

1 THE HAKALA LAW GROUP, P.C.  
2 Brad A. Hakala, CA Bar No. 236709  
3 Ryan N. Ostrowski, CA Bar No. 305293  
4 One World Trade Center, Suite 1870  
5 Long Beach, California 90831  
6 Telephone: 562.432.5023  
7 Facsimile: 562.786.8606  
8 Email: [bhakala@hakala-law.com](mailto:bhakala@hakala-law.com)  
9 [rostrowski@hakala-law.com](mailto:rostrowski@hakala-law.com)

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10 Attorneys for Plaintiffs – Mary Matthias,  
11 Chris Lugatiman, Toni Johnson, and A Voice  
12 for Choice, Inc.

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **COUNTY OF LOS ANGELES**

15 MARY MATTHIAS, an Individual;  
16 CHRIS LUGATIMAN, an Individual,  
17 TONI JOHNSON, an Individual, A VOICE  
18 FOR CHOICE, INC. on behalf of its  
19 members,

20 Plaintiff,

21 v.

22 STATE OF CALIFORNIA,  
23 DEPARTMENT OF PUBLIC HEALTH;  
24 DR. TOMÁS J. ARAGÓN, in his official  
25 capacity as Director of the Department of  
26 Public Health; GAVIN NEWSOM, in his  
27 official capacity as Governor of the State of  
28 California; STATE OF CALIFORNIA,  
HEALTH AND HUMAN SERVICES  
AGENCY; DR. MARK GHALY, in his  
official capacity as Secretary of the  
California Health & Human Services  
Agency; STATE OF CALIFORNIA,  
DEPARTMENT OF HEATH CARE  
SERVICES; MICHELLE BAASS, in her  
official capacity as Director of the  
Department of Health Care Services;  
CALIFORNIA GOVERNOR’S OFFICE  
OF EMERGENCY SERVICES, NANCY  
WARD, in her official capacity as Director  
of the California Governor’s Office of  
Emergency Services; and ROBERT  
BONTA, Attorney General of California,  
in his official capacity, and DOES 1 – 50,  
Inclusive

Defendants.

Case No.: 23STCV26006

UNLIMITED CIVIL MATTER

ASSIGNED FOR ALL PURPOSES TO:  
*The Honorable Upinder S. Kalra, Dept. 51*

**PLAINTIFFS MARY MATTHIAS’, CHRIS  
LUGATIMAN’S, TONI JOHNSON’S, AND A  
VOICE FOR CHOICE, INC.’S OPPOSITION  
TO STATE DEFENDANTS’ DEMURRER TO  
PLAINTIFFS’ COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

Hearing Date: April 24, 2024  
Time: 9:00 a.m.  
Department: 51

Action Filed: October 24, 2023  
Trial Date: None Set

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1           **TO THIS HONORABLE COURT, ALL PARTIES, AND THEIR RESPECTIVE**  
2 **ATTORNEYS OF RECORD:**

3           Plaintiffs: (i) MARY MATTHIAS (“Ms. Matthias”); (ii) CHRIS LUGATIMAN (“Mr.  
4 Lugatiman”); (iii) TONI JOHNSON (“Ms. Johnson”); and (iv) A VOICE FOR CHOICE, INC.  
5 (“AVFC”) (Ms. Matthias, Mr. Lugatiman, Ms. Johnson, and AVFC are hereinafter referred to  
6 individually as a “Plaintiff” and collectively as the “Plaintiffs”) hereby submit their joint  
7 Opposition to the Defendants’ Demurrer (the “Demurrer”) to Plaintiffs’ Complaint for  
8 Declaratory and Injunctive Relief (the “Complaint”).

9                           **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I.       INTRODUCTION**

11           In their Demurrer, Defendants disingenuously attempt to assert to this Court that the  
12 Plaintiffs have failed to plead necessary facts to support their three (3) alleged causes of action.  
13 In doing so, the Defendants not only appear to have conveniently ignored an abundance of the  
14 Plaintiffs’ sufficiently plead allegations, but it appears that the Defendants are further requesting  
15 that the Court render an actual determination and finding upon the overall merits of each of the  
16 Plaintiffs’ causes of action, which is a wholly improper and legally precluded course of action to  
17 engage in within a Demurrer. Rather, Defendants’ instant Demurrer is nothing more than a  
18 smokescreen, one which is intentionally designed by the Defendants to distract the Court from  
19 those numerous allegations which were sufficiently plead by the Plaintiffs, all of which must be  
20 accepted as true by this Court at this stage in the litigation process. Simply put, Plaintiffs have  
21 sufficiently plead each of their causes of action against each of the named Defendants, and thus,  
22 the Defendants’ Demurrer has no merit and should be overruled. Accordingly, this Court should  
23 overrule the Defendants’ Demurrer, in its entirety, and thereby cause the Defendants to actually  
24 respond to each of the Plaintiffs’ properly and sufficiently plead causes of action.

