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**Exempt from filing fees
Gov. Code, § 6103**

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES

11
12 **MARY MATTHIAS, et al.,**
13
14 **v.**
15
16 **STATE OF CALIFORNIA,**
DEPARTMENT OF PUBLIC HEALTH, et
al.
17
18 Defendants.

Case No. 23STCV26006
**DEFENDANTS' REPLY BRIEF IN
SUPPORT OF DEMURRER TO
PLAINTIFFS' COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**
Date: April 24, 2024
Time: 9:00 a.m.
Dept: 51
Judge: The Honorable Upinder S. Kalra
Trial Date: TBD
Action Filed: October 24, 2023
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1 **TABLE OF CONTENTS**

2 **Page**

3 Introduction 6

4 Argument 7

5 I. Plaintiffs Fail to Demonstrate that They Have Standing 7

6 II. Plaintiffs Fail to Demonstrate that They Can State a Cognizable Claim for

7 Violation of Health and Safety Code Section 111550 9

8 A. Plaintiffs Do Not Have a Private Right of Action to Enforce Section

9 111550..... 9

10 B. Federal Law Preempts Plaintiffs’ Section 111550 Lawsuit..... 10

11 C. Plaintiffs’ Statutory Claim Fails as a Matter of State and Federal

12 Law..... 12

13 III. Plaintiffs Fail to Demonstrate that They Can State a Cognizable Claim for

14 Violation of the Constitutional Right to Obtain Safety..... 13

15 IV. Plaintiffs Fail to Demonstrate that They Can State a Cognizable Claim for

16 Declaratory Relief 15

17 Conclusion 15

18

19

20

21

22

23

24

25

26

27

28

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page

CASES

Ball v. FleetBoston Fin. Corp.
(2008) 164 Cal.App.4th 794 15

Blank v. Kirwan
(1985) 39 Cal.3d 311 6

Blumhorst v. Jewish Family Services of L.A.
(2005) 126 Cal.App.4th 993 7

Borchenko v. L'Oreal USA, Inc.
(C. D. Cal. 2019) 389 F.Supp.3d 769 10, 11

Brinkerhoff v. L'Oreal USA, Inc.
(S. D. Cal. 2019) 417 F.Supp.3d 1308 11

Buckman Co. v. Plaintiffs' Legal Comm.
(2001) 531 U.S. 341 10

Cangress v. City of Los Angeles
(C.D. Cal., June 17, 2014, No. 214CV01743 SVW MANX) 2014 WL
12564099..... 14

Cansino v. Bank of America
(2014) 224 Cal.App.4th 1462 6

Chong v. Kind LLC
(N.D. Cal. 2022) 585 F.Supp.3d 1215 13

Clausing v. San Francisco Unified School Dist.
(1990) 221 Cal.App.3d 1224 14, 15

Connerly v. Schwarzenegger
(2007) 146 Cal.App.4th 739 7

Farn Raised Salmon Cases (2008) 42 Cal.4th 1077 11

Harrison v. City and County of San Francisco
(N.D. Cal., Apr. 19, 2022, No. 20-CV-05178-JST) 2022 WL 20241964..... 14

Julian v. Mission Community Hospital
(2017) 11 Cal.App.5th 360 9

Kievlan v. Dahlberg Electronics, Inc.
(1978) 78 Cal.App.3d 951..... 11

TABLE OF AUTHORITIES
(continued)

