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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

'22CV1922 MMAJLB

MICHAEL COURIS and
MICHAEL FITZGIBBONS,

Case No.: 22-cv-_____

Plaintiffs,

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF FOR
VIOLATION OF FEDERAL CIVIL
RIGHTS UNDER 42 U.S.C. § 1983
AND UNDER CALIFORNIA LAW**

v.

KRISTINA D. LAWSON, in her official
capacity as President of the Medical
Board of California; WILLIAM J.
PRASIFKA, in his official capacity as
Executive Director of the Medical Board
of California; and ROBERT BONTA, in
his official capacity as Attorney General
of California,

Defendants.

1 **Introduction**

2 On September 30, 2022, Governor Newsom signed AB-2098 (“Statute”),
3 which adds Section 2270 to the California Business and Professions Code. The Statute
4 declares it “unprofessional conduct for a physician or a surgeon to disseminate
5 misinformation or disinformation related to Covid-19.” The Statute intrudes on the
6 patient-doctor relationship and violates the First Amendment’s protections of free
7 speech because it regulates the content of patient-doctor communications and
8 interferes with the candid conversations and exchanges between physicians and
9 patients that are critical to the patient-doctor relationship.

10 Plaintiffs Michael Couris and Michael Fitzgibbons are physicians licensed in the
11 State of California and will be subject to the constraints of the statute. Doctors Couris
12 and Fitzgibbons share a legitimate concern that, because they may hold opinions and
13 beliefs about COVID-19, masking and social distancing, the vaccines, or potential
14 treatments for COVID-19 that now or at one time were perhaps not held by most of
15 the public or most of physicians, **and** because they shared and either intend to
16 continue or would like to continue to share those opinions and beliefs when advising
17 and consulting patients, they may be subject to investigation and discipline by the
18 Medical Board of California pursuant to AB 2098.

19 Doctors Couris and Fitzgibbons thus bring this civil rights action against
20 Defendants to vindicate their rights under the First and Fourteenth Amendments of
21 the United States Constitution and Article I of the California Constitution, upon which
22 AB 2098 infringes both on its face and as applied. Plaintiffs seek to enjoin Defendants
23 in their official capacity from enforcing the Statute.

Parties

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2 1. Plaintiff Doctor Michael Couris is a resident of San Diego County,
3 California; and a United States and California citizen. He is a physician licensed by the
4 Medical Board of California to practice medicine in the State of California.

5 2. Plaintiff Doctor Michael Fitzgibbons is a resident of Orange County,
6 California; and a United States and California citizen. He is a physician licensed by the
7 Medical Board of California to practice medicine in the State of California.

8 3. Defendant Kristina D. Lawson is the President of the Medical Board of
9 California (“Board”), the state licensing authority that regulates the practice of
10 medicine in the state, and she is a defendant in this case in her official capacity. The
11 mailing address for the Board is 2005 Evergreen Street, Suite 1200, Sacramento,
12 California 95815.

13 4. Defendant William J. Prasifka is the executive director of the Board, and he
14 is a defendant in this case in his official capacity. Upon information and belief,
15 Defendant Prasifka is responsible for the Board’s decision to investigate physicians
16 for violating Board-enforced laws and rules or supervises subordinate Board
17 employees who make such decisions. The mailing address for the Board is 2005
18 Evergreen Street, Suite 1200, Sacramento, California 95815.

19 5. Defendant Attorney General Robert Bonta is sued in his official capacity as
20 the chief law officer for the State of California. His address for service of process
21 is 1300 “I” Street, Sacramento, California 95814.
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1 **Jurisdiction and Venue**

2 6. Plaintiffs bring this action under Section 1 of the Civil Rights Act of 1871,
3 42 U.S.C. § 1983, and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, for
4 violating the First and Fourteenth Amendments to the United States Constitution; and
5 under California law for violating Article I, Section 2 of the California Constitution.
6 This Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343(a), and
7 supplemental jurisdiction over the state-law claim under 28 U.S.C. § 1367.

8 7. Venue is proper in this district under 28 U.S.C. § 1391(b) because a
9 substantial part of the events that gave rise to Plaintiffs’ claims occurred in this district.