25 **II.       LEGAL STANDARDS OF REVIEW**

26           The “cardinal rule of pleading” is that plaintiffs need **only** to allege “ultimate facts.”  
27 *Ludgate Ins. Co. v. Lockheed Martin Corp.* (2000) 82 Cal.App.4th 592, 606. A general demurrer  
28 tests the legal sufficiency of a complaint by raising questions of law. *Wilner v. Sunset Life Ins.*

1 Co. (2000) 78 Cal.App.4th 952, 958. Judicial policy favors resolving cases on their merits rather  
2 than through technical challenges to the pleadings, and as such, unless there is an “obvious  
3 failure” by the claimants to state a cause of action within their pleadings taking into account that  
4 courts are also required to construe pleadings liberally, a demurrer **cannot** lie. *Terry Trading*  
5 *Corp. v. Barsky* (1930) 210 Cal. 428, 438. As a result, a complaint is **invulnerable** to a demurrer  
6 if on **any** theory, **regardless of the title under which the factual basis for relief is stated**, the  
7 pleading states a legally recognized cause of action. *Johnson v. Clark* (1936) 7 Cal.2d 529, 536.  
8 Thus, in evaluating a complaint under the demurrer standards, if there is any valid and legally  
9 recognized cause of action stated, even if not the one intended, the pleading is sufficient, and the  
10 demurrer **must** be overruled. *Saunders v. Cariss* (1990) 224 Cal.App.3d 905, 908. In ruling on  
11 a demurrer, the sufficiency of a challenged cause of action is tested by presuming all of the  
12 material factual allegations in the pleading to be true, unless the allegations are contradicted by  
13 exhibits or judicially noticed material. *Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962,  
14 966-967. It is well-settled law in the State of California that Courts not only treat a demurrer as  
15 admitting all material facts properly plead, but also give the pleading a “reasonable interpretation,  
16 reading it as a whole and its parts in their context.” *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.  
17 The question raised by a demurrer to a complaint is simply whether the pleading alleges sufficient  
18 facts to state a legally recognized cause of action. *Gervase v. Superior Court* (1995) 31  
19 Cal.App.4th 1218, 1224. A demurrer is **not** concerned with the likelihood that the claimants will  
20 prevail, nor whether the claimants will have evidence to support their allegations. *Alcorn v.*  
21 *Anbro Engineering, Inc.* (1970) 2 Cal.3d 493, 496. Given the foregoing standard of review, the  
22 Defendants’ Demurrer to the Plaintiffs’ Complaint should be overruled, in its entirety.

### 23 **III. ARGUMENT**

#### 24 **A. The Plaintiffs Have Standing to Maintain Each of Their Causes of Action, and** 25 **thus, Defendants’ Demurrer Should be Denied.**

26 Within the Defendants’ Demurrer, they first attempt to assert that the Plaintiffs lack  
27 standing to maintain any of their causes of action being asserted against the Defendants’ unlawful  
28 violation of *California Health and Safety Code* §111550. In doing so, the Defendants proclaim

1 that the Plaintiffs supposedly lack standing to maintain their claims due to their contentions that  
2 the Plaintiffs did not adequately allege personal stakes in the claims being set forth by the  
3 Plaintiffs within the Complaint and/or further did not allege personal concrete injuries that would  
4 be redressable if the Defendants were forced to cease their unlawful conduct. In essence, through  
5 their Demurrer, the Defendants have essentially asserted that any opinion being requested to be  
6 given by this Court from the Plaintiffs would be considered an “advisory opinion,” and thus,  
7 Defendants contend that each of the Plaintiffs now somehow lack standing on the basis of there  
8 allegedly not being an actual case or controversy pending between the respective parties that  
9 would entitle the Plaintiffs to have standing to maintain each of their causes of action.

10 Notwithstanding the foregoing, notably **absent** from the Defendants Demurrer is the fact  
11 that it is already well-settled law in this State that traditional notions of the federal “case or  
12 controversy” requirements, including any traditional federal requirements that claimants in civil  
13 actions first be required to set forth allegations of actual personal and individualized “concrete  
14 injuries” and “redressability” of such personal injuries are **NOT** even prerequisites to  
15 justiciability in California. *Grosset v. Wenaas* (2008) 42 Cal.4th 1100, 1117. (*See also,*  
16 *Weatherford v. City of San Rafael* (2017) 2 Cal.5th 1241, 1247-1248, at its core, standing simply  
17 concerns a party’s interest in the outcome of a lawsuit and there is **no** “case or controversy  
18 requirement imposing an independent jurisdictional limitation on our standing doctrine.”). (*See*  
19 *also, National Paint & Coatings Assn. v. State of California* (1997) 58 Cal.App.4th 753, 761-  
20 762, no California cases hold that “concrete injury and redressability are essential prerequisites  
21 to justiciability in California...[o]n the contrary, California authority supports the conclusion that  
22 a suit by a citizen in the undifferentiated public interest is ‘justiciable,’ or appropriate for decision  
23 in a California Court.”). As such, in matters that involve questions or issues that are of significant  
24 public importance (i.e., the exact basis of this present Action), it has long been the established  
25 law and policy of this State to employ a significantly broader allowance for claims to be  
26 maintained by parties on the basis that such parties have standing to assert such claims through a  
27 significantly broader “public interest” standard. *Weatherford v. City of San Rafael, supra*, 2  
28 Cal.5th at 1248. (*See also, Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52



