in the 1450's and
15 has been in production, distribution, and circulation in varying editions since that
16 time.
17

18 5.4 Christians hold the Bible to be the basis of their faith in God through
19 Christ and the Holy Spirit.
20

21 5.5 The Bible instructs a faith based person on how to live and exercise
22 their religion, and the Constitution defends the right to do so.
23

24 5.6 Beginning in early 2020, COVID-19 became a grave concern for the
25 whole world.
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1 5.7 Governor Inslee issued his first proclamation, 20-05 et seq, relating
2 to COVID-19 under RCW 38.08, 38.52, and 43.06, thus effectively deploying
3 militia, declaring a state of emergency, and limiting activities he believes to be
4 necessary to preserve and maintain life, health, property or the public peace.
5

6 5.8 Proclamation 20-46 addressed certain high-risk groups (those over
7 65, ADEA covered individuals, and those with underlying health conditions,
8 ADA covered individuals) and the protections afforded them including:
9 prohibition from failing to utilize all available options for alternative work
10 assignments to protect them from exposure to COVID-19, including but not
11 limited to telework, alternative work locations, reassignment, and social
12 distancing measures. Further, employers were prohibited from failing to permit
13 such high-risk individuals, where an alternative work arrangement was not
14 feasible, to use any available accrued leave or unemployment insurance in any
15 sequence at the discretion of the employee...and prohibited employers from
16 taking adverse employment action against an employee for exercising his or her
17 rights under said proclamation that would result in loss of the employee's current
18 employment position by permanent replacement.
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1 5.9 On May 29, 2020, the Governor announced a county-by-county plan
2 by which counties could move through phased reopening based on metric
3 analysis of number of cases reported in relation to health care system readiness.
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5 5.10 Proclamation 20-25.4 further outlined the phased reopening start
6 plan stating that employers are required to: "provide at no cost cloth facial
7 coverings...following public health recommendations for testing and disease
8 control measures...educate workers....maintain minimum six foot distance when
9 possible...staggering work shift, and staggering breaks...establishing a
10 housekeeping schedule including frequent cleaning and sanitizing...screen
11 employees for signs and symptoms... and cordon off areas where a person known
12 to have had COVID-19 worked."
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15 5.11 The Vaccine Mandate was issued on August 20, 2021. In accord
16 with this mandate, all of the Plaintiff Class individuals submitted a timely request
17 for exemption from the vaccination based on each Plaintiff's sincerely held
18 religious beliefs.
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21 5.12 King County, through its Mayor, has issued additional
22 proclamations in line with the Governor's mandate and in line with Title VII and
23 WLAD. The Mayor has also specifically stated that religious exemptions will be
24 allowed/accommodated.
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1 5.13 Plaintiffs, and each of them, hold religious convictions that prevent
2 them from taking the COVID-19 vaccination. Their beliefs are sincere and
3 presumed. (Exhibit B request for accommodation)
4

5 5.14 Due to their sincerely held religious beliefs, the Plaintiffs, and each
6 of them, submitted a request for a religious accommodation pursuant to Title VII
7 and WLAD to their respective employers, all of whom are Fire Departments and
8 Emergency Medical Service providers located within King County, WA. The
9 Plaintiff requests for accommodation included: masking, social distancing when
10 available, testing, and any and all DOH/CDC recommendations and internal
11 policies save vaccination.
12

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14 5.15 Plaintiffs' requests for religious exemptions were approved by their
15 employers (Defendants) based on Plaintiffs' sincerely held religious beliefs.
16

17 5.16 The approval of religious exemption was often verbal although in
18 some instances was given in writing via email. The accommodation requested in
19 lieu of vaccination was to follow CDC and DOH guidelines including: masking,
20 social distancing where and when able, testing, and washing hands and other
21 measures as adopted in the Fire Departments.
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5.17 The notification denying a reasonable accommodation was the only communication given in many instances (e.g. Chief Clark notified the Department via video posting).

