

COMP

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THE UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

DANNY ITZHAKI, an individual,)
NATALIE HETLY, and individual)
)
Plaintiff,)
vs.)
)
STEPHEN F.SISOLAK, in his official capacity)
as Governor of the State of Nevada, AARON)
DARNELL FORD, in his official capacity as)
Attorney General of the State of Nevada, IHSAN)
AZZAM, in his capacity as Nevada Chief)
Medical Officer, NEVADA DEPARTMENT OF,)
HEALTH AND HUMAN SERVICES, a Nevada)
Administrative Agency, DOES 1 through 100)
)
Defendants.)

DEMAND FOR JURY TRIAL

**COMPLAINT FOR TEMPORARY
RESTRAINING ORDER, DECLARATORY JUDGMENT, AND PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF**

COME NOW, Plaintiffs, DANIEL ITZAHKI and NATALIE HETLY, who bring this
action on behalf of themselves and on behalf of all similarly situated persons (collectively
“PLAINTIFFS”) by and through the undersigned attorneys of record SIGAL CHATTAH, ESQ.
of CHATTAH LAW GROUP, respectfully request this Court to issue a Temporary Restraining

1 Order, Declaratory Judgment, and Preliminary and Permanent Injunctive Relief and Damages.

2 In support thereof, Plaintiff shows unto the Court as follows:

3 **PRELIMINARY STATEMENT**

4 1. Plaintiffs DANIEL ITZHAKI and NATALIE HETLY are residents of Clark
5 County, Nevada and both over the age of Seventy years of age.

6 2. Despite Senior citizens and the elderly of the State of Nevada, being an especially
7 vulnerable and protected class, more susceptible to comorbidities and serious bodily harm or death
8 from COVID-19, Defendants and each of them denied this protected group of individuals access
9 to the COVID-19 vaccines in an arbitrary and capricious manner through the establishment of Tier
10 distribution as delineated *infra*.

11 3. On December 13, 2020, Defendant Sisolak announced that due to the rising cases
12 of COVID-19, the Statewide pause would be extended to January 15, 2021.

13 4. On or about December 15, 2020, Nevada began receiving doses of the vaccines
14 distributed by Pfizer-BioNtech and Moderna for distribution through the State's established
15 program.

16 5. The State of Nevada's key metrics provide that Nevada has on average
17 approximately 1858 confirmed cases daily of the COVID-19 virus.

18 6. As of the date of this Class Action Complaint, there is a confirmed count of over
19 250,000 COVID-19 cases, according to the State of Nevada's metrics published by
20 Nevadahealthresponse.nv.gov., with 19 daily deaths published by same.

21 7. Furthermore, as of the date of filing this Class Action Complaint, the State of
22 Nevada has received more than 205,200 doses of the vaccine according to the Center for Disease
23 Control and Prevention's ("CDC") vaccination data.
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1 8. Less than 2% percent of Nevadans have been vaccinated using only 24% of the
2 dosages received by the State of Nevada by Pfizer- BioNtech and Moderna.

3 **NATURE OF ACTION AND JURSDICTION**

4 9. This is a civil action under 42 U.S.C § 1983 seeking damages and injunctive relief
5 against Defendants for committing acts, under color of law, with the intent and for the purpose of
6 depriving Plaintiffs of rights secured under the Constitution and laws of the United States;
7 retaliating against Plaintiffs; and for refusing or neglecting to prevent such deprivations and
8 denials to Plaintiff.

9 10. This action arises under 42 U.S.C. § 1983 in relation to Defendants’
10 deprivation of Plaintiffs’ Constitutional rights to Due Process and Equal Protection under
11 the Fifth and Fourteenth Amendments, and their rights against Cruel and Unusual Punishment
12 under the Eighth Amendment to the U.S. Constitution. Accordingly, this Court has
13 Federal Question Jurisdiction under 28 U.S.C. §§ 1331 and 1343.

14 11. This Court has authority to award the requested declaratory relief under 28 U.S.C.
15 § 2201; the requested injunctive relief and damages under 28 U.S.C. § 1343(a); and attorneys’
16 fees and costs under 42 U.S.C. § 1988. Plaintiffs, therefore, on behalf of themselves and all
17 others similarly situated, seek damages and declaratory and injunctive relief accordingly.