1 Cal.4th 155, 166, where the issues being presented in an action are one of public right and the  
2 object of the civil action is to procure the enforcement of a public duty, the claimant or claimants  
3 in such action do **NOT** need to set forth allegations that they have “any legal or special interest  
4 in the result, since it is sufficient that [they] [are] interested as citizens in having the laws executed  
5 and the duty in question enforced.”). (See also, *Board of Social Welfare v. Los Angeles County*  
6 (1945) 27 Cal.2d 98, 100–101, holding that a party’s interest in having the laws executed and the  
7 duties in question enforced is sufficient to establish a claimant’s standing to maintain claims even  
8 in the absence of the claimant alleging a particularized or personal legal or special interest in the  
9 outcome of a suit.) (See also, *Green v. Obledo* (1981) 29 Cal.3d 126, 144, while it is ordinarily  
10 true that claimants will be deemed to have standing to maintain their claims if they can establish  
11 that they will be “beneficially interested” in the outcome of such case, the California Supreme  
12 Court has long recognized an exception to this rule when the focus of the cause involves questions  
13 or issues that are of significant public importance, and in such matters, the claimants are **NOT**  
14 required to establish any “legal or special interest in the result [of the case], since it is sufficient  
15 that [the claimants] [are] interested as citizens in having the laws executed and the duty in  
16 question enforced...[t]his exception promotes the policy of guaranteeing citizens the opportunity  
17 to ensure that no governmental body impairs or defeats the purpose of legislation...[and this  
18 important exception to the standing requirements] has often been invoked by California courts.”).

19 In addition to all of the foregoing, it is also notable that one of the named Plaintiffs,  
20 AFVC, is an association that is maintaining this Action on behalf of its members. It is well-  
21 settled that an association, such as AFVC, will be declared to have standing to maintain an action  
22 on behalf of its members when: “(a) its members would otherwise have standing to sue in their  
23 own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c)  
24 neither the claim asserted nor the relief requested requires the participation of individual members  
25 in the lawsuit.” *Association for Los Angeles Deputy Sheriffs v. Macias* (2021) 63 Cal.App.5th  
26 1007, 1019; *United Farmers Agents Assn., Inc. v. Farmers Group, Inc.* (2019) 32 Cal.App.5th  
27 478, 488; (See also, *Amalgamated Transit Union, Local 1756, AFL-CIO v. Superior Court* (2009)  
28 46 Cal.4th 993, 1003, “[u]nder the doctrine of associational standing, an association that does not

1 have standing in its own right may nevertheless have standing to bring a lawsuit on behalf of its  
2 members.”).

3         When applying all of the above-referenced and well-settled legal principles to the  
4 Plaintiffs’ Complaint, it simply cannot be found that there is an “obvious failure” by the Plaintiffs  
5 to establish a basis of their respective standing to bring and maintain their causes of action against  
6 the Defendants, and thus, the Defendants’ Demurrer must be overruled and denied, in its entirety.  
7 To begin, it is simply beyond dispute that the particular matters, issues, and claims, including the  
8 bases thereof, which are being set forth by the Plaintiffs within their Complaint concern those  
9 that are of a particular heightened level of public interest or importance. In fact, throughout their  
10 Demurrer, the Defendants expend considerable effort delineating the evolution of the rushed  
11 creation of the applicable COVID-19 vaccines as well as the overall efforts to mass distribute,  
12 administer, and/or give away such “drugs” within the State of California. (*See*, Demurrer Pg. 12:  
13 6, “[m]ore than 94 million doses [of the COVID-19 vaccines] have been administered in  
14 California.”). Within their Complaint, the Plaintiffs’ set forth allegations to establish that each  
15 of them are interested citizens of the State of California, and thus, each of the Plaintiffs have a  
16 legally recognizable interest in ensuring that the Defendants, as public officials and public  
17 governmental agencies, are not violating legal requirements being imposed upon them by state  
18 statutes. (*See*, Plaintiff’s Complaint ¶¶1-4; 80-82). In this respect, as is thoroughly delineated  
19 by the Plaintiffs throughout their Complaint, it is express statutory law in this State that no person,  
20 including any of the Defendants, are permitted to sell, deliver, and/or otherwise give away any  
21 new drug or device in this State, which would include all of the COVID-19-related vaccines that  
22 are identified by the Plaintiffs within their Complaint, unless and until such time that all such  
23 new “drugs” have gone through the process and received formal approval in accordance with the  
24 statutory requirements of *California Health and Safety Code* §111550, which has **not** occurred.  
25 In fact, despite such non-compliance with *California Health and Safety Code* §111550, the  
26 Defendants have been and continue to be actively involved with and/or otherwise responsible for  
27 the selling, distributing, and/or otherwise giving away of all of these statutorily unapproved drugs  
28 within the State of California, including without limitation, by using and expending significant