		<u>Page</u>
3	<i>McCann v. Lucky Money, Inc.</i>	
4	(2005) 129 Cal.App.4th 1382	14
5	<i>Moradi-Shalal v. Fireman’s Fund Ins.</i>	
6	(1988) 46 Cal.3d 287	9
7	<i>New Plumbing Contractors, Inc. v. Nationwide Mutual Ins. Co.</i>	
8	(1992) 7 Cal.App.4th 1088	6
9	<i>Pacific Legal Foundation v. California Coastal Com.</i>	
10	(1982) 33 Cal.3d 158	8
11	<i>PDK Labs, Inc. v. Friedlander</i>	
12	(2d. Cir. 1997) 103 F.3d 1105.....	11
13	<i>People ex rel. Becerra v. Super. Ct.</i>	
14	(2018) 29 Cal.App.5th 486	8
15	<i>Perez v. Nidek Co.</i>	
16	(9th Cir. 2013) 711 F.3d 1109	10
17	<i>Rondeau v. Mosinee Paper Corp.</i>	
18	(1975) 422 U.S. 49.....	9
19	<i>Title Ins. Co. v. Comerica Bank-Cal.</i>	
20	(1994) 27 Cal.App.4th 800	6
21	<i>White v. Davis</i>	
22	(1975) 13 Cal.3d 757	15
23	<i>Winter v. Gnaizda</i>	
24	(1979) 90 Cal.App.3d 750.....	8
25	STATUTES	
26	21 U.S.C.	
27	§ 337(a)	10, 11
28	§ 343-1	11
	§ 355.....	10, 12, 13
	§ 360bbb.....	<i>passim</i>
	§ 360bbb-3a.....	12, 13
	42 U.S.C. § 262(a)(1)(A)	10
	California Organic Food and Farming Act	9

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES
(continued)

	<u>Page</u>
Code of Civil Procedure § 1086.....	8
Evidence Code § 452	6
Federal Food, Drug, and Cosmetic Act (FDCA)	<i>passim</i>
Health & Safety Code	
§ 110110.....	12, 13
§§ 110810 through 111224.6	9
§ 111550.....	<i>passim</i>
§ 111910.....	9
CONSTITUTIONAL PROVISIONS	
California Constitution	
Article I § 1	7, 13, 14, 15
Article I § 28	14

1 **MEMORANDUM OF POINT AND AUTHORITIES**

2 **INTRODUCTION**

3 To overrule this demurrer, plaintiffs must provide legal authority supporting the viability
4 of the challenged causes of action in their complaint (Complaint). Plaintiffs dispute this, arguing
5 that this Court cannot address the merits of the claims in deciding this demurrer. However,
6 testing the legal sufficiency of the factual allegations in a complaint *necessarily includes* an
7 assessment of the merits of plaintiffs’ claims. (*Title Ins. Co. v. Comerica Bank-Cal.* (1994) 27
8 Cal.App.4th 800, 807.) Plaintiffs bear the burden of showing that the Complaint alleges facts
9 sufficient to establish every element of each cause of action. (*Blank v. Kirwan* (1985) 39 Cal.3d
10 311, 318.) Though all material facts are admitted as properly pleaded, courts reject contentions,
11 deductions, and conclusions of fact or law.¹ (*Ibid.*) If plaintiffs fail to plead, or if defendants
12 negate, any essential element of a particular cause of action, the demurrer will be sustained.
13 (*Ibid.*) If plaintiffs cannot demonstrate that a reasonable possibility exists that amendment can
14 cure the defects or that there is legal authority supporting the viability of the causes of action, the
15 demurrer will be sustained without leave to amend. (*New Plumbing Contractors, Inc. v.*
16 *Nationwide Mutual Ins. Co.* (1992) 7 Cal.App.4th 1088, 1098.) Because defendants conclusively
17 invalidate all causes of actions in the Complaint, and no amendment could cure the defects at the
18 core of this lawsuit, this demurrer should be sustained without leave to amend.

19 Plaintiffs characterize defendants’ demurrer as a “smokescreen” of “technical challenges
20 to the pleadings.” (Pls. Opp., pp. 2-3.) However, the Complaint’s defects amount to much more
21 than technical challenges that can be cured by amendment. First, plaintiffs fail to properly allege
22 standing for injunctive and declaratory relief because they do not establish that they have suffered
23 or are in imminent danger of suffering an actual and concrete injury that is redressable by any of
24 the defendants. Merely stating that they have “significant concerns” about an issue of alleged

25 _____
26 ¹ Courts can also consider matters that are the subject of judicial notice. (*Cansino v. Bank*
27 *of America* (2014) 224 Cal.App.4th 1462, 1474.) Plaintiffs object to defendants’ request for
28 judicial notice. However, the proffered exhibits are proper subjects of judicial notice because
they are government agency publications describing official government acts and providing
background facts that are not reasonably subject to dispute and capable of immediate and accurate
determination. (See Evid. Code, § 452, subs. (c), (g), (h).)