5.18 In the instance where there was some discussion with a Plaintiff, there was no meaningful reason given as to why the accommodations could not be afforded the Plaintiffs. Undue burden was cited without specificity as to the harm that the requested accommodation would impose. All discussions were as to the individual being unvaccinated not as to the requested accommodation and whether or not masking, testing, and social distancing presented an undue burden.

5.18.1 There were multiple instances where chiefs alluded to: patient risk, insurance claims, negligence claims, expense, and fear of retaliation, but there were no discussions regarding the risk which would pose an undue burden after the implementation of the requested accommodations.

5.18.2 In instances where the unvaccinated would have to be unmasked, the accommodation of social distancing [while eating or sleeping] was not referred to at all or discussed.

5.19 Chief Clark, on behalf of KCFCA and East Side Fire and Rescue , communicated via video on September 20, 2021, that no accommodations would be made because the legal cost and liability did not allow for it.

5.20 Other Plaintiffs were told that a "Dr. Rea" had made the decision not to allow for religious accommodations. (Exhibit A Vashon Island Fire Fighter Wolf Declaration).

5.21 Yet other Plaintiffs were told that they would have their EMT licenses pulled by Dr. Rea. (Ex. A Shoreline Fire Fighter Cherkasskikh Decl p. 4-5).

5.22 No information was provided to the Plaintiffs explaining why the reasonable accommodation of masks, social distancing, and testing could not be used as an accommodation when such accommodations had previously been sufficient.

5.23 As a result of the denial of the request for a reasonable accommodation under WLAD and Title VII, Plaintiffs have been placed on unpaid leave or separation from their employment beginning October 18, directed to resign, or have been told that unless they submit to a COVID-19 vaccination by a date certain, they will not be allowed on site or able to have patient interaction.

5.24 KCFCA met and conferred regarding the accommodation process and each member of the Board agreed that no accommodations would be made

1 for their respective Departments and that they would refuse mutual aid to [help]
2 other departments in neighboring towns that allowed religious accommodations.

3
4 5.25 Defendant Dr. Rea has stated that no unvaccinated individuals can
5 have patient contact, and KCFCA followed this blanket statement in
6 implementing its outright ban on all faith based individuals from active fire-
7 fighting duties (Exhibit C letter from Defendant Doctor Rea).

8
9 5.26 Defendant Dr. Rea wrote a letter stating that all members should be
10 vaccinated and proceeded to provide legal advice regarding accommodations
11 (Exhibit C Shoreline Fire Department, Extra Documents, "Letter from King
12 County EMS Directors" dated September 23, 2021).

14 5.27 As supposed support for his [red herring] arguments in his letter to
15 the KCFCA, Dr. Rea states that being unvaccinated would compromise
16 workplace safety and put vulnerable patients at risk, a statement that contradicts
17 his published medical journal article which showed a very low rate of
18 transmission of COVID-19 to patients among EMS when PPE was worn.
19 (<https://newsroom.uw.edu/news/study-low-risk-ems-staff-getting-covid->
20 [patients](https://newsroom.uw.edu/news/study-low-risk-ems-staff-getting-covid-)).
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1 5.27.1 PPE is still being worn by all EMS and firefighters on
2 call. Plaintiffs are asking no more than what is already being offered and
3 provided to all EMS and Fire Fighters.
4

5 5.28 Prior to masks being required inside of the fire department facilities
6 in August of 2021, there were COVID-19 positive cases among both the
7 vaccinated and unvaccinated (**Exhibit A East Side Fire Decls. Joseph Stone,**
8 **Jason Stearns, Dominick Miller, Ricardo Martinez, Jack Lewis, Ex. A**
9 **Declarations Northshore Jake Gillis, Exhibit A Declaration Fall City Dylan**
10 **Lindberg**).
11
12

13 5.29 No fire fighter or EMS died from COVID-19 in King County to the
14 declarant's knowledge (**Exhibit A Declarations et al**).
15

16 5.30 There is one known hospitalization of an unvaccinated Fire Fighter
17 among the Plaintiff Class.
18

19 5.31 The Plaintiff Class possesses specific skill sets which are not easily
20 transferable to other professions.
21