1 amounts of public funds to do so. (*See*, Plaintiff’s Complaint ¶¶5-15; 46-58; 72-79). In  
2 furtherance of the foregoing, within their Complaint, the Plaintiffs further thoroughly evidence  
3 the significant known side effects of such unapproved drugs that are still being administered  
4 within this State with the active participation of the Defendants, including without limitation,  
5 recipients of these “drugs” now suffering from blood clotting disorders, myocarditis, increased  
6 risk of premature death, increased risk of cancer, miscarriages, and other autoimmune disorders.  
7 (*See*, Plaintiff’s Complaint ¶¶62-67). Notably, even within the Defendants’ Demurrer, the  
8 Defendants appear to even acknowledge the heightened risks of significant injuries for those  
9 individuals who are injected with these “drugs.” (*See*, Demurrer Pg. 12: 13-19). As a result of  
10 the foregoing, especially in light of the fact that this matter is simply at the pleading stages where  
11 such pleadings must be liberally construed in favor of the Plaintiffs, it is simply beyond question  
12 that within their Complaint, the Plaintiffs have sufficiently established that the matters involved  
13 in this Action concern claims being set forth by citizens within the State of California and which  
14 concern matters of a significant public interest. As such, pursuant to the above-referenced  
15 binding legal standards, the Plaintiffs have undoubtedly set forth sufficient factual allegations  
16 within its Complaint to demonstrate that each Plaintiff has standing to maintain these claims of  
17 heightened public interest against each of the Defendants. Accordingly, Plaintiffs each  
18 respectfully request that this Court overrule and deny the Defendants Demurrer, in its entirety.

19         Notwithstanding anything to the contrary, even if this Court requires the Plaintiffs to  
20 satisfy the heightened standing standards which are attempting to be required by the Defendants  
21 within their Demurrer, the Plaintiffs should still be deemed to have satisfied such standards, and  
22 thus, have standing to maintain each of their causes of action. As is set forth above, it is well-  
23 settled law that associations, even if not individually injured, will be deemed to have standing to  
24 maintain an action on behalf of its members when: (i) its members would otherwise have standing  
25 to sue in their own right; (ii) the interests that the association seeks to protect are germane to the  
26 organization’s purpose; and (iii) neither the claim asserted nor the relief requested requires the  
27 participation of individual members in the lawsuit. In furtherance of this, it is simply indisputable  
28 that the Plaintiffs have set forth detailed allegations which establish each of the foregoing

1 requirements, thereby enabling Plaintiff AVFC to have legal standing to bring and maintain this  
2 Action against the Defendants. Plaintiff AFVC is a California not for profit corporation whose  
3 primary purpose and mission is to protect the rights of individuals and ensuring that its members  
4 have sufficient knowledge about, have a free choice, and have been provided informed consent  
5 as to what medications are put into their and their children’s bodies, and that all such “drugs”  
6 have gone through all of the proper testing procedures, trials, and other channels, and thereafter  
7 have received all of the legally requisite approvals to ensure the full safety and efficacy of all  
8 such “drugs.” (*See*, Plaintiff’s Complaint ¶4). In this respect, Plaintiffs’ Complaint further sets  
9 forth, with significant detail, that Plaintiff AVFC’s membership consists of tens of thousands of  
10 individuals, including a significant number of those members who are citizens of the State of  
11 California and who, in pertinent part, have been injected with some form of the COVID-19  
12 vaccines or “drugs,” including those members who have also suffered adverse reactions and/or  
13 side effects from such “drugs” which necessarily resulted due to the Defendants’ widespread and  
14 concerted effort to cause for the sale, distribution, and/or giving away of such statutorily  
15 unapproved vaccines within this State. *Id.* Moreover, as is set forth by the Plaintiffs within their  
16 Complaint, the issues to be decided by this Court are limited in that such issues simply pertain to  
17 whether the Defendants have or have not complied with all of the requirements being imposed  
18 upon them by *California Health and Safety Code* §111550. In this respect, if it is deemed that  
19 the Defendants have not fully complied with all such statutory requirements, then the remedy  
20 sought by the Plaintiffs is simply that the Defendants be enjoined from any further unlawful  
21 actions until such time that the Defendants could initiate selling, distributing, and/or giving away  
22 such “drugs” in full compliance with all statutory requirements. As such, the asserted basis and  
23 nature of the Plaintiffs’ claims do not require the participation of any of Plaintiff AFVC’s  
24 individual members in this Action. Accordingly, within their Complaint, the Plaintiffs have  
25 sufficiently established requisite bases for this Court to allow Plaintiff AFVC to be able to have  
26 standing to maintain this Action against each of the Defendants on behalf of Plaintiff AFVC’s  
27 associational members.  
28