1 “significant public importance” is not enough to confer standing for injunctive and declaratory
2 relief because the claim is not an actual, justiciable controversy.

3 Second, this entire action is predicated on plaintiffs’ claim that defendants have allegedly
4 not enforced Health and Safety Code section 111550 (Section 111550) with respect to COVID-19
5 vaccines approved for emergency use authorization (EUA). Plaintiffs fail to establish that they
6 have a private right of action to enforce this statutory claim. More importantly, plaintiffs fail to
7 rebut defendants’ assertion that federal law unambiguously precludes state government entities
8 (such as any of the named defendants) from classifying EUA COVID-19 vaccines as
9 “unapproved” drugs. Therefore, Section 111550 is not applicable to EUA COVID-19 vaccines.
10 Plaintiffs cannot provide any legal authority to support their claim that a drug authorized for
11 emergency use is subject to further scrutiny and approval processing under Section 111550.

12 Third, plaintiffs fail to establish that they have a private right of action to enforce the right
13 to obtain and pursue safety under article I, section 1 of the California Constitution. This claim
14 also fails as a matter of law because California’s decision to permit the distribution of EUA
15 COVID-19 vaccines during the pandemic is rationally related to the legitimate state interest of
16 public health and safety.

17 Defendants have not permitted use of an unapproved drug in violation of state law or any
18 right to obtain and pursue safety. Plaintiffs’ opposition does not counsel otherwise. Accordingly,
19 defendants respectfully request that the Court sustain the demurrer to plaintiffs’ complaint
20 without leave to amend.

21 ARGUMENT

22 I. PLAINTIFFS FAIL TO DEMONSTRATE THAT THEY HAVE STANDING

23 Plaintiffs’ failure to plead any cognizable basis for standing warrants dismissal of their
24 claims. (*Blumhorst v. Jewish Family Services of L.A.* (2005) 126 Cal.App.4th 993, 1000.)
25 Standing is a threshold issue. (*Ibid.*) Plaintiffs assert that they have plead entitlement to
26 injunctive and declaratory relief. (Complt. ¶¶ 85-109.) For injunctive relief, plaintiffs must
27 plead injuries as to themselves. (*Connerly v. Schwarzenegger* (2007) 146 Cal.App.4th 739, 748.)
28

1 For declaratory relief, plaintiffs must allege “a real and substantial controversy admitting of
2 specific relief through a decree of a conclusive character, as distinguished from an opinion
3 advising what the law would be upon a hypothetical set of facts.” (*Pacific Legal Foundation v.*
4 *California Coastal Com.* (1982) 33 Cal.3d 158, 170-171.)

5 Plaintiffs concede that they have not suffered any actual injury that is redressable by
6 defendants. Indeed, plaintiffs fail to state any allegation of misconduct specific to each of the six
7 state officials and four state agencies. Plaintiffs do not allege that they, or any A Voice for
8 Choice members, face the threat of forced EUA COVID-19 vaccination. Plaintiffs do not plead
9 that they are subject to—or will be subject to—a vaccine mandate that compels them to choose
10 between receiving an EUA COVID-19 vaccine or penalties for failing to get vaccinated.
11 Importantly, plaintiffs do not claim that any of the defendants have required or currently require
12 any of the plaintiffs to receive an EUA COVID-19 vaccine. Given these facts, plaintiffs have not
13 plead an injury, and therefore lack standing to bring this lawsuit.

