

# McMahon v. City of Los Angeles

United States District Court for the Central District of California

September 30, 2025, Decided; September 30, 2025, Filed

Case No. 2:23-cv-09815-FLA (SKx)

## Reporter

2025 U.S. Dist. LEXIS 220835 \*; 2025 LX 537310

MICHAEL MCMAHON, et al., Plaintiffs, v. THE CITY OF LOS ANGELES, et al., Defendants.

**Counsel:** [\*1] For Armando Diaz -, Ana Karen Cruz, Adrien Pertilla, Aaron Brownell, Angela Jung, Bonifacio Chagolla, Daniel Lee, Cynthia Uytiepo, Darin Laier, Flor Burrola, Jerry Kowalsky, Jamie Stanford, Dubwana Clark II, John Knox, Jason Birondo, John Van Hoesen, Matthew Bailey, Rick Tanguay, William Collyer, Steve Lovell, Plaintiffs: David J. Schexnaydre, Schexnaydre Law Firm LLC, Mandeville, LA; Jennifer Walsleben Kennedy, Jennifer Kennedy Law Offices, Sierra Madre, CA.

For Albert Vega, David Finger, Jeffrey Todd Briscoe, Robert Corchado, Kevin Ishida, Mark Anthony Carrillo, Ruzanna Luledzhyan, Kelly Gutwein, Mackenzie Vandergeest, Thomas Chamberlain, Plaintiffs: Jennifer Walsleben Kennedy, Jennifer Kennedy Law Offices, Sierra Madre, CA; David J. Schexnaydre, LEAD ATTORNEY, Schexnaydre Law Firm LLC, Mandeville, LA.

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For Karen Bass, Defendant: Jaclyn Dyan Grossman, Jaclyn Dyan Grossman, Los Angeles City Attorney's Office, Los Angeles, CA.

For The City of Los Angeles, Defendant: Jaclyn Dyan Grossman, Los Angeles City Attorney's Office, Los Angeles, CA.

**Judges:** FERNANDO L. AENLLE-ROCHA, United States District Judge.

**Opinion by:** FERNANDO L. AENLLE-ROCHA

## Opinion

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**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS [DKT. 64], GRANTING IN PART AND DENYING IN PART DEFENDANTS' REQUEST FOR**

**JUDICIAL NOTICE [DKT. 67], AND DENYING AS MOOT DEFENDANTS' MOTIONS TO STRIKE [DKT. 65] AND FOR A MORE DEFINITE STATEMENT [DKT. 66]**

**RULING**

Before the court is Defendants City of Los Angeles (the "City") and Karen Bass' ("Bass" and, together with the City, "City Defendants") Motion to Dismiss ("Motion"), filed on January 30, 2025. Dkt. 64 ("Mot."). Plaintiffs,<sup>1</sup> who are current or former [\*4] City employees, bring seven claims under 42 U.S.C. § 1983 ("§ 1983"), related to the City's adoption of an ordinance mandating employees become vaccinated against COVID-19 or seek a religious or medical exemption. Dkt. 59 ("4AC") ¶¶ 253-361. On March 14, 2025, Plaintiffs filed an Opposition to the Motion. Dkt. 72 ("Opp'n"). On March 31, 2025, the court found this matter appropriate for resolution without oral argument and vacated the April 4, 2025 hearing on the Motion. Dkt. 78; see Fed. R. Civ. P. 78(b); Local Rule 7-15.

For the reasons stated herein, the court GRANTS the City Defendants' Motion and DISMISSES Plaintiffs' claims against the City and Bass without leave to amend. The court GRANTS in part and DENIES in part the City Defendants' Request for Judicial Notice (Dkt. 67), and DENIES as moot the City Defendants' Motion to Strike (Dkt. 65) and Motion for a More Definite Statement (Dkt. 66).