1           Additionally, within their Complaint, the individual Plaintiffs further set forth specific  
2 bases for their standing to maintain their claims against the Defendants. For example, it is alleged  
3 that Plaintiff Ms. Johnson not only received multiple injections of the non-statutorily approved  
4 “drugs” that are being sold, distributed, and/or otherwise given away by the Defendants, but that  
5 she even suffered and continues to suffer from significant adverse side effects as a result of such  
6 injections. Moreover, Plaintiffs further allege that while neither Plaintiff Ms. Matthias and/or  
7 Plaintiff Mr. Lugatiman have actually been injected by such non-statutorily approved “drugs,”  
8 they suffered related injuries that would not have occurred but for the Defendants engaging in  
9 the unlawful selling, distribution, and/or giving away of such non-statutorily approved “drugs”  
10 within this State. (*See*, Complaint ¶¶80-82). As a result, within their Complaint, each of the  
11 Plaintiffs have set forth and have identified particularized injuries suffered by them which would  
12 not have been suffered and/or otherwise realized but for the Defendants’ unlawful selling,  
13 distribution, and/or giving away of such non-statutorily approved “drugs” within this State.

14           Given all of the foregoing, especially in light of all of the above-referenced applicable  
15 legal standards, it is simply beyond question that each of the Plaintiffs have set forth at least a  
16 minimum amount of factual allegations to establish that each of them have sufficient standing to  
17 bring and maintain each of their claims against the Defendants. As such, Plaintiffs respectfully  
18 request that this Court overrule and deny the Defendants’ Demurrer, in its entirety, and thereby  
19 allow this Action to actually be adjudicated and determined upon its merits rather than  
20 hypothetical procedural challenges.

21           **B. Plaintiffs’ Second Cause of Action is Adequately Plead, and thus, Defendants’**  
22           **Demurrer Should be Denied.**

23           Within their Demurrer, the Defendants also contend that their Demurrer should be  
24 sustained and that the Plaintiffs’ entire Complaint should be dismissed, without leave to amend,  
25 on the basis of the Defendants’ contentions that the Plaintiffs’ Second Cause of Action somehow  
26 should be declared by this Court as meritless, as a matter of law.

27           To begin, the Defendants attempt to contend that this Court, at the pleading stages of this  
28 Action, should already adjudicate the merits of Plaintiffs’ entire Second Cause of Action for the

1 Defendants' violation of *California Health and Safety Code* §111550, and thereby somehow  
2 determine and find that the Plaintiffs' Second Cause of Action should fail, as a matter of law, and  
3 thus, be subject to the Defendants' Demurrer. In doing so, the Defendants first attempt to contend  
4 that *California Health and Safety Code* §111550 should not be perceived as a statute that provides  
5 the Plaintiffs with a private right of action to enforce its requirements, but rather, the Defendants  
6 contend that such statute should be interpreted as solely enabling Defendant, the State of  
7 California, Department of Public Health, with being responsible for administering and enforcing  
8 the statute's requirements even if the basis of the Plaintiffs' Complaint is that such Defendant is  
9 not only failing to do so but is actually actively propagating the violation of such statute's  
10 requirements. In support of such contentions being set forth within their Demurrer, the  
11 Defendants attempt to cite to a number of federal court decisions and other federal statutes, all of  
12 which are not only **nonbinding** upon this Court, but which actually seemingly do not even relate  
13 to the specific issues that are pending in this Action. For example, within their Demurrer, the  
14 Defendants attempt to cite to the provisions of 21 U.S.C. §337(a), and in doing so, spend  
15 considerable effort in attempting to proclaim that such federal statutory authority supports its  
16 contention that *California Health and Safety Code* §111550 should not be deemed to provide a  
17 private right of action to enforce the statute's requirements. (*See*, Demurrer Pg. 16:21-28; Pg.  
18 17:1-19). The issue with the Defendants' aforementioned contentions and its efforts to proclaim  
19 that such federal statute, by nature, should also preclude any private enforcement of *California*  
20 *Health and Safety Code* §111550, is that the plain wording of 21 U.S.C. §337(a) explicitly  
21 indicates that such statute solely pertains to the enforcement or restraining of violations of the  
22 provisions of Chapter 9 of Title 21 of the U.S. Code, which is **not** even applicable or at issue  
23 within this instant Action. It is notable that the U.S. Food and Drug Administration (the "FDA")  
24 has previously opined on the applicability of reliance upon the limitations set forth within 21  
25 U.S.C. §337(a) in the context of private enforcement of state law claims, and the FDA already  
26 opined that Section 337 should **NOT** be interpreted in a manner that would preclude the ability  
27 of states to provide a private remedy for violations of their own state laws. (*See*, 58 Fed.Reg.  
28 2458 (Jan. 6, 1993)). Moreover, notably absent from the Defendant's Demurrer is the fact that