14 Plaintiffs’ allegations of “significant concerns” about defendants allowing distribution of
15 EUA COVID-19 vaccines does not confer standing. (Complt. ¶¶ 80-82.) The focus of plaintiffs’
16 suit is the alleged harm of receiving an EUA COVID-19 vaccine. Yet, there is no likelihood that
17 plaintiffs will ever face the alleged harm of vaccination because plaintiffs cannot be forced to
18 receive an EUA COVID-19 vaccine. (See 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III) [requiring that
19 individuals be informed of and given the option to refuse an EUA vaccine]).

20 Finally, plaintiffs fail to competently plead public interest standing. (Pls. Opp., p. 5.)
21 Unless plaintiffs plead a broad public interest *and* a true justiciable controversy, which they have
22 not here, California courts will not find public interest standing. (*Winter v. Gnaizda* (1979) 90
23 Cal.App.3d 750, 756.) Similarly, Code of Civil Procedure section 1086 public interest standing is
24 unavailable because plaintiffs do not plead any action in mandamus. (See *People ex rel. Becerra*
25 *v. Super. Ct.* (2018) 29 Cal.App.5th 486, 503 [outside mandamus, “[t]here is no general ‘public
26 interest’ exception to the requirement of standing”].)

27 Plaintiffs fail to establish standing for their claims. Accordingly, the demurrer should be
28 sustained.

1 **II. PLAINTIFFS FAIL TO DEMONSTRATE THAT THEY CAN STATE A COGNIZABLE CLAIM**
2 **FOR VIOLATION OF HEALTH AND SAFETY CODE SECTION 111550**

3 Plaintiffs still fail to demonstrate that they can state a cognizable claim for a violation of
4 Section 11150. Despite maintaining that defendants violated Section 111550 by permitting the
5 distribution of EUA COVID-19 vaccines within California, plaintiffs have not and cannot dispute
6 that: (1) Section 111550 is not privately enforceable; (2) even if the law was privately
7 enforceable, plaintiffs have not and cannot allege facts sufficient to state a claim; and (3) any
8 additional claims depend on the viability of the Section 111550 statutory claim and thus fail.
9 Therefore, defendants' demurrer to the entire Complaint should be sustained without leave to
10 amend.

11 **A. Plaintiffs Do Not Have a Private Right of Action to Enforce Section 111550**

12 Plaintiffs offer no legal support that Section 111550 expressly provides a private right of
13 action for enforcement. As it is plaintiffs' burden to establish a private right of action, plaintiffs
14 therefore fail to carry their burden of proof. (*Rondeau v. Mosinee Paper Corp.* (1975) 422 U.S.
15 49, 63.) Because there is no express right of action, granting leave to amend is futile. As a
16 general rule, when a statute does not explicitly provide an enforceable right, courts will only infer
17 such a right in rare circumstances where the Legislature actually intended to create a private right
18 of action to enforce a statute. (*Moradi-Shalal v. Fireman's Fund Ins.* (1988) 46 Cal.3d 287.)

19 Because plaintiffs similarly fail to offer authority that the Legislature intended to create a
20 private right of action to enforce Section 111550, this Court should not infer this right. The fact
21 the Legislature established private rights of action to remedy violations of some provisions of a
22 law, but not for others, is a "strong indication" that no private right of action exists. (See *Julian v.*
23 *Mission Community Hospital* (2017) 11 Cal.App.5th 360, 381.) Here, the Legislature chose to
24 provide an express private right of action for enforcing other provisions of the California FDCA,
25 the California Organic Food and Farming Act. (Health & Saf. Code, § 111910.) That the
26 Legislature chose to permit private enforcement for this subset (sections 110810 through
27 111224.6 of the Health and Safety Code), but not any other articles of the California FDCA, is a
28 strong indication that there is no legislative intent to confer a private right of action for Section

1 111550. As plaintiffs do not competently dispute this, there is no authority that compels this
2 Court to infer a private right of action.