**BACKGROUND**

Plaintiffs allege the following facts in their Corrected Fourth Amended Complaint ("4AC"), filed on December 17, 2024. 4AC. In 2020, the federal government established the Centers for Disease Control ("CDC") Vaccination Program ("CDC Vaccination Program" or "Program")<sup>2</sup> to distribute and administer COVID-19

vaccines (which Plaintiffs term "COVID-19 [\*5] Investigational Drugs"). 4AC ¶ 97. The federal government purchased COVID-19 vaccines and administered them through the states. *Id.* ¶ 118.

On August 18, 2021, Defendant Eric Garcetti<sup>3</sup> ("Garcetti," who was the mayor of the City at that time) submitted to the Los Angeles City Council Ordinance No. 187134 (the "Ordinance"), which required "all current and future City employees" to be fully vaccinated for COVID-19 or request an exemption. *Id.* ¶ 144. The Ordinance contained the following vaccination requirements:

- (1) Employees must receive their first dose of a two-dose COVID-19 vaccine no later than September 7, 2021; second dose no later than October 5, 2021, of a two-dose COVID-19 vaccine series (Moderna or Pfizer-BioNTech).
- (2) Employees must receive their single dose of a single-dose COVID-19 vaccine (Johnson & Johnson/Janssen) no later than October 5, 2021.
- (3) Requests for exemption from the COVID-19 vaccination [sic] must be submitted no later than September 7, 2021.
- (4) Effective October 20, 2021, any new contract executed by the City shall include a clause requiring employees of the contractor and/or persons working on their behalf who interact with City employees, are [\*6] assigned to work on City property for the provision of services, and/or come into contact with the public during the course of work on behalf of the City to be fully vaccinated.

Dkt. 67-1 at 4.<sup>4</sup>

The Ordinance also listed the qualified exceptions and means for employees to opt out:

All current and future City employees shall have the right to petition for a medical or religious exemption to be evaluated on a case-by-case basis, consistent with City procedures for reasonable accommodation requests. Documentation prescribed by the City shall be required.

<sup>1</sup> The first named Plaintiff in this action is Michael McMahon. There were, at varying times, 144 Plaintiffs in this action, although some have since been terminated from the action. The court refers the parties to the docket for the full list of Plaintiffs.

<sup>2</sup> Plaintiffs never define the exact contours of the CDC Vaccination Program. See *generally*, 4AC. The court infers from the 4AC that the "Program" refers to the federal government's efforts to approve and distribute vaccinations to combat the COVID-19 pandemic. *Id.*

<sup>3</sup> Plaintiffs assert claims against Garcetti individually, and in his official capacity as the former Mayor of the City. 4AC ¶¶ 141-47, 192. Plaintiffs' claims against Bass are based on her assumption of Garcetti's position, and her alleged failure to issue an executive order bringing the Ordinance into Constitutional and statutory compliance. *Id.* ¶¶ 178-89.

<sup>4</sup> The court cites documents by the page numbers added by the court's CM/ECF System, rather than any page numbers included natively.

(a) Employees with medical conditions/restrictions or sincerely held religious beliefs, practices, or observances that prevent them from receiving a COVID-19 vaccine shall qualify for COVID-19 vaccine exemption, upon approval of documentation provided by the employee to the appointing authority or designee. Employees who qualify for the medical or religious exemptions may be subject to weekly testing, as provided in (b)(1), below.

(b) Employees with medical or religious exemptions and who are required to regularly report to a City worksite shall be subject to weekly COVID-19 tests. Testing will be provided to the employees at no cost during their [\*7] work hours following a process and timeline determined by the City.

(1) Employees with medical or religious exemptions who are telecommuting or teleworking shall be subject to ad hoc COVID-19 testing when they are asked to report to a worksite on an as-needed basis.

The City's goal is to have a vaccinated workforce. As such, employees will not have the option to "opt out" of getting vaccinated and become subject to weekly testing. Only those with a medical or religious exemption and who are required to regularly report to a work location are eligible for weekly testing.

*Id.* at 5-6. Employees who were unvaccinated, partially vaccinated, or whose vaccination status was unreported were "ineligible to promote or transfer until the employee ... reported to the appointing authority that they [were] fully vaccinated." *Id.* at 6. Plaintiffs allege the vaccination requirement was a "condition of continuing or starting public employment with the City." 4AC ¶ 144.