10 **Facts**

11 8. The Medical Board of California (“Board”) is the state agency charged with
12 investigating physicians and surgeons for unprofessional conduct and had that
13 authority before the passage of AB 2098. *See* Cal. Bus. & Prof. Code §§ 2220, 2234.

14 9. The Board has the authority to commence disciplinary actions against
15 licensee physicians and surgeons for unprofessional conduct. *See* Cal. Bus. & Prof.
16 Code § 2220.5. Discipline can include suspension or revocation of the license to
17 practice medicine. *See* Cal. Bus. & Prof. Code § 2227. Defendants Lawson and Prasifka
18 are Board members and have disciplinary authority.

19 10. The Federation of State Medical Boards (“FSMB”) represents state medical
20 and osteopathic regulatory boards and supports the member boards. *See About FSMB*,
21 Federation of State Medical Boards, <https://www.fsmb.org/about-fsmb>.

1 11. Upon information and belief, Defendant Lawson is a voting member of the
2 FSMB or a fellow, and currently serves on the FSMB's Ethics and Professionalism
3 committee.

4 12. On July 29, 2021, the FSMB issued a press release stating:

5 Physicians who generate and spread COVID-19 vaccine
6 misinformation or disinformation are risking disciplinary action by
7 state medical boards, including the suspension or revocation of
8 their medical license. Due to the specialized knowledge and
9 training, licensed physicians possess a high degree of public trust
10 and therefore have a powerful platform in society, whether they
11 recognize it or not. They also have an ethical and professional
12 responsibility to practice medicine in the best interest of their
13 patients and must share information that is factual, scientifically
14 grounded and consensus-driven for the betterment of public
15 health. Spreading inaccurate COVID-19 vaccine information
16 contradicts that responsibility, threatens to further erode public
17 trust in the medical profession and thus puts all patients at risk.

13 *FSMB: Spreading Covid-19 Vaccine Misinformation May Put Medical License at Risk*,
14 Federation of State Medical Boards, News Releases (Jul. 29, 2021);
15 [https://www.fsmb.org/advocacy/news-releases/fsmb-spreading-covid-19-vaccine-](https://www.fsmb.org/advocacy/news-releases/fsmb-spreading-covid-19-vaccine-misinformation-may-put-medical-license-at-risk/)
16 [misinformation-may-put-medical-license-at-risk/](https://www.fsmb.org/advocacy/news-releases/fsmb-spreading-covid-19-vaccine-misinformation-may-put-medical-license-at-risk/).

17 13. Meeting minutes from the Board's February 2022 Board meeting show that
18 Defendant Lawson echoed the FSMB's press release. The meeting minutes state:

19 Ms. Lawson stated it is the duty of the board to protect the public
20 from misinformation and disinformation by physicians, noting the
21 increase in the dissemination of healthcare related misinformation
22 and disinformation on social media platforms, in the media, and
23 online, putting patient lives at risk in causing unnecessary strain on
the healthcare system.

Ms. Lawson elaborated [that] in July 2021, the Federation of State
Medical Boards released a statement saying physicians spreading

1 misinformation or disinformation risk disciplinary action by their
2 state medical board.

3 Medical Board of California, Meeting Minutes for Feb. 10-11, 2022 at 6,
4 [https://www.mbc.ca.gov/About/Meetings/Minutes/31009/brd-Minutes-
5 20220210.pdf](https://www.mbc.ca.gov/About/Meetings/Minutes/31009/brd-Minutes-20220210.pdf).

6 14. Around the same time, the California Assembly introduced AB 2098, a bill
7 that targeted the dissemination of “misinformation or disinformation related to Covid-
8 19” by physicians and surgeons. The bill specifically referenced the FSMB’s July 2021
9 press release to justify the legislation. *See AB-2098 Physicians and Surgeons: Unprofessional*
10 *Conduct (2021-2022)*, Cal. Legislative Information (Bill Text, June 21, 2022),
11 [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2
12 098#99INT](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB2098#99INT), Section 1(f).