3 **B. Federal Law Preempts Plaintiffs’ Section 111550 Lawsuit**

4 Furthermore, even if Section 111550 could be privately enforced, any claim would be
5 preempted. Congress expressly authorized only federal enforcement of the FDCA, precluding
6 private enforcement. (21 U.S.C. § 337(a) (Section 337).) The U.S. Supreme Court affirmed that
7 Section 337(a) “leaves no doubt that it is the Federal Government rather than private litigants who
8 are authorized to file suit for noncompliance.” (*Buckman Co. v. Plaintiffs’ Legal Comm.* (2001)
9 531 U.S. 341, 349.) As a general rule, a private plaintiff cannot pursue state law claims if the
10 claims collide with the federal government’s exclusive enforcement power. (*Id.* at 343, 349-50,
11 353.) To avoid preemption, “[t]he plaintiff must be suing for conduct that violates the FDCA . . .
12 but the plaintiff must not be suing because the conduct violates the FDCA (such a claim would be
13 impliedly preempted under *Buckman*).” (*Perez v. Nidek Co.* (9th Cir. 2013) 711 F.3d 1109, 1120
14 (*Perez*)). In other words, a claim is preempted when it exists solely by virtue of the FDCA and
15 law which references the FDCA, seeks to enforce provisions of the FDCA, and conflicts with the
16 FDCA enforcement process.” (*Borchenko v. L’Oreal USA, Inc.* (C. D. Cal. 2019) 389 F.Supp.3d
17 769, 774 (*Borchenko*)).

18 Plaintiffs’ claim is preempted under Section 337 because it exists “only because of the
19 FDA approval system” and whether EUA COVID-19 vaccines have “received federal premarket
20 approval.” (*Borchenko, supra*, 389 F.Supp.3d at p. 773, citing *Perez, supra*, 711 F.3d at p. 1119.)
21 California has no role in authorizing or approving COVID-19 vaccines; that responsibility rests
22 squarely on the FDA. (42 U.S.C. § 262(a)(1)(A), (i)(1); 21 U.S.C. §§ 355, 360bbb-3(a)(1).) In
23 plaintiffs’ own words, Section 111550 “explicitly requires that all new drugs being sold,
24 distributed, or given away within the State of California must first receive, in pertinent part,
25 approval under Section 505 of the [federal FDCA].” (Pls. Opp., p. 13.) Therefore, plaintiffs’
26 allegations of a Section 111550 violation solely rely on a violation of the FDCA, so plaintiffs’
27 claim falls within the category of preempted claims under Section 337.

1 Plaintiffs argue that their claims are not preempted, citing to three unavailing cases. (Pls.
2 Opp., p. 11.) The first two cases do not support plaintiffs’ arguments for the same reasons as in
3 *Borchenko*: cases relying on a violation of the FDCA are preempted. (*Kievlan v. Dahlberg*
4 *Electronics, Inc.* (1978) 78 Cal.App.3d 951 (*Kievlan*); *Farm Raised Salmon Cases* (2008) 42
5 Cal.4th 1077.) In *Kievlan*, the state appellate court determined that a statute regarding hearing aid
6 advertisements was not preempted by federal law because plaintiff was not seeking to enforce the
7 federal FDCA through a state statute. (*Kievlan, supra*, 78 Cal.App.3d at p. 958.) Similarly, in
8 *Farm Raised Salmon Cases*, the state Supreme Court held that Section 337 does not impliedly
9 preempt private actions based on violations of state laws explicitly authorized by title 21 United
10 States Code section 343-1. (*Farm Raised Salmon Cases, supra*, 42 Cal.4th at p. 1098.) Unlike
11 plaintiffs here, the plaintiffs in *Kievlan* and *Farm Raised Salmon Cases* raised state law claims
12 that did not “seek[] injunctive relief requiring Defendants to receive premarket approval by the
13 FDA before [they] can continue [distributing] the Products [at issue].” (*Borchenko, supra*, 389
14 F.Supp.3d at p. 773.) Finally, in *Brinkerhoff v. L’Oreal USA, Inc.* (S. D. Cal. 2019) 417
15 F.Supp.3d 1308 (*Brinkerhoff*) the court did not reach the preemption issue because it stayed the
16 proceedings pending the FDA’s determination as to whether the lotion product at issue was a
17 “new drug” that must undergo federal approval. (*Brinkerhoff, supra*, 417 F.Supp.3d at p. 1317.)
18 Therefore, none of these cases counsel against preemption.