22 5.32 King County has enforced a zero-exemption policy which makes
23 the Plaintiff Class unemployable in the profession for which they are trained and
24 certified which by application, results in a disparate impact that is not narrowly
25 tailored and results in discrimination on a suspect class of people.
26
27

1 5.32.1 The “framework” the departments used in determining
2 whether or not they could allow an exemption resulted in a 100% denial of
3 accommodations requested. The framework was not specifically discussed with
4 the Plaintiffs but generally alluded to. (Ex. C Shoreline Exemption Review Letter
5 October 4, 2021)
6

7 5.33 Monetary damages are insufficient to compensate the Plaintiff Class
8 for the loss of their First Amendment rights.
9

10 5.34 Department of Health (“DOH”) updated guidelines of September
11 2021 state that testing may be an option in a health care setting for direct patient
12 care. (CITE)
13

14 5.35 The DOH guidance on accommodation states:
15

16 **Health care setting operators may follow their pre-existing**
17 **accommodation processes, provided they comply with applicable law. Any**
18 **accommodations provided must, to the extent permitted by law, require the**
19 **individual to take COVID-19 safety measures that are consistent with DOH**
20 **recommendations for the setting in which the individual works. Health**
21 **care setting operators must follow the accommodations processes**
22 **required by law and are prohibited from providing accommodations that**
23 **they know are based on false, misleading, or dishonest grounds or**
24 **information or are actually based on personal preference. They are**
25 **likewise prohibited from providing accommodations without conducting an**
26 **individualized assessment and determination of each individual’s need and**
27 **justification for an accommodation, i.e., “rubberstamping”**
28 **accommodation requests.¹**

¹ <https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/505-160-VaccinationRequirementFAQs.pdf>

5.36 Defendants have asserted a new standard of patient care.

5.37 There has been no training regarding the new standard for patient care, and such standard appears to be based solely on vaccination status.

5.38 The named Defendants rubber stamped denials based on the faulty premise that the Plaintiff Class could not safely provide services. 5.39 In discussing the reasons that accommodations could not be afforded to faith-based individuals, the oft cited reasons were: DOH language forbids patient contact with the unvaccinated; insurance will not insure the fire department; liability, including gross misdemeanors for spreading COVID-19; funding being pulled from BLS and ALS; Federal funding being pulled if unvaccinated staff remain; hospitals refusing to admit transfers from unvaccinated fire departments ;and Medicare and Medicaid funds terminated. Exhibit C Cherkasskikh Ruslan (Exemption Response)

5.40 Chief Clark of East Side Fire and Rescue stated that, "Allowing unvaccinated personnel to engage in direct patient care would create undue hardship." He made this statement while citing a lengthy legal brief that included case citations for *Robinson v. Children's Hosp. Bos.* and statements that "masking and social distancing were insufficient." Chief Clark's statements reveal a preemptive move to withhold approval from faith based individuals

1 based on a carefully crafted legal theory before entertaining any dialogue
2 regarding the actual accommodations and risk therein. In short, Chief Clark was
3 advised and acted in a manner that would REQUIRE (emphasis added) denials
4 across the board. Chief Clark's legal analysis did not consider statistics and
5 information taken from unvaccinated individuals who were masked and tested.
6 This obfuscates the accommodation requested and fails to address the risk or cost
7 WITH the accommodations (Exhibit C East Side Fire and Rescue Email
8 Accommodation Jason Stearns, and Exhibit C East Side Fire and Rescue Pam
9 More Info email chain dated October 6, 2021).

13 5.40.1 An individual named Pam emailed the Plaintiffs of East Side
14 FR that meetings for individuals to discuss with Chief Clark the accommodations
15 request would be set for Sept. 28, 29, and Oct 1, 2021.

17 5.40.2 Chief Clark stated via video prior to these dates and the email
18 thread with Jason Stearns, Plaintiff, that no accommodations would be made.

20 5.40.3 There have been no risks of increased COVID-19 spread nor
21 the Delta variant directly attributable to the Plaintiff Class in any of the fire
22 departments named.