18 12. The District of Nevada is the appropriate venue for this action
19 pursuant to 28 U.S.C. §§ 1391(b)(1) and (2) because it is the District in which Defendants
20 either maintain offices or do substantial official government work in, exercise their
21 authority in their official capacities, and will continue to enforce the Orders; and it is the
22 District in which substantially all of the events giving rise to the claims occurred.

23 13. This Court has supplemental jurisdiction over Plaintiffs’ state law claims pursuant
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25

1 to 28 U.S.C. § 1367(a) because they are part of the same case and controversy described by
2 Plaintiffs' federal claims.

3 **THE PARTIES**

4 **PLAINTIFFS**

5 14. Plaintiff DANIEL ITZHAKI is a citizen of the United States and was, at all times
6 relevant to this complaint, a resident of Clark County having attained the age of 74 years old.

7 15. Plaintiff NATALIE HETLY, is a citizen of the United States and was, at all times
8 relevant to this complaint, a resident of Clark County, Nevada having attained the age of 70 years
9 old.

10 **DEFENDANTS**

11 16. Defendant STEPHEN F. SISOLAK, at all times relevant to this complaint, a
12 resident of the State of Nevada, acting as the Governor of the State of Nevada.

13 17. Defendant AARON DARNELL FORD, was and is at all times relevant herein
14 the Attorney General for the State of Nevada.

15 18. Defendant IHSAN AZZAM, Ph.D., M.D., was and is at all times relevant
16 herein the Chief Medical Examiner for the State of Nevada, relegated by Defendant Governor
17 Sisolak during the COVID-19 period and acting on his behalf.

18 19. Defendant. NEVADA DEPARTMENT OF, HEALTH AND HUMAN
19 SERVICES (hereinafter "DHHS"), was and is at all times relevant herein an Administrative
20 Agency operating in the State of Nevada, acting with and at the direction of Defendant Governor
21 Sisolak
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23 20. At all times pertinent herein, Defendants were agents, servants, employees, or
24 joint venturers of every other Defendant, and at all times mentioned herein were acting
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1 within the scope and course of said agency, employment, or joint venture, with knowledge
2 and permission and consent of all other named Defendants. Whenever and wherever
3 reference is made in this Complaint to any acts by Defendants, such allegations and
4 references shall also be deemed to mean the acts of each Defendant acting individually,
5 jointly or severally.

6 21. All of the actions taken by Defendants and/or those acting on behalf of
7 Defendants and referred to herein, were done by Defendants while acting under color or state of
8 law and had the effect of depriving Plaintiffs of rights secured by the Constitution and laws of
9 the United States .

10 22. The true names and capacities, whether individual, corporate, associate, or
11 otherwise, of Defendants DOES 1 through 100, are unknown to Plaintiffs, who therefore sue
12 said Defendants by such fictitious names. Plaintiffs are informed and believe and thereon
13 allege that each of the Defendants designated herein as a DOE is responsible in some
14 manner for the events and happenings herein referred to. As such, Plaintiffs will seek leave
15 of Court to amend this Complaint to insert the true names and capacities of said Defendant
16 as they become identified.
17

18 **CLASS ALLEGATIONS**
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20 23. The treatment to which Plaintiffs, and the class they represent, have and will be
21 subjected, specifically the arbitrary denial of medical care, the arbitrary restriction of drugs
22 approved by the FDA for use in the vaccination against COVID-19, the violation of NRS
23 441A.200, the violation of Plaintiffs' First, Fifth and Eighth Amendment Constitutional rights –
24 were all performed pursuant to the policies, customs, and/or practices of Defendants.
25

1 24. Plaintiffs, on behalf of themselves and of the class of similarly situated persons,
2 seek an order declaring that Defendants' treatment of Plaintiffs pursuant to these policies,
3 customs, and/or practices is unlawful.

4 25. Plaintiffs bring this action on their own behalf and on behalf of all persons
5 similarly situated, pursuant to Federal Rule of Civil Procedure 23(b)(3). Plaintiffs seek
6 certification of a class defined as follows:

7 a. All persons qualified to old age benefits, under 42 U.S. Code CHAPTER 7 and
8 defined under §402 of said Chapter; to wit: individuals sixty-two (62) years of age at the time of
9 filing this action *i.e.*, all individuals born on or after January 11, 1959.

10 b. All persons who were unable to receive the COVID- 19 vaccinations distributed
11 to the State of Nevada according to eligibility under the Tier distribution program;

12 c. All persons who were deprived of their Constitutional and Statutory rights under
13 NRS 441A.200 and as described in *Roe v. Wade* (1973); and

14 d. All persons affected by the wanton and reckless disregard of Defendants' conduct
15 to the detriment of the residents of the State of Nevada.