1 the California Supreme Court has already been confronted with a similar issue and has already  
2 held that the limitations set forth within 21 U.S.C. §337 **DO NOT** apply to a private claimant’s  
3 attempt to enforce state law claims as such statute, “by its very terms, only implicates efforts to  
4 enforce federal laws.” *Farm Raised Salmon Cases* (2008) 42 Cal.4th 1077, 1095-1096. In fact,  
5 in *Farm Raised Salmon Cases*, the California Supreme Court explicitly held that 21 U.S.C. §337  
6 **“DOES NOT...limit, prohibit, or affect private claims predicated on [violations of] state**  
7 **laws.”** *Id.* (Emphasis Added). As a result of the foregoing, any reliance by the Defendants upon  
8 the provisions and limitations set forth within 21 U.S.C. §337(a) as a means to justify their request  
9 that this Court determine that there is no right for any private enforcement of the requirements of  
10 *California Health and Safety Code* §111550 should be disregarded, in its entirety.

11 In addition to the foregoing, within their Demurrer, the Defendants further attempt to  
12 contend that the “statutory scheme” of *California Health and Safety Code* §111550 somehow  
13 indicates that the California Legislature chose not to provide a private right of action for the  
14 enforcement of this statute, and thus, this Court should now, at the pleading stages of this Action,  
15 automatically presume that there should be no ability for the Plaintiffs to maintain their claims  
16 against the Defendants based upon alleged violations of *California Health and Safety Code*  
17 §111550, which is a subset of the Sherman Food, Drug, and Cosmetic Laws within the State of  
18 California. (*See*, Demurrer Pg. 17:20-28; Pg. 18:1-19). Notwithstanding the Defendants’  
19 aforementioned arguments, it is important to note that both federal and state courts within this  
20 State, when confronted with issues that concerned attempts of private enforcement of the  
21 Sherman Food, Drug, and Cosmetic Laws (i.e., the exact same situation as this Action), have  
22 actually allowed for the private enforcement and maintaining of such actions. (*See, Brinkerhoff*  
23 *v. L’Oreal USA, Inc.* (S.D. Cal. 2019) 417 F.Supp.3d 1308, holding that a private consumer had  
24 standing to maintain a private action in an effort to seek the enforcement of the provisions of the  
25 Sherman Food, Drug, and Cosmetic Laws which included the requirements of *California Health*  
26 *and Safety Code* §111550). (*See also, Kievlan v. Dahlberg Electronics, Inc.* (1978) 78  
27 Cal.App.3d 951, wherein the Court of Appeal allowed a private suit to enjoin violations of the  
28 Sherman Food, Drug, and Cosmetic Laws). Accordingly, while the Defendants attempt to spend

1 a considerable amount of time within their Demurrer to convince this Court that it should just  
2 presume there is no private right of action to enforce the provisions of *California Health and*  
3 *Safety Code* §111550, despite the fact that the Defendants **FAILED** to set forth even a single  
4 case which would conclusively support such contentions, the fact of the matter is that both federal  
5 and the courts of this State have already afforded private claimants opportunities to maintain  
6 private actions based upon alleged violations of the Sherman Food, Drug, and Cosmetic Laws,  
7 and the enforcement thereof, and thus, this Court should not be persuaded to preclude the  
8 Plaintiffs from being able to maintain this Action on such bases. As such, the Plaintiffs again  
9 respectfully request that this Court overrule the Defendants’ Demurrer, in its entirety.

10 Additionally, within their Demurrer, the Defendants also spend a considerable amount of  
11 time attempting to argue the overall merits of the Plaintiffs’ Second Cause of Action, including  
12 by attempting to contend that since all of the “drugs” that are the subject of this Action are FDA  
13 Emergency Use Authorization “approved” (“EUA”), such “approvals” alone should somehow  
14 allow this Court to make an affirmative finding upon the merits of the Plaintiffs’ Second Cause  
15 of Action in the Defendants’ favor, and thus, allow this Court to sustain the Defendants’  
16 Demurrer. (*See*, Demurrer Pg. 18: 22-28; Pg. 19: 1-21). The issue with the Defendants’ attempts  
17 to argue the overall merits of the Plaintiffs’ Complaint in support of their Demurrer are two-fold.

18 First and foremost, as is set forth above, it is well settled law within this State that a  
19 demurrer is **NOT** concerned with the likelihood that the claimants will prevail upon any of its  
20 claims, nor is a demurrer even concerned with whether a claimant will even be able to present  
21 evidence to support their allegations, as such are immaterial at the pleading stages. *Alcorn v.*  
22 *Anbro Engineering, Inc.*, *supra*, 2 Cal.3d at 496. As such, to the extent that the Defendants are  
23 attempting to litigate the merits of the Plaintiffs’ claims being set forth within their Complaint in  
24 support of their Demurrer, such efforts **MUST** be disregarded by this Court.