13 15. In April, the Assembly amended the original version of AB-2098 because of
14 concerns that it might penalize physicians for public speech. Accordingly, the
15 Assembly amended the bill to limit its application to “treatment or advice” to a patient.
16 *See AB-2098 Physicians and Surgeons: Unprofessional Conduct (2021-2022)*, Cal. Legislative
17 Information (Bill Analysis, April 15, 2022),
18 [https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220
19 AB2098](https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202120220AB2098), Page 12, paragraph 3.

20 16. The Board, at its May 2022 meeting, expressed reservations about AB 2098.
21 Some Board members noted that the Board already had authority to investigate and
22 discipline physicians for conduct that misled or was harmful to patients. *See Medical*
23 *Board of California Quarterly Board Meeting May 19-20, 2022 (Day 2)*,
 <https://www.mbc.ca.gov/About/Meetings/Minutes/31033/brd-Minutes->

1 [20220519.pdf](#), (link to video of meeting [https://www.youtube.com/watch?v=dz-](https://www.youtube.com/watch?v=dz-3h2IEcb4&t=7726s)
2 [3h2IEcb4&t=7726s](#) (2:08:48 to 3:03:00)) (May 26, 2022).

3 17. The meeting minutes also reflect the Board’s concern that “the definitions
4 of misinformation/disinformation may prove challenging for the Board to prove.” *See*
5 Medical Board of California, Meeting Minutes for May 19-20, 2022 at 8,
6 [https://www.mbc.ca.gov/About/Meetings/Minutes/31033/brd-Minutes-](https://www.mbc.ca.gov/About/Meetings/Minutes/31033/brd-Minutes-20220519.pdf)
7 [20220519.pdf](#).

8 18. On August 30, 2022, the California Assembly approved the final amended
9 version of AB 2098 which the State Senate had approved the previous day. Governor
10 Newsom signed AB 2098 into law on September 30, 2022.

11 19. Section 1 repeats the FSMB warning from its July 2021 press release stating
12 that physicians who disseminate COVID-19 vaccine misinformation or
13 disinformation jeopardize their medical licenses.

14 20. Section 2 of the Statute adds Section 2270 to the California Business and
15 Professions Code and makes it “unprofessional conduct” for any California physician
16 or surgeon “to disseminate misinformation or disinformation related to COVID-19,
17 including false or misleading information regarding the nature and risks of the virus,
18 its prevention and treatment; and the development, safety, and effectiveness of
19 COVID-19 vaccines.”

20 21. Section 2 defines disinformation as “misinformation that the licensee
21 deliberately disseminated with malicious intent or an intent to mislead.”

22 22. Section 2 defines misinformation as “false information that is contradicted
23 by contemporary scientific consensus contrary to the standard of care.”

1 23. Section 2 defines disseminate as “the conveyance of information from the
2 licensee to a patient under the licensee’s care in the form of treatment or advice.”

3 24. The Statute impermissibly intrudes on the patient-doctor relationship and
4 limits the ability of the doctor and the patient to have a free, open, and candid
5 conversation about COVID-19, its treatments, and the vaccines.

6 25. The Statute purports to codify an official “scientific consensus” that is not
7 the role or responsibility of the government and departs from fundamental scientific
8 and medical inquiry, which requires that conventional views, especially those
9 concerning new diseases, ailments, conditions, and related treatments, be challenged
10 by opposing, contrary, dissenting, skeptical, or critical voices or opinions.

11 26. The notion that there is “scientific consensus” regarding COVID-19 is
12 flawed. During the pandemic, public health officials, medical researchers, and
13 individuals within the medical community have revised guidance, issued contradictory
14 or conflicting statements, or altered previously held positions on matters ranging from
15 the origins of the virus, transmission of the virus, lockdowns, school closures, mask-
16 wearing, the effectiveness of the vaccines to prevent infection and reduce
17 transmission, and the need for boosters.

18 27. For example, National Institute of Allergy and Infectious Diseases Director
19 Dr. Anthony Fauci, perhaps the most high-profile public health official since the
20 pandemic began and the architect of the federal government’s response to the
21 pandemic, has a well-documented history of inconsistent statements, mixed messages
22 or reversals regarding a variety of COVID-19 issues.

1 28. The Statute contradicts the responsible practice of medicine, which requires
2 that doctors tailor medical care and advice to a particular patient using their best
3 professional judgment.