When Garcetti signed the Ordinance on August 20, 2021, there were no "[U.S. Food and Drug Administration, "FDA"]-licensed COVID-19 drug[s]" available. *Id.* ¶ 147. The Ordinance went into effect on August 25, 2021. *Id.* ¶ 144. Plaintiffs claim [\*8] "the only drugs made available to [them] for compliance with [the Ordinance] were FDA-classified as investigational drugs" and that the FDA only approved "any drug for general commercial marketing on August 23, 2021." *Id.* ¶ 166. Defendants allegedly "concealed from Plaintiffs that the drugs were investigational, were not licensed or approved by the FDA, and did not prevent transmission

or infection, and further concealed Plaintiffs' right to refuse the drugs without penalty or pressure, under the federally funded CDC Vaccination Program." *Id.* ¶ 168.

According to Plaintiffs, "[t]he City penalized Plaintiffs for refusing investigational drugs and unwanted medical treatments," in violation of "Plaintiffs' fundamental liberty interest in bodily autonomy and their property rights pursuant to the CDC Vaccination Program and applicable laws, ... which guarantee that Plaintiffs will not incur a penalty or lose a benefit to which they are otherwise entitled." *Id.* ¶ 117. Plaintiffs further argue the City, acting through its Mayors, "required Plaintiffs to: (1) surrender their Fourteenth Amendment rights to due process should they incur injury from the use of the product as required under the [Public Readiness and [\*9] Emergency Preparedness Act, henceforth 'PREP Act'], (2) become a human subject involved in federally funded research activities, (3) publicly disclose their private health information to unknown persons for unknown reasons for an unknown length of time, and (4) assume greater risks to their health, safety, financial, and legal rights involving investigational drug treatments." *Id.* ¶ 202 (errors in original).

Plaintiffs bring seven claims under § 1983 for violations of the Fourteenth Amendment: (1) deprivation of federal benefits; (2) unwanted use of emergency use authorization ("EUA") drugs; (3) violation of the right to refuse PREP Act countermeasures; (4) unwanted investigational drugs and unwanted medical treatment; (5) deprivation of equal protection rights; (6) deprivation of the right to privacy; and (7) deprivation of procedural due process. *Id.* ¶¶ 253-361. The First through Fourth, and Seventh Causes of Action are brought for violations of the Due Process Clause, the Fifth for violation of the Equal Protection Clause, and the Sixth for the general right to privacy. *Id.*

#### **REQUEST FOR JUDICIAL NOTICE**

On January 30, 2025, the City Defendants filed a Request for Judicial Notice ("RJN") in support of the Motion, asking the court to take judicial notice [\*10] of several documents, including the Ordinance (Exhibit A, Dkt. 67-1 at 3-7), an FDA news release dated August 23, 2021 (Exhibit I, Dkt. 67-3 at 85-86), and Ordinance No. 188279 ("Repeal Ordinance"), which repealed the vaccination mandates in the Ordinance and allowed the rehiring of City employees who resigned or were terminated (Exhibit J, Dkt. 67-3 at 90-93). Dkt. 67 at 3-9. Plaintiffs oppose the RJN and request the court take

judicial notice of a "Fact Sheet for Recipients and Caregivers" issued by the FDA. Dkt. 70 at 11-12; Dkt. 70-1. The City Defendants filed a reply in support of the RJN on March 21, 2025. Dkt. 77.

As a general rule, when evaluating a motion to dismiss under Fed. R. Civ. P. ("Rule") 12(b)(6), district courts may not consider material evidence outside the pleadings without treating the motion as a motion for summary judgment under Rule 56. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). "There are, however, two exceptions to the requirement that consideration of extrinsic evidence converts a 12(b)(6) motion to a summary judgment motion. First, a court may consider 'material which is properly submitted as part of the complaint'.... Second, under Fed. R. Evid. 201, a court may take judicial notice of 'matters of public record.'" *Id.* at 668-69. A fact is judicially noticeable if [\*11] it "is not subject to reasonable dispute because it ... can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b)(2). While courts may take judicial notice of public records, they "cannot take judicial notice of disputed facts contained in such public records." *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th Cir. 2018).