25 Second, even assuming arguendo that this Court did want to evaluate the overall merits  
26 of the Plaintiffs’ claims at the pleading stages of this Action, the Defendants’ Demurrer is still  
27 without merit as the Defendants inaccurately attempt to cite the requirements of *California*  
28 *Health and Safety Code* §111550. For example, within their Demurrer, the Defendants explicitly



1 attempt to declare that since each of the “drugs” that are at issue in this Action have received  
2 EUA “approval,” this fact alone would cause there to be an allowance for the Defendants to  
3 actively sell, distribute, and/or give away such “drugs” in accordance with *California Health and*  
4 *Safety Code* §111550. Notwithstanding the foregoing arguments attempting to be set forth by  
5 the Defendants, as was thoroughly explained by the Plaintiffs within their Complaint, *California*  
6 *Health and Safety Code* §111550 explicitly requires that all new “drugs” being sold, distributed,  
7 or given away within the State of California **must** first receive, in pertinent part, approval under  
8 Section 505 of Federal Food, Drug, and Cosmetic Act (the “FD&C Act”) (21 U.S.C. §355);  
9 however, **NONE** of the COVID-19 Vaccines that are being sold, distributed, and/or otherwise  
10 given away by the Defendants, which serve as the basis of the above-captioned Action, have  
11 received such full and formal approval. (*See*, Complaint ¶¶52-54). Rather, as is evidenced by  
12 the Plaintiffs within their Complaint and which is seemingly admitted to by the Defendants within  
13 their Demurrer, the only “approvals” of such applicable COVID-19 Vaccines are under the far  
14 lesser EUA standards being set forth within 21 U.S.C. §360bbb-3, which is a wholly different  
15 and non-applicable subset of “approval standards,” and thus, does **NOT** result in compliance with  
16 the heightened testing and “approval” requirements of Section 505 of the FD&C Act, and thereby  
17 does not result in compliance with *California Health and Safety Code* §111550. As a result, as  
18 was also set forth by the Plaintiffs within their Complaint, the only other potential legal pathway  
19 for a new, experiments, and/or investigational type of “drug” to be sold, distributed, and/or  
20 otherwise given away within the State of California is one that satisfies the requirements being  
21 set forth within *California Health and Safety Code* §111595; however, as is thoroughly  
22 demonstrated by the Plaintiffs’ within their Complaint, such statutory framework does not allow  
23 for the **widespread** selling, distribution, and/or giving away of such experimental “drugs,” and  
24 thus, does not allow the Defendants to escape the requirements being set forth within *California*  
25 *Health and Safety Code* §111550.

26           Simply put, for the reasons set forth above, not only does the judicial history of matters  
27 concerning the enforcement of the provisions of the Sherman Food, Drug, and Cosmetic Laws  
28 provide for a private right of action, but by the Defendants engaging in the sale, distribution,

1 and/or giving away of COVID-19 Vaccines that have not received full approval under Section  
2 505 of the FD&C Act, the Defendants have undoubtedly violated and continue to violate the  
3 statutory requirements being set forth within the Sherman Food, Drug, and Cosmetic Laws,  
4 including within *California Health and Safety Code* §111550. All such facts were beyond  
5 adequately plead by the Plaintiffs within their Complaint. Accordingly, Plaintiffs respectfully  
6 request that this Court deny the Defendants' Demurrer, in its entirety.

7 **C. Plaintiffs' First Cause of Action is Adequately Plead, and thus, Defendants'**  
8 **Demurrer Should be Denied.**

9 Within their Demurrer, the Defendants also attempt to challenge the Plaintiffs' First  
10 Cause of Action for a Violation of Article I, Section 1, of the California Constitution. In support  
11 of the Defendants' arguments being set forth within their Demurrer, the Defendants attempt to  
12 cite to the holdings of the Court of Appeal in the matter of *Clausing v. San Francisco Unified*  
13 *School Dist.* (1990) 221 Cal.App.3d 1224 by proclaiming that such case stands for the position  
14 that the right to safety under Article I, Section 1, of the California Constitution is not enforceable  
15 by an action for injunctive relief. (*See*, Demurrer Pg. 20: 14-27; Pg. 21:1-5). The issue with the  
16 Defendants' aforementioned contentions and asserted basis for its requests for relief being set  
17 forth within their Demurrer is the fact that the court in *Clausing* did not impose a per se absolute  
18 preclusion of claims for an injunction under the premise of alleged violations of Article I, Section  
19 1, of the California Constitution, but rather, to the contrary, the court in *Clausing* notably held  
20 that violations of constitutional protections set forth within Article I, Section 1, of the California  
21 Constitution **ARE SELF-EXECUTING AND THEREBY SUPPORT A CAUSE OF**  
22 **ACTION FOR AN INJUNCTION**, which is the **EXACT** basis of the Plaintiffs' asserted First  
23 Cause of Action in this Action. *Id.* at 1238. Accordingly, the legal standards being set forth by  
24 the court in *Clausing* actually support the Plaintiffs' First Cause of Action and the need for this  
25 Court to deny the Defendants' Demurrer. As a result, Plaintiffs again respectfully request that  
26 this Court deny the Defendants' Demurrer, in its entirety.