16 26. Pursuant to Federal Rule of Civil Procedure 23(a), the members of the class are so
17 numerous that joinder of all members is impractical. Plaintiffs do not know the exact number of
18 class members. Plaintiffs are informed and believe, and thereupon allege that there are more
19 than 300,000 persons in the class defined above.

20 27. Pursuant to Federal Rule of Civil Procedure 23(a), Plaintiffs are informed and
21 believe, and thereupon allege, that there are questions of law and fact common to the class,
22 including but not limited to:
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1 a. Whether Defendants' designation of class members as defined by 42 USC §402
2 through an arbitrarily Tiered vaccination program was arbitrary and capricious action
3 taken by Defendant Governor Sisolak and the Defendants named above;

4 b. Whether the emergency regulation prohibiting the prescription and issuance,
5 filling, and dispensing of Pfizer-BioNtech and Moderna COVID-19 vaccines was
6 arbitrary and capricious action and willful misconduct on behalf of Defendant Governor
7 Sisolak and Codefendants.

8 c. Whether Defendants' bad faith and willful misconduct harmed the Plaintiff class
9 and precluded them from obtaining vaccinations violates their right against cruel and
10 unusual punishment under the Eighth Amendment of the United States Constitution;

11 d. Whether Defendants engaged in gross negligence, willful misconduct, and bad
12 faith and are liable for violating the First, Fourth, Eighth and Fourteenth Amendment
13 rights of the Plaintiff class; and

14 e. Whether Defendants should be enjoined from engaging in this gross negligence
15 and willful misconduct which has been detrimental to the State of Nevada and its
16 residents.
17

18 28. Pursuant to Federal Rule of Civil Procedure 23(a), Plaintiffs' claims are typical of
19 the class they seek to represent. Plaintiffs and the class they seek to represent were all subjected
20 to violations of their Constitutional rights over the course of the past four weeks in the State of
21 Nevada.

22 29. Plaintiffs have the same interests and have suffered the same type of injuries as
23 the proposed class. Each proposed class member suffered actual damages as a result of the
24 challenged conduct.
25

1 30. Plaintiffs' claims arose because of Defendants' policies, customs, and/or
2 practices. Plaintiffs' claims are based upon the same legal theories as the claims of the
3 proposed class members.

4 31. Plaintiffs' counsel has the resources, experience, and expertise to successfully
5 prosecute this action against Defendants. Counsel knows of no conflicts among any members
6 of the class, or between counsel and any members of the class.

7 32. Pursuant to Federal Rule of Evidence 23(b)(3), upon certification, class members
8 must be furnished with the best notice practicable under the circumstances, including individual
9 notice to all members who can be identified through reasonable effort.

10 33. If this action is certified as a class action, Plaintiffs contemplate that individual
11 notice will be given to class members, at such last known address by first class mail, as well as
12 notice by publication informing them of the following:

- 13 a. The pendency of the class action and the issues common to the class;
14 b. The nature of the action;
15 c. The right to "opt-out" of the action within a given time, in which event they will
16 not be bound by a decision rendered in the class action;
17 d. Their right to "opt-out" to be represented by their own counsel and to enter an
18 appearance in the case, otherwise they will be represented by the named class
19 Plaintiffs and their counsel; and
20 e. Their right, if they do not "opt-out", to share in any recovery in favor of the class,
21 and conversely, to be bound by any judgment on the common issues adverse to the
22 class.
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SUMMARY OF FACTS

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2 34. On May 15, 2020, United States President Donald J. Trump, announced a
3 public-private initiative named Operation Warp Speed (OWS) to facilitate and accelerate the
4 development, manufacturing, and distribution of COVID-19 vaccines, therapeutics, and
5 diagnostics.

6 35. The program promoted mass production of multiple vaccines, and different
7 types of vaccine technologies, based on preliminary evidence, allowing for faster distribution
8 if clinical trials confirm one of the vaccines is safe and effective.

9 36. In October 2020, Alex Azar predicted 100 million available doses by the end
10 of the 2020 year.

11 37. On or about October 29, 2020, Defendants DHHS issued a roadmap for
12 vaccination in Nevada labeled, Vaccination Planning Assumptions for Jurisdictions which
13 continues to be updated from time to time.