4 29. The Statute also fails to recognize that standards of care are not stable. What
5 might be considered experimental or untested might in six months or a year become
6 accepted practice or the preferred treatment, especially for a novel disease where
7 medical facts are uncertain.

8 30. Critically, neither the Board nor licensees will be able to say with any certainty
9 or consistency what is fair or foul under the Statute because of its vague and broad
10 definitions. For instance, if a doctor, echoing the sentiments of then-U.S. Senator from
11 California and now Vice President Kamala Harris, expresses reservations to a patient
12 about taking a COVID-19 vaccine fast-tracked for FDA approval developed under
13 the prior administration, would that constitute misinformation or disinformation?
14 What about a doctor advising patients that the vaccine he or she believes has the least
15 risk is the more traditional vaccine developed by Novavax, rather than the mRNA
16 vaccines developed by Pfizer or Moderna; would such counsel be deemed
17 misinformation or disinformation? Or consider a scenario in which a patient asks a
18 doctor about treatments and mentions ivermectin. If the doctor responds that
19 ivermectin may have some promise as a treatment and the National Institutes of
20 Health is open to studying whether it really is a viable treatment, could such a
21 comment trigger an investigation by the Board under newly enacted Section 2270?
22 Similarly, if a patient tells the doctor that they have already had COVID-19 and asks
23 whether to get the vaccine or a booster and the doctor responds that the prior

1 infection perhaps provides better protection than the vaccine, and that the marginal
2 benefit of an additional vaccination does not outweigh the risk of vaccine side effects,
3 will that result in investigation by the Board?

4 31. Even if an investigated doctor is ultimately vindicated, the process is the
5 punishment, and highlights the chilling nature of the statute. Moreover, an
6 unconstitutional speech restriction is not salvageable because enforcement authorities
7 say that it will be enforced only in a narrow or benign manner. *E.g., United States v.*
8 *Wunsch*, 84 F.3d 1110, 1118 (9th Cir. 1996). As a result, doctors are likely to self-censor,
9 potentially to the detriment of patients.

10 32. AB 2098 also infringes on the First Amendment rights of patients to hear
11 the advice and counsel from the doctors they consult. The patients are entitled to
12 unfiltered consultations with their doctors, rather than a potentially narrow self-
13 censored message that hues closely to a preferred government narrative regarding
14 COVID-19.

15 33. Doctors were and remain at risk of investigation and discipline if they
16 provide negligent or substandard medical care. The Board has the authority to
17 monitor, investigate, and regulate the conduct of doctors' treatment of patients. The
18 Statute exceeds these standards and heightens the risk to physicians of investigation
19 and unfounded discipline with vague terms such as "misinformation" and
20 "disinformation," all in the context of a new disease about which much is still
21 unknown and the science of existing and potential treatments is unsettled.
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Doctor Fitzgibbons

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2 34. Dr. Michael Fitzgibbons is a physician licensed by the Medical Board of
3 California who has been board-certified in internal medicine since 1979 and infectious
4 diseases since 1984.

5 35. Dr. Fitzgibbons obtained a medical degree from Georgetown University
6 in 1976 and performed his internship, residency in internal medicine, and fellowship
7 in infectious diseases at the University of California, Irvine from 1976 to 1981. He has
8 been in private practice since 1981.

9 36. Since the onset of the COVID-19 pandemic in 2020, Dr. Fitzgibbons has
10 been concerned about the public-health response to the pandemic and its impact on
11 patient care.

12 37. Dr. Fitzgibbons is familiar with the standards of care for the treatment
13 required of California physicians concerning the diagnosis and treatment of disease,
14 particularly with respect to infectious diseases.

15 38. Within the past two years, Dr. Fitzgibbons has personally treated
16 approximately 1000 patients diagnosed with COVID-19, and is familiar with the
17 methods of diagnosing, treating, acquiring, and avoiding COVID-19.

18 39. During the pandemic, Dr. Fitzgibbons has shared with patients that he
19 believes that there is strong evidence suggesting that the virus causing COVID-19
20 originated in the Wuhan Institute of Virology Laboratory.