24 5.40.4 Neighboring counties have and continue to offer reasonable
25 accommodations for faith-based individuals.

5.41 On October 19, 2021, the Shoreline Fire Department stated that “due to 100% vaccinations [sic] of crews, face coverings are no longer required for crews while in-station....(Exhibit C Extra Documents, Shoreline Fire Department inter office communication)

542 At least one Plaintiff, Plaintiff Class Representative 2, Ruslan Cherkasskikh, had to inquire of his employer, Shoreline, how to notify his agency what option he would be pursuing for the requirement (**Exhibit C** Shoreline, Pam deadline email). The failure of the departments, generally, to engage in an interactive and good faith accommodation process resulted in a complete banning of faith-based individuals from fire service with no consideration of the accommodation requested.

5.43 Dr. Rea was approached by other Defendants with a request for a supportive letter for the chiefs' and departments' policy not to accept accommodations (**Exhibit A** South King Fire Decl. of Chad Snyder p. 2 ¶ 1).

5.44 The Chiefs were told specifically by the Commissioners not to accept any accommodations or exemptions and carried out that policy. (Decl. Chad Snyder p. 2 ¶1)

5.45 Many of the fire houses within King County experienced break through cases whereby vaccinated individuals tested positive for COVID-19 after

1 being vaccinated (**Exhibit A** Declaration of Plaintiffs, **Exhibit D**, spreadsheet of
2 declarants' **Exhibit A** contents cross reference).

3
4 5.46 As recently as October 28, 2021 an email from Bill Newbold to the
5 Bothell Fire Department members shows fire houses have continued to
6 experience COVID-19 cases:
7

8 We continue to exist in challenging times with the risk of COVID-19
9 exposure. The chance for transmission remains high and remains real,
10 vaccinated or not. Many of the reported new cases are break through cases
11 effecting vaccinated people.
12

13 As of recent, in our own department, we have seen this unfold with several
14 members. Not only does this have a direct impact on those members and their
15 families, it in turn impacts each of us and our organization. With that in mind,
16 Chief Kroon and I have discussed measures we can take organizationally to
17 minimize our risk. The first step is a reminder of individual actions - Please
18 remain vigilant, continue to practice social distancing, good hygiene, and yes –
19 choosing to wear a mask in mixed-group settings or if you are uncertain; we are
20 not out of the woods yet. With the unexpected and added cost of multiple
21 COVID-related absences we have discussed cancelling any non-required training
22 in order to help shore up our budget. Short of formally taking this step, I am
23 asking that each of you evaluate your need for attending such training and
24 consider postponing or foregoing if able to do so.
25

26
27 (Exhibit C Bothell Fire Department COVID Exposure and Risk
28 Assessment email)

1 5.47 There have been no known transmissions of COVID-19 amongst
2 King County Fire Department employees while at work wearing PPE (**Exhibit A**
3 **Declarations of Plaintiffs**).

4
5 5.48 Fire Chiefs appear to be to refusing mutual aid to those departments
6 which will provide accommodations. Mutual aid agreements are necessary for
7 proper function, and communities are at risk without them (**Exhibit C Shoreline**
8 **Chief Doctors meeting minutes**).

9
10 5.49 The inaction of Defendants has also led to a hostile work
11 environment filled with harassment, intimidation, bullying, discrimination,
12 belittling, threatening and malicious statements towards faith based individuals
13 who have been told, amongst many things: they deserve to die if they get COVID-
14 19, they should be punched in the face, others can't wait until "they are purged",
15 and other intimidating statements, social media posts, letters posted on walls at
16 work, and the like (**Exhibit A Declaration of Plaintiffs**), **Exhibit D** column D).

17
18
19
20 5.50 Plaintiffs have had their personal phone numbers shared with the
21 public in order to belittle and harass them regarding their faith (**Exhibit A**
22 **Redmond Fire Department, Decl. Carlson, Redmond, p. 3 ¶2**).