19 There can be no state law cause of action if a plaintiff’s “true goal is to privately enforce
20 alleged violations of the FDCA.” (*PDK Labs, Inc. v. Friedlander* (2d. Cir. 1997) 103 F.3d 1105.)
21 The plain language of Section 111550 and plaintiffs’ own admissions demonstrate that the crux of
22 this suit is intertwined with the FDA approval process for COVID-19 vaccines. Accordingly,
23 plaintiffs do not have a private right of action to enforce Section 111550 and the demurrer should
24 be sustained without leave to amend.

25 **C. Plaintiffs’ Statutory Claim Fails as a Matter of State and Federal Law**

26 Even if this Court determines that plaintiff has a private right of action to bring this claim,
27 which it does not, the substance of plaintiffs’ claim fails as a matter of law. The crux of
28

1 plaintiffs' claim is that without "full and formal approval" under Section 355 of the federal
2 FDCA, Section 111550 of the California FDCA prohibits distribution of EUA COVID-19
3 vaccines within California. (Pls. Opp., p. 13.) However, there is no such "full and formal
4 approval" requirement in Section 111550. The law provides that "no person shall sell, deliver, or
5 give away any new drug or new device unless . . . a new drug, and a new drug application, has
6 been approved for it and that approval has not been withdrawn, terminated, or suspended under
7 Section 505 of the federal act."² (Health & Saf. Code, § 111550, subd. (a)(1).) Therefore,
8 Section 111550 does not mandate any further approval processing beyond what the FDA requires.

9 In their opposition to the demurrer, plaintiffs fail to address the Complaint's fatal flaw:
10 because the COVID-19 vaccines at issue have received EUA, they are not considered unapproved
11 under the federal or California FDCA. Therefore, there is no violation of Section 111550. The
12 demurrer should be sustained without leave to amend because the state and federal statutory
13 schemes at issue do not support plaintiffs' foundational claim.

14 Plaintiffs concede that the EUA COVID-19 vaccines at issue are properly authorized
15 under federal law, specifically 21 U.S.C. § 360bbb-3 (Section 360bbb-3). (Pls. Opp., p. 13.)
16 Section 360bbb-3, subdivision (a), provides that the Secretary of the U.S. Department of Health
17 and Human Services "may authorize the introduction into interstate commerce . . . a drug . . .
18 intended for use in an actual or potential emergency" that is not otherwise "licensed" under
19 Section 355. (21 U.S.C. § 360bbb-3, subd. (a)(1)-(2).) Section 360bbb-3a, subdivision (e)(2)(B),
20 states that a drug authorized for emergency use "shall not be considered an unapproved product . .
21 . under this chapter . . . by a government entity (including a Federal, *State*, local or tribal
22 government entity), or a person acting on behalf of such a government entity." (21 U.S.C. §
23 360bbb-3a, subd. (e)(2)(B), emphasis added.) Sections 355 and 360bbb fall within the same
24 chapter of the federal FDCA. Therefore, pursuant to federal law, EUA COVID-19 vaccines
25 cannot be considered "unapproved" drugs under Section 355.

26 Similarly, EUA COVID-19 vaccines cannot be considered "unapproved" drugs under

27 _____
28 ² Section 505 of the federal FDCA is title 21 United States Code section 355, also referred
to herein as "Section 355." (See Health & Saf. Code, §§ 110110, 111550.)