14 38. On November 9, 2020, the Pfizer-BioNTech partnership announced positive early
15 results from its Phase III trial of the BNT162b2 vaccine candidate, and on December 11, 2020
16 the FDA provided emergency use authorization, initiating the distribution of the vaccine
17 followed by the Centers for Disease Control and Prevention (CDC)'s recommendation for use,
18 clearing the way for delivery and administration of the vaccine throughout the United States.

19 39. Vaccine doses purchased by Operation Warp Speed were sent from manufacturers
20 via UPS and FedEx to locations specified by state governments.

21 40. The Federal Pharmacy Partnership delivered doses to CVS and Walgreens
22 locations, which then send pharmacists for mass vaccinations at care facilities like nursing
23 homes.
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1 41. Defendant IHSAN AZZAM, Nevada’s Chief Medical Officer provides direction
2 for the State’s immunization program which commenced in November, 2020, with the plan to
3 distributed the vaccines upon arrival in the State of Nevada.

4 42. While COVID-19 vaccines were issued to the State of Nevada in limited supply,
5 distribution was to be determined in direct proportion to the nation's adult population 18 years
6 and older.

7 43. The pro rata method was approved on Nov. 6, 2020, by United States Health and
8 Human Services Secretary Alex Azar.

9 44. Once vaccines were allocated, it was up to each State’s jurisdiction or agency to
10 place orders, designate delivery points, prioritize recipients and administer vaccines to the
11 American people.

12 45. The Southern Nevada Health District established a tiered distribution is planned
13 to ensure there is equitable access to the vaccine by the critical populations identified by the
14 Centers for Disease Control and Prevention (CDC).
15

16 TIER 1

17 General Medical and Surgical Hospital

- 18 • Long Term Care Facility Staff and Residents
- 19 • Psychiatric and Substance Disorder Hospital
- 20 • Emergency Medical Services Personnel
- 21 • Public Health Workforce
- 22 • Laboratory Workers
- 23 • Pharmacists and Pharmacy Technicians
- 24 • Outpatient and Home Health Providers
- 25 • Nevada Department of Corrections Staff
- Law Enforcement and Public Safety

 TIER 2

- Deployed and mission critical personnel who play an essential role in national security
- Emergency Operations Center Staff
- POD Volunteers
- Education and Childcare Staff

- Nevada System of Higher Education (NSHE) Faculty
- Essential Public Transportation
- Agriculture and Food Processing
- Essential Retail Workers
- Logistics and Supply Chain
- Utilities and Communications Infrastructure
- NDOT and Local Emergency Road Personnel
- Community Support (e.g., food banks, DETR, WIC)
- Airport Operations
- Depository Credit Institution Workforce
- Mortuary Services
- Remaining Public Health Workforce
- Additional Critical Infrastructure
- Inmates

TIER 3

- Transitional Housing for Released Offenders
- Homeless
- People with Underlying Health Conditions that are at Increased Risk for Severe Illness from COVID-19
- Elderly Nevadans Age 65+ without Underlying Health Conditions
- Remainder of NSHE Staff

TIER 4

- Healthy People Aged 16-64

46. According to the US National Library of Medical & National Institutes of Health elderly¹ patients with COVID-19 indicated relatively higher proportion of comorbidities, and the most common were atherosclerotic cardiovascular disease (56.5%), hypertension (43.5%) and chronic pulmonary disease (21.7%). The proportion of severe cases was higher in elderly group than that in non-elderly group (73.9% and 42.2%, respectively).

47. During hospitalization, elderly patients indicated relatively higher proportion of complications, such as shock (21.7%), respiratory failure (21.7%).

¹ Elderly patients are those over the age of 60 years old and non-elderly group under 60 years old.

1 48. The proportion of patients with a decreased number of CD8+ lymphocytes
2 (82.6%) and B lymphocytes (77.8%) in elderly patients is found to be significantly higher than
3 that in non-elderly groups (48.9% and 44.8%, respectively).

4 49. Elderly patients with COVID-19 had a high proportion of severe cases and
5 comorbidities, more likely to show low immune function, and indicate higher proportion of
6 complications.

7 50. According to the CDC, 8 out of 10 COVID deaths reported in the US have been
8 in adults 65 or older.