The court GRANTS in part the City Defendants' RJN and takes judicial notice of the existence and legal effect of the City Defendants' Exhibits A, I, and J, but not reasonably disputed facts contained therein. See Fed. R. Evid. 201(b)(2); *Khoja*, 899 F.3d at 999. The parties' requests for judicial notice are otherwise DENIED as not necessary to the resolution of the Motion.

## **DISCUSSION**

### **I. Legal Standard**

Under Rule 12(b)(6), a party may file a motion to dismiss a complaint for "failure to state a claim upon which relief can be granted." The purpose of Rule 12(b)(6) is to enable defendants to challenge the legal sufficiency of claims asserted in a complaint. *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987). A district court properly dismisses a claim under Rule 12(b)(6) if the complaint fails to allege sufficient facts "to support a cognizable legal theory." *Caltex Plastics, Inc. v. Lockheed Martin Corp.*, 824 F.3d 1156, 1159 (9th Cir. 2016).

"To survive a motion to dismiss, a complaint must

contain sufficient factual matter ... to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). [\*12] "The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Id.* "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (internal citations omitted).

"Factual allegations must be enough to raise a right to relief above the speculative level." *Id.* (internal citations omitted). "Determining whether a complaint states a plausible claim for relief is 'a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.'" *Ebner v. Fresh, Inc.*, 838 F.3d 958, 963 (9th Cir. 2016) (quoting *Iqbal*, 556 U.S. at 679). When evaluating a complaint under Rule 12(b)(6), the court "must accept all well-pleaded material facts as true and draw all reasonable inferences in favor of the plaintiff." *Caltex*, 824 F.3d at 1159; *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008) ("We accept factual allegations in the complaint as true and construe the pleadings in the light most favorable to the nonmoving party."). Legal conclusions, however, "are not entitled to the assumption of truth" and "must [\*13] be supported by factual allegations." *Iqbal*, 556 U.S. at 679.

## **II. Analysis**

### **A. Standard of Review**

Certain medical procedures implicate a fundamental right to bodily integrity. See, e.g., *Washington v. Harper*, 494 U.S. 210, 229 (1990) (holding "[t]he forcible injection of [antipsychotic drugs] into a nonconsenting person's body represents a substantial interference with a person's liberty"). A court will apply strict scrutiny when the government's challenged conduct infringes on a fundamental right. *Reno v. Flores*, 507 U.S. 292, 301-02 (1993). Otherwise, rational basis review applies. *Kheriaty v. Regents of the Univ. of Cal.*, Case No. 22-55001, 2022 WL 17175070, at \*1 (9th Cir. Nov. 23,

2022)).<sup>5</sup>

Fundamental rights must be either "enumerated in the Bill of Rights or 'deeply rooted in this Nation's history and tradition and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed.'" *Id.* (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997)) (cleaned up). "When determining whether an unenumerated right is fundamental, a court defines the liberty interest at issue 'in a most circumscribed manner' and examines whether there is a specific historical practice of protecting the defined interest." *Id.* (quoting *Khachatryan v. Blinken*, 4 F.4th 841, 856 (9th Cir. 2021)).

The City Defendants argue rational basis review applies to COVID-19 vaccine mandates. Mot. at 17-19, 22-23 (citing, e.g., *Kheriaty*, 2022 WL 17175070). In *Kheriaty*, 2022 WL 17175070, at \*2, the Ninth Circuit upheld the University of California's COVID-19 [\*14] vaccination policy under rational basis review, noting the plaintiff "fail[ed] to offer any appropriate historical example to establish a 'fundamental right' to be free from a vaccine mandate at a workplace" and that, "[t]o the contrary, the Supreme Court upheld a much more onerous vaccine requirement in *Jacobson v. Massachusetts*, 197 U.S. 11, 12-13 (1905)[.] ... that applied to all adults and [was] enforced with financial penalties and criminal charges."