1 Section 111550. The California FDCA “is entirely dependent upon the [federal] FDCA” and
2 “expressly adopts the FDCA and regulations as state law.” (*Chong v. Kind LLC* (N.D. Cal. 2022)
3 585 F.Supp.3d 1215, 1219, (citing Health & Saf. Code, § 110110.) Under Health and Safety
4 Code section 110110, California automatically adopts all federal regulations relating to new drug
5 applications under the federal FDCA. (Health & Saf. Code, § 110110 [“All regulations relating
6 to . . . new drug applications, except for abbreviated new drug applications, adopted pursuant to
7 Section 505 of the federal act . . . shall be the new drug and new device application regulations of
8 this state.”].) In addition to Section 360bbb-3a expressly prohibiting any State government entity
9 from characterizing an EUA drug as “unapproved,” California’s adoption of these federal
10 regulations precludes any suggestion that EUA COVID-19 vaccines are “unapproved.” Plaintiffs
11 offer no legal authority in their opposition to refute this controlling statutory scheme.

12 Despite plaintiffs’ opinions on “lesser EUA standards,” federal and California law are
13 clear: drugs approved for emergency use authorization cannot be considered “unapproved”
14 products. (Pls. Opp., p. 13.) Thus, the EUA COVID-19 vaccines are not prohibited from
15 distribution under Section 111550. Plaintiffs have not stated and cannot state a viable claim
16 under Section 111550, which plaintiffs also concede is the basis of their first and third causes of
17 action. For these reasons, the demurrer should be sustained in its entirety without leave to amend.

18 **III. PLAINTIFFS FAIL TO DEMONSTRATE THAT THEY CAN STATE A COGNIZABLE CLAIM**
19 **FOR VIOLATION OF THE CONSTITUTIONAL RIGHT TO OBTAIN SAFETY**

20 Plaintiffs’ single-paragraph response in defense of their claim alleging violation of the right
21 to “pursu[e] and obtain[] safety” under article 1, section 1 (section 1) of the state Constitution
22 fails to demonstrate that plaintiffs have, or could state, a cognizable claim for violation of this
23 provision. In their demurrer, defendants first demonstrated that the right to pursue and obtain
24 safety under section 1 is not self-executing and does not create a private right of action or impose
25 any affirmative duty on state government. (Mem. at 20–21; see *Clausing v. San Francisco*
26 *Unified School Dist.* (1990) 221 Cal.App.3d 1224, 1237–1238 & fn. 6 (*Clausing*)³.) Second,

27 ³ See also *Harrison v. City and County of San Francisco* (N.D. Cal., Apr. 19, 2022, No.
28 20-CV-05178-JST) 2022 WL 20241964 at *6; *Cangress v. City of Los Angeles* (C.D. Cal., June

1 defendants demonstrated that, even if the right to pursue and obtain safety under section 1 were
2 actionable, plaintiffs cannot state a cognizable claim for violation of the right because they fail to
3 and cannot demonstrate that defendants’ role in the distribution of EUA COVID-19 vaccines
4 lacks any conceivable rational basis, as required under the applicable “rational basis” review
5 standard. (*Id.* at 21–23.) Finally, defendants concluded that plaintiffs fail to state a cognizable
6 claim for violation of the right to pursue and obtain safety because plaintiffs improperly seek to
7 “bootstrap” their statutory Section 111550 claim into a constitutional claim. (*Id.* at 23.)

8 Plaintiffs’ sole rebuttal argument rests on their mischaracterization of the holding in
9 *Clousing*. Plaintiff argues that the court in *Clousing* held that violations “of constitutional
10 protections set forth within Article I, Section 1” are self-executing and therefore “support a cause
11 of action for an injunction.” (Opp. at p. 14, citing *Clousing, supra*, 221 Cal.App.3d at p. 1238.)
12 However, this argument misreads the holding of *Clousing*, failing to recognize the fundamental
13 differences in the court’s statements regarding the enforceability of the right to school safety
14 under article 1, section 28 of the state Constitution (formerly subdivision (c), now (f)(1)), which it
15 held was “closely analogous” to the rights to safety and happiness under article 1, section 1, on
16 one hand, and the right to privacy under section 1, on the other.