21 40. Dr. Fitzgibbons has also counseled patients about and prescribed
22 hydroxychloroquine (“HCQ”) and azithromycin because both drugs possess anti-
23 inflammatory properties that he believes are beneficial in the treatment of COVID-

1 19, and because there were early medical reports that suggested potential benefits of
2 the drugs in treating patients with COVID-19.

3 41. Later in the pandemic, Dr. Fitzgibbons prescribed ivermectin as both a
4 treatment and prophylaxis for patients, and in the instances when he did so, no patient
5 ever complained of an adverse reaction attributed to their use of ivermectin.

6 42. Use of HCQ and ivermectin to treat COVID-19 were “off-label” uses for
7 those two drugs, meaning that they were not approved by FDA to treat COVID-19.
8 Off-label prescriptions by doctors are common and doctors often use them to treat
9 conditions or illnesses for which the medicine had not been approved by the FDA.
10 Physicians’ freedom to prescribe drugs off-label carries important advantages. It
11 permits innovation in clinical practice. Medical advances can and do occur more
12 quickly than the FDA can relabel medications. It offers patients and physicians earlier
13 access to potentially valuable medications and allows physicians to adopt new practices
14 based on emerging evidence. As much as 38% of prescriptions from doctors are “off-
15 label” and the Statute could result in doctors refraining from prescribing potentially
16 beneficial off-label treatments, not just for COVID-19, but for other illnesses or
17 conditions should the legislature expand the scope of the Statute.

18 43. Dr. Fitzgibbons believes that had the Statute been in effect during the prior
19 two years at the height of the pandemic, his actions and the advice and counsel he
20 provided to patients described above would have jeopardized his medical license.

21 44. Since the advent of the COVID-19 vaccines, Dr. Fitzgibbons has counseled
22 patients to get vaccinated, but he was and remains opposed to vaccinating children
23 with the current vaccines because he believes that the risks outweigh the benefits. Dr.

1 Fitzgibbons believes that for certain populations, particularly children, the potential
2 harms from the vaccines exceed that of the disease, and he has communicated this to
3 his patients.

4 45. Dr. Fitzgibbons believes that the assertions by federal health agencies such
5 as the FDA, CDC, and NIH that the vaccines were safe was generally true, but such
6 assertions should not and did not prevent him from counseling patients regarding
7 potential harmful side-effects of the vaccines.

8 46. Dr. Fitzgibbons has also advised patients that have contracted COVID-19
9 that vaccination is superfluous since because he believes natural immunity is as
10 protective if not more protective as the immunity achieved through boosted
11 vaccination.

12 47. Dr. Fitzgibbons believes that there are and will remain controversies,
13 debates, and disagreements about the treatment of diseases such as COVID-19,
14 cancer, sepsis, and other ailments. The notion of scientific consensus, particularly with
15 respect to a new disease such as COVID-19, is naïve and potentially harmful to
16 patients.

17 48. Dr. Fitzgibbons has grave concerns about what he can or cannot
18 communicate to his patients now that AB 2098 has been passed and signed into law.
19 Advice and counsel to patients regarding COVID-19 that otherwise was permissible
20 under California law may now be sanctionable under AB 2098. As such, he has a
21 legitimate fear that he could be subject to an onerous investigation and potentially lose
22 his license to practice medicine for simply continuing to provide the type of advice
23 and counsel to patients regarding COVID-19 that he has during the past two years.

Doctor Couris

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2 49. Dr. Michael Couris is an ophthalmologist licensed by the Medical Board of
3 California who is in solo private practice in San Diego, California.

4 50. Dr. Couris graduated from the Massachusetts Institute of Technology (MIT)
5 in 1988 and from Georgetown University School of Medicine in 1992. He attended
6 medical school on a Navy Health Professions Scholarship and was commissioned an
7 officer in the United States Navy upon graduation from MIT.

8 51. Dr. Couris completed a surgical internship at the Naval Medical Center in
9 San Diego, California. Dr. Couris attended the Naval Aerospace Operational
10 Medical Institute and in 1994 was designated a Naval Flight Surgeon.