"Plaintiffs do not contest Defendants' discretionary authority to implement an employment policy requiring vaccination with a FDA-licensed vaccine," but argue the COVID-19 vaccines mandated in the Ordinance<sup>6</sup> were "investigational medical treatments" only, and not actually licensed vaccines. Opp'n at 7. Specifically, Plaintiffs allege the FDA formally approved a Pfizer vaccine with the licensed marking name "COMIRNATY®," but Pfizer never manufactured vaccines with vials bearing the licensed marketing

name, and only manufactured EUA investigational drugs that Plaintiffs identify as "Pfizer-BioNTech COVID-19 Vaccine." 4AC ¶¶ 152, 155-56. According to Plaintiffs, "[o]nly those vials bearing the [National Drug Code] and Pfizer's licensed marketing name, 'COMIRNATY®,' are considered 'licensed' [\*15] by the FDA." *Id.* ¶ 152. Plaintiffs, thus, contend the vaccines mandated in the Ordinance were not legally "vaccines" and strict scrutiny should apply because "multiple fundamental rights are involved" in this action, including their "fundamental right to refuse investigational medical treatments." Opp'n at 11-14.

The City Defendants counter the vaccines were "identical in all but name" and the court, therefore, should apply rational basis review. Mot. at 25-26. The court agrees with the City Defendants. The FDA announced on August 23, 2021, that the vaccine "known as the Pfizer-BioNTech COVID-19 Vaccine, and ... now ... as Comirnaty" was "approved [as] the first COVID-19 vaccine." Dkt. 67-3 at 85. Other courts have similarly held COMIRNATY® and Pfizer BioNTech-COVID-19 Vaccine are the same vaccine for establishing rational basis review. See, e.g., *Johnson v. Brown*, 567 F. Supp. 3d 1230, 1241 (D. Or. 2021) ("[T]he Court finds that the August FDA Approval of Pfizer-BioNTech's mRNA vaccine was for the chemically and biologically identical vaccine that underwent clinical trials, was given conditional marketing approval in the EU in December 2020 under the brand name COMIRNATY®, and was given EUA by the FDA in the United States under the name "Pfizer-BioNTech [\*16] COVID-19 Vaccine" beginning in December 2020.").

Plaintiffs, themselves, do not appear to dispute that "Pfizer-BioNTech COVID-19 Vaccine" and "COMIRNATY®" were identical aside from the name listed on the vials. See 4AC ¶ 158 ("[A]lthough the FDA informed Defendants that Pfizer BioNTech-COVID-19 Vaccine and COMIRNATY® had the same formulation, the FDA demonstrated—as well as explicitly stated—that the drugs were 'legally distinct.'"); Opp'n at 11 ("Whatever the definition of a vaccine, one legal standard must be met: a drug manufacturer must label a vial with its FDA-licensed label, at which point that vial is considered approved for its FDA-licensed legal indication.").

Plaintiffs do not cite any legal authority or identify any historical analogue to support their position that they have a "fundamental right" to be free from vaccine mandates unless the vaccines in question bear the specific marketing name approved by the FDA on the

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<sup>5</sup>Under rational basis review, courts must first "determine whether the challenge law has a legitimate purpose" and second "whether the challenged law promotes that purpose." *Erotic Serv. Provider Legal Educ. & Rsch. Project v. Gascon*, 880 F.3d 450, 457 (9th Cir.), amended, 881 F.3d 792 (9th Cir. 2018). "This inquiry is the same for both substantive due process and equal protection claims." *Kheriaty*, 2022 WL 17175070 at \*2 (citing *Muñoz v. Sullivan*, 930 F.2d 1400, 1404 (9th Cir. 1991)).