17 *Clousing* did not, as plaintiffs suggest, hold that *all* of the rights enumerated as
18 “inalienable” in section 1—which include the rights to “protect[] property” and to pursue and
19 obtain “happiness”—were self-executing and thus enforceable. To the contrary, the court
20 specifically held that the right to *safety* was not self-executing. (*Clousing, supra*, 21 Cal.App.3d
21 at pp. 1235–1237.) With respect to the *Clousing* plaintiffs’ separate claim based on the right to
22 *privacy*, the court recognized, in contrast, that “the right of privacy” has been recognized as
23 self-executing, and thus, supports a claim against government for injunction against a violation of
24 the right (but not, as plaintiffs alleged in that case, a claim that a public entity has a “mandatory
25 duty” to take measures to protect privacy). (*Id.* at pp. 1235–1238.) The court relied on *White v.*
26 *Davis* (1975) 13 Cal.3d 757, 775-776, in which the state Supreme Court held that the privacy

27 17, 2014, No. 214CV01743 SVW MANX) 2014 WL 12564099 at *8. Federal decisions
28 construing state law may be relied on for their “cogent reasoning and persuasive value.”
(*McCann v. Lucky Money, Inc.* (2005) 129 Cal.App.4th 1382, 1396.)

1 right, which was separately added to section 1 by initiative, was intended to create an enforceable
2 right based on the clear intent of ballot materials supporting the initiative. (See *White v. Davis*
3 (1975) 13 Cal.3d 757, 775-776.) As the *Clausing* court noted, however, “[t]here is nothing in the
4 legislative history” of the rights to safety under section 28 or the rights to safety and happiness
5 under article 1, section 1, demonstrating any intent to establish a private right of action.
6 (*Clausing, supra*, 21 Cal.App.3d at p. 1237 & fn. 6.)

7 Accordingly, plaintiffs’ argument is without merit, and defendants’ demurrer to plaintiffs’
8 first cause of action should be sustained.

9 **IV. PLAINTIFFS FAIL TO DEMONSTRATE THAT THEY CAN STATE A COGNIZABLE CLAIM**
10 **FOR DECLARATORY RELIEF**

11 Plaintiffs concede that their third cause of action seeking declaratory relief is entirely
12 derivative of their second cause of action regarding defendants’ alleged failure to enforce Section
13 111550. (Pls. Opp., p. 15.) Because plaintiffs’ statutory claim fails as a matter of law for the
14 reasons explained above, plaintiffs’ declaratory relief claim also fails. (See *Ball v. FleetBoston*
15 *Fin. Corp.* (2008) 164 Cal.App.4th 794, 800.) Accordingly, the demurrer to plaintiffs’ claim for
16 declaratory relief should be sustained without leave to amend.

17 **CONCLUSION**

18 For the foregoing reasons, defendants respectfully request that the Court sustain the
19 demurrer to the Complaint without leave to amend.

20
21 Dated: April 17, 2024

Respectfully submitted,

22 ROB BONTA
23 Attorney General of California
24 ALYSON PARKER
25 Supervising Deputy Attorney General

26 */s/ Jacquelyn Young*

27 JACQUELYN Y. YOUNG
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DECLARATION OF SERVICE BY E-MAIL

Case Name: **Matthias, et al. v Newsom, et al.**

Case No.: **23STCV26006**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence located at 300 South Spring Street Suite 1702, Los Angeles, CA 90013.

On April 17, 2024, I served the attached **DEFENDANTS' REPLY BRIEF IN SUPPORT OF DEMURRER TO PLAINTIFFS' COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** by transmitting a true copy via electronic mail, addressed as follows:

Brad A. Hakala, Esq.
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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on April 17, 2024, at Los Angeles, California.

Anthony Conklin

Declarant

Anthony Conklin
Signature