11 52. Following several deployments on naval ships and overseas bases, Dr. Couris
12 did an ophthalmology residency at the Naval Medical Center San Diego from 1996
13 to 1999; and was a staff ophthalmologist at the Naval Medical Center in Portsmouth,
14 Virginia from 1991 to 2001.

15 53. Dr. Couris resigned his Navy commission in July 2001 and started his private
16 practice. He has been a board member and is currently President of Scripps Mercy
17 Physician Partners Medical Group and is also the Chief Financial Officer of the Mercy
18 Physicians Medical Group.

19 54. In his ophthalmology practice since 1990, Dr. Couris has treated patients
20 who also suffer from autoimmune diseases. Many of these patients require HCQ to
21 manage their autoimmune condition. There is a small risk of eye damage
22 (maculopathy) from chronic use of HCQ, so biannual eye exams are necessary for
23 such patients. Dr. Couris has not had a single patient using HCQ discontinue its use

1 because of cardiac side effects and has recommended fewer than 10 patients
2 discontinue use of HCQ due to maculopathy over the last 20 years

3 55. During the COVID-19 pandemic, a patient of Dr. Couris's who suffered
4 autoimmune disease asked if he could help her refill her prescription for HCQ. Dr.
5 Couris did so, but the Costco pharmacy would not fill the prescription without first
6 speaking with Dr. Couris. Although this was early in the pandemic, Dr. Couris was
7 concerned that the pharmacist might "report" him and perhaps instigate a Board
8 investigation.

9 56. Ophthalmologists have a high risk of contracting COVID-19 because of the
10 proximity of their faces to those of their patients during an exam. Many of his patients
11 ask him about COVID-19 topics routinely. Accordingly, COVID-19 is a topic of
12 which Dr. Couris has been especially mindful.

13 57. On December 16, 2020, Dr. Couris received the first dose of the Pfizer
14 mRNA vaccine and the second dose in January 16, 2021. Soon after, Dr. Couris
15 suffered a cardiac condition that his doctors diagnosed as arrhythmia. Before this, Dr.
16 Couris had suffered no cardiac conditions and there was no history of cardiac disease
17 in his family. About three weeks after his cardiac diagnosis, Dr. Couris learned of an
18 Israeli study finding that myocarditis was a side effect for men who received an mRNA
19 vaccine.

20 58. Dr. Couris has spoken with nurses at Children's Hospital in San Diego who
21 informed him that they had seen an increase in the number of pediatric patients
22 admitted for myocarditis and pericarditis following COVID-19 administration.
23 Although anecdotal, Dr. Couris believes this type of information is important to him

1 and other doctors as it may assist spotting early trends and also help inform doctors
2 about how best to advise patients.

3 59. For patients who inquire, as many of his patients have, Dr. Couris typically
4 advises those age 60 or older to get vaccinated against COVID-19 and to get booster
5 shots at their discretion. He also encourages those with risk factors such as obesity,
6 diabetes or asthma to get vaccinated. Many of his patients ask about their children and
7 grandchildren, and Dr. Couris’s standard advice to those patients is that young
8 children should not get the mRNA vaccine.

9 60. Dr. Couris recommends that patients, both adult and children, interested in
10 the vaccine get the more traditional Novavax vaccine, rather than the mRNA vaccines.

11 61. Like Dr. Fitzgibbons, Dr. Couris is fearful that the type of information he
12 has provided to patients in the past concerning COVID-19 and that was otherwise
13 permissible under California law prior to AB 2098 would be deemed to fall outside
14 the notion of “scientific consensus” incorporated into the Statute and that if he
15 continues to provide this type of advice and counsel to patients he could face an
16 investigation by the Board and potentially lose his license to practice medicine.

17 **CAUSES OF ACTION**

18 **Count I – Violation of the First Amendment**

19 **(42 U.S.C. § 1983 – Free Speech Clause)**

20 62. The allegations contained in all the preceding paragraphs are incorporated
21 by reference.

22 63. The First Amendment of the United States Constitution states, “Congress
23 shall make no law . . . abridging the freedom of speech.”

1 64. The First Amendment is incorporated to apply to the states by the
2 Fourteenth Amendment.

3 65. The Statute invites arbitrary, subjective and viewpoint discriminatory
4 enforcement.