<sup>6</sup>The Los Angeles City Council passed, and Mayor Bass signed, the Repeal Ordinance on June 24, 2024, repealing the relevant provisions of the Ordinance as of June 2, 2024. Dkt. 67-3 at 90-93.

vials or labels. Rational basis review, thus, applies. See *Kheriaty*, 2022 WL 17175070, at \*2.

The court will apply rational basis review to Plaintiffs' claims.

## B. Due Process Claims

Plaintiffs bring five claims for deprivations of substantive and procedural due process. 4AC ¶¶ 253-318, 352-61. [\*17] Defendants argue "it is well-established that compulsory vaccination laws are constitutional and do not violate [due] process." Mot. at 22. Applying rational basis review, the court agrees the Ordinance was constitutional and did not violate due process.

"The essence of due process is the requirement of notice and an opportunity to respond." *NewGen, LLC v. Safe Cig, LLC*, 840 F.3d 606, 615 n. 5 (9th Cir. 2016) (citing *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976)). The Ordinance clearly articulated the vaccination requirements, set reasonable deadlines, outlined the consequences of failure to comply with said requirements, and provided religious and medical exemptions. Dkt. 67-1 at 5. See also *Martinez v. Eastside Fire & Rescue*, No. 2:24-cv-01706-TL, 2025 WL 1654649, at \*12 (W.D. Wash. June 10, 2025) (holding similar directive did not violate procedural due process); *Pilz v. Inslee*, No. 3:21-cv-05735-BJR, 2022 WL 1719172, at \*7 (W.D. Wash. May 27, 2022), *aff'd*, No. 22-35508, 2023 WL 8866565 (9th Cir. Dec. 22, 2023) (same).

As the Ninth Circuit noted in assessing other COVID-19 vaccination requirements in employment contexts, "no procedural due process is required beyond the proper promulgation of the new substantive rule." *Bacon v. Woodward*, No. 22-35611, 2024 WL 3041850, at \*2 (9th Cir. June 18, 2024); *Abshire v. Newsom*, No. 21-16442, 2023 WL 3243999, at \*3 (9th Cir. May 4, 2023) (holding procedural due process was not violated because plaintiffs received pre-deprivation notice in the form of a citation). Plaintiffs do not claim the Ordinance was improperly promulgated. See generally, 4AC. As a result, the Ordinance did not violate Plaintiffs' right to procedural due process.

As to Plaintiffs' [\*18] claims for substantive due process, the Ninth Circuit has clearly held vaccination mandates like the Ordinance do not implicate a fundamental liberty interest. See *Kheriaty*, 2022 WL 17175070, at \*2. To the extent Plaintiffs assert fundamental liberty interests found in federal statutes,

4AC ¶ 261, such claims fail in the face of the Ordinance's legitimate purpose and the statutes' lack of private rights of action. *Kheriaty*, 2022 WL 17175070, at \*2; *Gonzaga Univ. v. Doe*, 536 U.S. 273, 282-283, 285 (2002) (holding § 1983 does not provide a remedy for violations of a federal statute if the statute is "short of an unambiguously conferred right[.]").

Accordingly, the court GRANTS the City Defendants' Motion and DISMISSES Plaintiffs' First through Fourth, and Seventh Causes of Action against the City and Bass.

## C. Equal Protection Claim

Plaintiffs bring a Fifth Cause of Action for violation of the Fourteenth Amendment's Equal Protection Clause. 4AC ¶¶ 319-33. Plaintiffs allege they are a class "similarly situated to other employees who were given the same opportunity to be injected with the federally funded investigational drugs." *Id.* ¶ 323. In the "[a]lternative[], Plaintiffs assert a 'class of one' equal protection claim," alleging Defendants penalized Plaintiffs' right to refuse the vaccines under the EUA, but did not penalize employees choosing the option to accept the vaccines. [\*19] *Id.* ¶ 324. The City Defendants argue the claim fails, as Plaintiffs are not a suspect class and their interest in being treated equally before the law is not a fundamental right. Opp'n at 30-31. The City Defendants also submit the "class of one" alternative claim similarly fails, as the Ordinance has a rational basis. *Id.* at 31.