23
24 5.51 Plaintiffs have suffered severe psychological, emotional, and mental
25 stress at the hands of Defendants and as a result of their poor leadership and
26

1 tacit approval of discriminatory and harassing behaviors. (**Exhibit D** spreadsheet,
2 **Exhibit A** Declarations)

3 5.52 The community will be harmed by the actions of the Defendants in
4 reduced resources, stress on remaining employees, and issues with assistance by
5 EMS at the hospital. (Decl. Scott Carlson, Redmond Fire Fighter, p. 3 ¶2)

7 5.53 Vaccinated Fire Fighters have tested positive for COVID-19, other
8 individuals have been allowed to continue working despite being in direct contact
9 and exposure while unmasked (**Exhibit A** Declaration, VRFA, Walker p. 4).

11 5.54 Plaintiffs have experienced severe mental and emotional trauma at
12 the hands of Defendants (**Exhibit A** Redmond Fire Fighter, wife's Declaration,
13 Kayleigh Alsin p. 3).

15 5.55 Defendants have attempted to penalize the Plaintiffs for asserting
16 their protected class status and faith-based exemptions. (*Id.* p. 4) 5.56

18 Plaintiffs have had their personal phone numbers given out only to be
19 screamed at and harassed (**Exhibit A** Redmond Fire Fighter, Declarations Wife,
20 Dana Carlson, p. 3).

22 5.57 Plaintiffs have been told the situation is more about public
23 perception than public safety (*Id.* p. 4.).
24
25
26
27

5.58 Defendant Dr. Rea told individuals that EMS must be vaccinated to treat patients despite his studies showing significantly low rates of transmission from EMS to patient and vice versa (Exhibit A Shoreline Fire Department, Declaration of Michael Coolidge, p. 3).

5.59 Ladder trucks will be forced to respond to calls that are not within their intended use, thus putting valuable equipment at risk for over use. (Exhibit A South King Fire Department, Declaration of VanBerkam p. 3)

5.59 Test kits are reported to cost less than \$8.00 which is a de minimus cost compared to retraining an entire force(*Id. at p. 5*).

5.60 When asked by Fire Fighter Chad Snyder of South King Fire Department if Defendant Dr. Rea was the cause of the policy that unvaccinated Fire Fighters could not treat patients any longer he stated: “ I did not make the policy but was asked to provide support for the Chiefs’ and Departments’ policy to do so.” (Exhibit A South King Fire, Declaration of Chad Snyder p. 2)

5.61 The Port of Seattle used masks only sixty percent (60%) of the time and was utilizing expired tests without any exposure that resulted in quantifiable loss to the Department. (Exhibit A Port of Seattle Fire, Declaration of Coubertier, p. 2, 9)

1 5.62 As part of their MOU, the leave of absence notice stated that in a
2 specified number of months the individuals would be allowed to return, but upon
3 exiting their jobs on October 18, 2021 those in various departments were
4 informed that new hires were being made to fill their positions. This effectively
5 terminates all individuals. (Exhibit A East Side Fire, Declaration of Frank
6 Dahlquist p. 8-15)
7

8
9 5.63 Members of various Departments were threatened with forced
10 vaccination.
11

12 5.64 Multiple Departments have had breakthrough cases where
13 vaccinated individuals caught and tested positive for COVID-19. (Exhibit A
14 Burien Fire Fighter, Declaration of Dow, p. 1, Tukwila Fire Fighter, Declaration
15 of Levi Keller, p. 3)
16

17 5.65 During the accommodation process, the protected Class Plaintiffs
18 were publicly called out, emailed, and derided for their beliefs. (Exhibit. A
19 Burien Fire Fighter, Declaration of Cruz, p. 2)
20

21 5.66 One Defendant, the City of Bothell, held accommodation meetings
22 after October 18, 2021 when individuals had already been placed on leave.
23 (Exhibit A Bothell Fire Fighter, Declaration of Petrick, p. 7)
24
25
26
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28

5.67 Because of the aid given to Police Departments, the staffing issues will affect a broader range of departments and the community in a broad way that is not isolated by department. (Exhibit A Puget Sound Fire Dept, Declaration of Paul Conan, p. 2-3)

5.68 King County Fire Chiefs met during or around the last week of September and expressed a concern for funding if they allowed accommodations. (Exhibit A Bellevue Accommodations, Doctor Chiefs Minutes, #18 p. 2)

5.69 As of October 18, 2021, all members of the Plaintiff Class have been removed from their jobs due to the improper implementation of the Proclamation and the misapplication of the law.