5 66. The Statute constitutes an impermissible and unreasonable infringement on
6 the free speech of physicians and surgeons in California on the basis of content and
7 viewpoint of a doctor's speech and imposes professional liability in contravention of
8 the First Amendment.

9 67. 42 U.S.C. §§ 1983, 1988, and Cal. Civ. Code § 52.1(c) entitle Plaintiffs to
10 declaratory relief and preliminary and permanent injunctive relief invalidating and
11 restraining enforcement of the Statute. Unless Defendants are enjoined from
12 enforcing the Statute, Plaintiffs will suffer irreparable harm.

13 68. Plaintiffs found it necessary to engage the services of private counsel to
14 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of
15 attorneys' fees under 42 U.S.C. § 1988 and Cal. Civ. Code § 52.1(i).

16 **Count II – The Statute is Void for Vagueness**

17 **(Fourteenth Amendment)**

18 69. The allegations contained in all the preceding paragraphs are incorporated
19 by reference.

20 70. The Fourteenth Amendment provides “. . . nor shall any State deprive any
21 person of life, liberty, or property, without due process of law.”

22 71. Due process requires that people of ordinary intelligence be able to
23 understand what conduct a given statute, rule or regulation prohibits.

1 72. Statutes, rules, or regulations that fail to provide this fair notice and clear
2 guidance are void for vagueness.

3 73. Statutes, rules, or regulations that authorize or even encourage arbitrary or
4 discriminatory enforcement are void for vagueness.

5 74. Statutes, rules, or regulations implicating and jeopardizing First Amendment
6 rights are required to be especially precise.

7 75. The Statute subjects doctors licensed in California to investigation and
8 potential discipline, including the loss of their medical license.

9 76. The Statute does not define the terms “disinformation,” “misinformation,”
10 “scientific consensus,” or “standard of care” with any precision or specificity and
11 therefore does not give licensed doctors like the Plaintiffs clear and adequate notice
12 of what will be considered a violation of the Statute.

13 77. The Statute imposes an unconstitutionally vague restriction on the speech of
14 doctors such as Plaintiffs. 42 U.S.C. §§ 1983 and 1988 entitle Plaintiffs to declaratory
15 relief and preliminary and permanent injunctive relief invalidating and restraining
16 enforcement of the Statute. Unless Defendants are enjoined from enforcing the
17 Statute, Plaintiffs will suffer irreparable harm.

18 78. Plaintiffs found it necessary to engage the services of private counsel to
19 vindicate his rights under the law. Plaintiffs are therefore entitled to an award of
20 attorneys’ fees, as well as reasonable costs of suit, under 42 U.S.C. § 1988 and Cal. Civ.
21 Code § 52.1(i).

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1 **Count III – Violation of Article I Section 2(a) of California State Constitution**
2 **(California Civil Code § 52.1)**

3 79. The allegations contained in all the preceding paragraphs are incorporated
4 by reference.

5 80. Defendants deprive Plaintiffs the rights secured to them by the California
6 Constitution. The enforcement of the Statute violates Plaintiffs’ right to free speech
7 under Article I, Section 2(a) of the California Constitution. This is a violation of Cal.
8 Civ. Code § 52.1.

9 81. Plaintiffs found it necessary to engage the services of counsel to vindicate
10 their rights under the law. Plaintiffs are therefore entitled to an award of attorneys’
11 fees, as well as reasonable costs of suit, under Cal. Civ. Code § 52.1(i).

12 **Prayer for Relief**

13 82. Plaintiffs respectfully request the following relief:

- 14 a. A declaratory judgment that the Statute is an unconstitutional violation
15 of the First Amendment and the California Constitution;
- 16 b. A declaratory judgment that the Statute is unconstitutionally vague under
17 the Fourteenth Amendment;
- 18 c. A preliminary injunction prohibiting Defendants from enforcing the
19 Statute;
- 20 d. A permanent injunction prohibiting Defendants from enforcing the
21 Statute;
- 22 e. An award of attorneys’ fees, costs, and expenses; and
- 23 f. Any other legal or equitable relief to which Plaintiffs may be entitled.

1 Dated: December 6, 2022

Respectfully submitted,

2 /s/ Theodore H. Frank

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