The Fourteenth Amendment "commands no State shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike." *City of Cleburne, Tex. v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985) (quoting *Plyler v. Doe*, 457 U.S. 202, 216 (1982)). To prevail on an Equal Protection claim, a plaintiff must "show that a class that is similarly situated has been treated disparately." *Broadman v. Inslee*, 978 F.3d 1092, 1117 (9th Cir. 2020) (internal quotation marks and citation omitted). "The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest," but heightened standards of review apply when suspect classifications like race, alienage, or national origin are implicated. *City of Cleburne*, 473 U.S. at 440.

The rational basis review test for Equal Protection Clause claims is functionally equivalent to the test used

for substantive due process claims. *Gamble v. City of Escondido*, 104 F.3d 300, 307 (9th Cir. 1997). Under the Equal Protection Clause, if there is no suspect class at [\*20] issue, a policy "need only rationally further a legitimate state purpose to be valid." *Minn. State Bd. for Cmty. Colls. v. Knight*, 465 U.S. 271, 291 (1984) (citation and internal quotation marks omitted). A policy can survive an Equal Protection challenge under rational basis review so long as there is a "plausible policy reason for the classification," the policy promulgator relied on facts that "may have been considered to be true," and the "relationship of the classification to its goal is not so attenuated as to render the distinction arbitrary or irrational." *Nordlinger v. Hahn*, 505 U.S. 1, 11 (1992). As discussed above, the City had a legitimate interest in protecting its residents and employees from the spread of COVID-19, a severe acute respiratory illness that caused millions of deaths worldwide, and the Ordinance was rationally related to furthering this interest.<sup>7</sup>

Similarly, Plaintiffs' "class of one" equal protection claim fails under rational basis review. To succeed on a "class of one" equal protection claim, a plaintiff "must demonstrate the [defendant] (1) intentionally (2) treated [the plaintiff] differently than other similarly situated [individuals], (3) without a rational basis." *Gerhart v. Lake County*, 637 F.3d 1013, 1022 (9th Cir. 2011) (citing *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000) (per curiam)). Plaintiffs fail the third prong, as the City had a rational basis [\*21] to enact the Ordinance.

Accordingly, the court GRANTS the City Defendants' Motion and DISMISSES Plaintiffs' Fifth Cause of Action against the City and Bass.

#### D. Right to Privacy Claim

Plaintiffs bring their Sixth Cause of Action to vindicate their "fundamental liberty interest in the right of privacy

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<sup>7</sup>The COVID-19 pandemic resulted in over 1.35 million deaths in the United States. See Excess Deaths Associated with COVID-19, Centers for Disease Control and Prevention, available at [https://www.cdc.gov/nchs/nvss/vsrr/covid19/excess\\_deaths.htm](https://www.cdc.gov/nchs/nvss/vsrr/covid19/excess_deaths.htm). As of the date of this Order, the World Health Organization estimates there have been over 7.1 million deaths due to COVID-19. See WHO COVID-19 Dashboard, World Health Organization, available at <https://data.who.int/dashboards/covid19/deaths>.

from unwanted, unwarranted, and unjustified government intrusion." 4AC ¶ 334; see generally *id.* ¶¶ 334-51. Plaintiffs also allege: (1) the CDC Vaccination Program required the public disclosure of their private health information, *id.* ¶ 337; (2) Defendants invaded Plaintiffs' privacy by demanding information on when, where, and from whom they received vaccinations, *id.* ¶¶ 338, 344; and (3) Defendants created an environment of undue pressure to deprive Plaintiffs of their privacy rights, *id.* ¶ 350. The City Defendants oppose, arguing the Ordinance was rationally related to the City's interest in preventing the spread of COVID-19. Opp'n at 17-19, 32-33.<sup>8</sup>

"[F]ederal constitutional law recognizes a 'right to informational privacy' stemming from 'the individual interest in avoiding disclosure of personal matters.'" *Endy v. County of Los Angeles*, 975 F.3d 757, 768 (9th Cir. 2020) (quoting *In re Crawford*, 194 F.3d 954, 958 (9th Cir. 1999)). This right "is not absolute; rather, it is a conditional right [\*22] which may be infringed upon a showing of proper governmental interest." *Id.* (internal quotation marks omitted).