5.70 Those who were given a leave of absence, changed jobs, and accommodated in a way that removes them from patient service have been accommodated on a temporary basis only and the harm will continue to escalate over time.

5.71 Plaintiffs Class Representative 1, Ken Hofschulte, submitted his initial request on September 5, 2021 and was told that he would receive a response by the end of business on September 8, 2021 (**Exhibit C Shoreline, Hofschulte Exemption Request**). He had to email the Chief and others asking for

1 a response to his request for accommodation. (Exhibit C Shoreline, Hofschulte
2 First Request).

3 5.72 Chief MacDonald of Shoreline explained that delays were occurring
4 in response time(s) because the Governor had amended the Proclamation.
5 Counsel is unaware of any amendment changing the nature of the
6 accommodation process or for which the Governor reneged on the law under Title
7 VII and WLAD. (Exhibit C Shoreline Hofschulte delay from admin.)
8

9 5.73 The harm is occurring and will continue to occur unless this Court
10 gives the Plaintiffs the redress they seek.
11
12

13
14 **VI. FIRST CAUSE OF ACTION**
15 **DEPRIVATION OF FREE EXERCISE OF RELIGION**
16 **Against Defendants, et al.**

17 6.1 Plaintiffs repeat and reallege the allegations above and incorporate
18 those allegations herein by reference.

19 6.2 The actions of Defendants are being done under color of law and
20 deprive the Plaintiffs of their rights as afforded them under the Constitution of
21 Washington State and of the United States.
22

23 6.3 Being forced to choose between taking COVID-19 vaccine in
24 violation of their sincerely held beliefs or being fired or separated from
25 employment imposes a substantial burden on the Plaintiffs and the Plaintiff Class
26
27

1 and interferes with, and deprives them of, the enjoyment of the free exercise of
2 religion under the First Amendment to the United States Constitution, as made
3 applicable to the state through the Fourteenth Amendment.
4

5 6.4 Wherefore, Plaintiffs bring this claim under both 42 U.S.C.
6 §2000(e) and RCW §49.60 and request the relief set forth below in the prayer for
7 relief.
8

9 **VII. SECOND CAUSE OF ACTION**
10 **DEPRIVATION OF PRIVILEGES AND IMMUNITIES**
11 **Against Defendants , et al.**

12 7.1 Plaintiffs repeat and reallege the allegations above and incorporate
13 those allegations herein by reference.

14 7.2 The actions of Defendants interfere with, and deprive, the Plaintiffs
15 of the rights, privileges and immunities of federal and state law, namely Title VII
16 and RCW §49.60.
17

18 **VIII. THIRD CAUSE OF ACTION**
19 **TITLE VII**
20 **Against Defendants, et al.**
21 **(42 U.S.C. § 2000e)**

22 8.1 Plaintiffs repeat and reallege the allegations above and incorporate
23 those allegations herein by reference.

24 8.2 By submitting a request for religious accommodation under Title
25 VII and WLAD, the Plaintiffs engaged in actions protected by federal law.
26
27

1 8.3 The Defendants subjected the Plaintiffs to adverse employment
2 actions by either threatening termination from their employment, placing them
3 on unpaid administrative leave, directing them to resign, or informing them that
4 unless they submit to a COVID-19 vaccination by a date certain, they will lose
5 their jobs.
6

7 8.4 The Defendants refused to entertain reasonable requests for
8 accommodation under Title VII and WLAD.
9

10 8.5 Wherefore, Plaintiffs bring this claim under 42 U.S.C. § 2000e and
11 this court may exercise supplemental jurisdiction over such claims.
12

13 **IX. FOURTH CAUSE OF ACTION**
14 **Washington Law Against Discrimination RCW 49.60**
15 **Against Defendants, et al.**

16 9.1 Plaintiffs repeat and reallege the allegations above and incorporate
17 those allegations herein by reference.