27 ///

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1           **D. Plaintiffs' Third Cause of Action is Adequately Plead, and thus, Defendants'**  
2           **Demurrer Should be Denied.**

3           Within their Demurrer, the Defendants further inaccurately attempt to contend that  
4 Plaintiffs' Third Cause of Action should fail as a matter of law. The issue with the Defendants'  
5 arguments is that such position hinges upon their arguments seeking the dismissal of the  
6 Plaintiffs' Second Cause of Action, which as is already set forth and established herein, Plaintiffs  
7 have adequately plead their Section Cause of Action. Accordingly, since the Plaintiffs' Second  
8 Cause of Action is adequately plead, the Defendants' asserted basis of their Demurrer to the  
9 Plaintiffs' Third Cause of Action must also fail, as a matter of law. As such, Plaintiffs' again  
10 respectfully request that this Court deny the Defendants' Demurrer, in its entirety.

11           **E. Plaintiffs Have Set Forth Numerous Factual Allegations Against the Defendants.**

12           In a last ditch effort to escape liability from the Plaintiffs' claims, within their Demurrer,  
13 the Defendants further disingenuously attempt to contend to this Court that the Plaintiffs have  
14 somehow failed to identify any specific conduct being engaged in by "any" of the Defendants  
15 that serve as the basis of the Plaintiffs' claims and requests for relief being set forth within their  
16 Complaint. Notwithstanding the foregoing, as is already set forth above, within the Plaintiffs'  
17 Complaint, the Plaintiffs set forth a myriad of detailed factual allegations which thoroughly  
18 demonstrate how each of the Defendants have been and continue to be actively involved with  
19 and/or otherwise responsible for the selling, distributing, and/or otherwise giving away of all of  
20 these statutorily unapproved "drugs" within the State of California, including without limitation,  
21 by using and expending significant amounts of public funds to do so. (*See*, Plaintiff's Complaint  
22 ¶¶5-15; 46-58; 72-79). Accordingly, any attempt by the Defendants to now contend within their  
23 Demurrer that the Plaintiffs have supposedly failed to set forth factual allegations of the  
24 Defendants' wrongdoing is simply without merit and should be disregarded by this Court.

25           **F. This Court Should Grant the Plaintiffs Leave to Amend If Any Part of the**  
26           **Defendants' Demurrer is Sustained.**

27           For the reasons set forth herein as well as those allegations being set forth by the Plaintiffs  
28 within their Complaint, this Court should deny the Defendants' Demurer, in its entirety.

1 However, should this Court be included to sustain any part of the Defendants’ Demurrer, this  
2 Court should also grant the Plaintiffs leave to amend its Complaint. (*See, Quelimane Co. v.*  
3 *Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 39, “[i]f a complaint does not state a cause of  
4 action, but there is a reasonable possibility that the defect can be cured by amendment, **leave to**  
5 **amend must be granted**”). (Emphasis Added). (*See also, City of Stockton v. Superior Court*  
6 (2007) 42 Cal.4th 730, 747, “[i]f the [claimant] has not had an opportunity to amend the  
7 complaint in response to the demurrer, leave to amend is liberally allowed as a matter of fairness,  
8 unless the complaint shows on its face that it is incapable of amendment”).

9 In this matter, while discovery might reveal a much greater level of detail which the  
10 Defendants are seeking to cause the Plaintiffs to unnecessarily plead at the pleading stages of this  
11 Action, any alleged potential deficiencies of the Complaint are indisputably able to be cured  
12 through amendment. As a result of the foregoing and since none of the Plaintiffs have yet had  
13 an opportunity to amend their pleadings in response to the Defendants’ Demurrer, this Court  
14 should grant the Plaintiffs leave to amend their Complaint to the extent that this Court finds that  
15 any part of their pleadings may be subject to the Defendants’ Demurrer.

16 **IV. CONCLUSION**

17 For the reasons set forth herein as well as those allegations being set forth by the Plaintiffs  
18 within their Complaint, Plaintiffs, Mary Matthias, Chris Lugatiman, Toni Johnson, and A Voice  
19 for Choice, Inc., each respectfully request that this Court deny and overrule the Defendants’  
20 Demurrer, in its entirety, and thereby allow this Action to be adjudicated upon its merits.

21  
22 Dated: April 11, 2024

**THE HAKALA LAW GROUP, P.C.**  
**BRAD A. HAKALA**

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25 \_\_\_\_\_  
26 Brad A. Hakala, Esq.  
27 Ryan N. Ostrowski, Esq.  
28 Attorneys for Plaintiffs, Mary Matthias,  
Chris Lugatiman, Toni Johnson, and A  
Voice for Choice, Inc.