Courts in the Ninth Circuit utilize a balancing test to determine "whether the government's right to infringe outweighs the individual's privacy interest...." *A.C. v. Cortez*, 34 F.4th 783, 787 (9th Cir. 2022) (citation omitted). Specifically, courts weigh:

- (1) the type of information requested, (2) the potential for harm in any subsequent non-consensual disclosure, (3) the adequacy of safeguards to prevent unauthorized disclosure, (4) the degree of need for access, and (5) whether there is an express statutory mandate, articulated public policy, or other recognizable public interest militating toward access.

*Id.* Private information is more likely to warrant protection when it leads directly to "injury, embarrassment or stigma." *In re Crawford*, 194 F.3d at 960; see also *Schmidt v. City of Pasadena*, Case No. 2:21-cv-08769-JAK (JCXx), at \*14 (C.D. Cal. Mar. 21, 2024) ("Applying [the *Cortez*] factors, courts have found actionable violations of privacy rights only where the information that has been disclosed is 'inherently sensitive or intimate,' and whose disclosure will cause

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<sup>8</sup>To the extent Plaintiffs argue the Ordinance violated their right to privacy under the California Constitution, such argument is inapposite since Plaintiffs base their claim on the federal right to privacy. Compare Opp'n at 32-33, with 4AC ¶¶ 334-51.

'injury, embarrassment or stigma.") (quoting *In re Crawford*, 194 F.3d at 960).

Plaintiffs do not allege the type of information requested is particularly damaging or embarrassing. See generally, 4AC; Opp'n. Accordingly, [\*23] this court joins other courts in this Circuit in holding that, "[t]here is no basis to accept an allegation that an individual's vaccination status is 'sensitive or intimate' under [the *Cortez* standard]," and that the simple disclosure of a party's vaccination status is unlikely to cause "injury, embarrassment, or stigma." *Schmidt*, Case No. 2:21-cv-08769-JAK (JCXx), at \*14; see also *Martinez v. Eastside Fire & Rescue*, Case No. 2:24-cv-01706-TL, 2025 WL 1654649, at \*12 (W.D. Wash. June 10, 2025) (holding same). Additionally, the disclosure of Plaintiffs' vaccination status was a necessary outcome of the Ordinance, which was implemented for the critical purpose of combatting the deadly spread of COVID-19, and which would have been ineffective without a means to ensure compliance.

After balancing the relevant *Cortez* factors, the court finds the alleged disclosure of Plaintiffs' vaccination status does not sufficiently state an impermissible invasion of the right to privacy. See *Kheriaty v. Regents of Univ. of California*, Case No. 8:21-cv-01367-JVS (KESx), 2021 WL 4714664, at \*6, 9 (C.D. Cal. Sept. 29, 2021) (dismissing, under similar circumstances, plaintiff's informational privacy claim based on public disclosure of his COVID-19 vaccination status). Accordingly, the court GRANTS the City Defendants' Motion and DISMISSES Plaintiffs' Sixth Cause of Action against the City and Bass.

## **CONCLUSION**

For the aforementioned reasons, the court GRANTS the Motion and DISMISSES Plaintiffs' claims against [\*24] the City and Bass without leave to amend.<sup>9</sup> The City Defendants' Request for Judicial Notice, Dkt. 67, is GRANTED in part and DENIED in part as stated. The City Defendants' Motion to Strike, Dkt. 65, and Motion for a More Definite Statement, Dkt. 66, are DENIED as moot.

IT IS SO ORDERED.

Dated: September 30, 2025

/s/ Fernando L. Aenlle-Rocha

FERNANDO L. AENLLE-ROCHA

United States District Judge

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<sup>9</sup>Because Plaintiffs do not request leave to amend in their Opposition, the court dismisses the claims against the City and Bass without leave to amend.