18 9.2 Plaintiffs have been denied reasonable accommodation under
19 WLAD, and such application of the Vaccine Mandate has a disparate impact on
20 the Plaintiff Class.
21

22 9.3 By disregarding the Governor's mandate that religious
23 accommodation be afforded those with sincerely held religious beliefs, the
24
25
26
27

1 Defendants violate the protections afforded Plaintiffs under WLAD and by
2 express direction of the Governor.

3
4 **X. FIFTH CAUSE OF ACTION**
5 **Hostile Work Environment Under RCW §49.60.180**
6 **Against Defendants, et al.**

7 10.1 Plaintiffs repeat and reallege the allegations above and incorporate
8 those allegations herein by reference.

9 10.2 Plaintiffs received unwelcome harassment constantly once they
10 asserted their rights and those were made known.

11 10.3 Plaintiffs were harassed because of their religious beliefs that
12 obtaining a vaccine which utilized aborted fetal cells lines in testing and/or
13 derivation was against their sincerely held beliefs.

14 10.4 The harassment affected the terms and conditions of Plaintiffs'
15 employment.

16 10.5 The harassment was systemic, approved of by superiors, and
17 imputable to the employer.

18
19 **XI. SIXTH CAUSE OF ACTION**
20 **Violations of the Due Process Clause and Equal Protection Clause of the**
21 **XIV Amendment**
22 **Against Defendants, et al.**

1 11.1 Plaintiffs repeat and reallege the allegations above and incorporate
2 those allegations herein by reference.

3
4 11.2 By receiving a religious exemption, the Plaintiffs have established a
5 sincerely held religious belief that entitles them to the interactive reasonable
6 accommodation process.

7
8 11.3 By denying any meaningful interaction regarding the
9 accommodations requested, the Defendants have denied the Plaintiffs their rights
10 to Due Process of Law and equal protection under the law prior to and throughout
11 the process of exemption resulting in the abridgement of their rights under the
12 Constitution and Title VII and WLAD.
13

14 **XII. SEVENTH CAUSE OF ACTION**
15 **Violation of law under 42 § 1983**
16 **Against Defendants, et al**

17 Discriminatory policies and procedures carried out under color of law
18 and by authority of the agent(s) in violation of 42 USC § 1983

19 12.1 Plaintiffs repeat and reallege the allegations above and incorporate
20 those allegations herein by reference.

21
22 12.2 Defendants knowingly, under color of law and authority therein,
23 violated the Proclamation as well as Federal and State law as to the rights of the
24 Plaintiff Class.
25

26 12.3 This Court has concurrent jurisdiction to hear such a claim.
27

1 **XIII. PRAYER FOR RELIEF**

2 Wherefore, Plaintiffs request that the Court enter judgment in their favor,
3
4 and against the Defendants, for full relief, including the following:

5 13.1 Declaratory judgment finding the Vaccine Mandate/Proclamation
6
7 21-14.1 unconstitutional as applied by Defendants;

8 13.2 Issue a temporary restraining Order;

9 13.3 Preliminary and permanent injunctive relief prohibiting Defendants
10
11 from denying reasonable accommodation without showing undue burden or
12 hardship;

13 13.4 Attorneys' fees and costs;

14 13.5 Lost wages, lost overtime, cost of medical coverage and out of
15
16 pocket expenses;

17 13.7 Mental and emotional anguish created by the Defendants in failing to
18
19 stem a hostile work environment and discriminatory treatment on the basis of
20 creed;

21 13.8 Any and all other appropriate relief to which the Plaintiffs may be
22
23 entitled including all "appropriate relief" within the scope of CR 54.

24 Dated: November __5__, 2021.

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VERIFIED COMPLAINT