9 51. Based on the CDC guidelines, adults of any age with the following
10 conditions might be at an increased risk for severe illness from the virus that causes COVID-19:

- 11 Asthma (moderate-to-severe)
- 12 Cerebrovascular disease (affects blood vessels and blood supply to the brain)
- 13 Cystic fibrosis
- 14 Hypertension or high blood pressure
- 15 Immunocompromised state (weakened immune system) from blood or bone marrow
16 transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune
17 weakening medicines
- 18 Neurologic conditions, such as dementia
- 19 Liver disease
- 20 Overweight (BMI > 25 kg/m², but < 30 kg/m²)
- 21 Pulmonary fibrosis (having damaged or scarred lung tissues)
- 22 Thalassemia (a type of blood disorder)
- 23 Type 1 diabetes mellitus

24 52. On December 13, 2020, Sisolak announced that due to the rising cases of
25 COVID-19, the Statewide pause would be extended to January 15, 2021.

 53. On or about December 15, 2020, Nevada began receiving doses of the vaccines
distributed by Pfizer- BioNtech and Moderna for distribution through the State's established
program.

1 54. As of the date of this Complaint, there is a confirmed count of over 250,000.00
2 COVID-19 cases in Nevada according to the State's metrics published by
3 Nevadahealthresponse.nv.gov., with 19 daily deaths published by same.

4 55. Approximately over 3,500 people in Nevada have died from coronavirus since
5 March, 2020. Of this population, more than 2,500 of them were over 70; More than 600 were
6 ages 60 to 69. Among those under 40, fewer than 200 have passed away. Nevada's current
7 positivity rate stands at 21%.

8 56. Despite having access to the subject empirical and medical data, Defendants
9 deliberately and with an utter disregard for such empirical data, created an arbitrary and
10 capricious Tier system that discriminates against a vulnerable and protected class of citizens and
11 precludes their access to life saving vaccinations.

12 57. It is indisputable that Defendants have no viable empirical data to preclude such a
13 vulnerable and protected class from obtaining priority vaccinations, specifically when
14 Defendants have earmarked special COVID-19 access to grocery stores to Nevada's elderly
15 population at the inception of the pandemic measures, knowing this classes vulnerability.
16

17 58. Defendants have further engaged in negligent administration of the vaccines with
18 a reckless disregard to the elderly population by hoarding the vaccines distributed to the State
19 and failing to efficiently and productively vaccinate this population group.

20 59. Defendants, collectively, continue to engage in a pattern of dubious excuses as to
21 why the vaccinations received by the State of Nevada have not been distributed in an efficient or
22 life-saving manner.

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CLAIMS FOR RELIEF

**FIRST CLAIM FOR RELIEF
VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE
FOURTEENTH AMENDMENT
(Against All Defendants)**

60. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

61. The Equal Protection Clause (EPC) of the 14th Amendment declares that “No State... shall deny to any person within its jurisdiction the equal protection of the laws.” This guarantee of equal protection is one of the most profound and important statements in the American Constitution.

62. The right to medical treatment by Nevada’s elderly population is a “suspect classification” as to the fundamental right of life, preservation of life and prolonging life.

63. Defendants establishment of an arbitrary Tier system preventing the elderly population from obtaining the vaccinations is not based on a compelling state interest.

64. Defendants’ arbitrary Tier policy is not narrowly tailored to meet such a compelling government interest.

65. Defendants arbitrary Tier policy is not the least restrictive means of meeting the State’s interest in protecting the elderly population.

66. It is clear that distribution of the vaccine to the elderly population is the only option of protecting this age group, prolonging and preserving their lives, such that no other viable alternative method for achieving this interest exists.

1 67. Defendants cannot satisfy strict scrutiny, because their arbitrary classifications are
2 not narrowly tailored measures that further compelling government interests, for the reasons
3 stated above.

4 68. All of the actions taken by Defendants and/or those acting on behalf of
5 Defendants and referred to herein, were done by Defendants while acting under color or state of
6 law and had the effect of depriving Plaintiffs of rights secured by the Constitution and laws of
7 the United States.

8 69. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable
9 harm to their constitutional rights unless Defendants are enjoined from implementing and
10 arbitrarily distributing the vaccines received.

11 70. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory
12 relief and temporary, preliminary, and permanent injunctive relief invalidating and restraining
13 enforcement of the Orders.

14 71. Plaintiffs found it necessary to engage the services of private counsel to vindicate
15 their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant
16 to 42 U.S.C. § 1988.

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18 **SECOND CLAIM FOR RELIEF**
19 **VIOLATION OF FOURTEENTH AMENDMENT PROCEDURAL DUE**
20 **PROCESS RIGHTS**
21 ***(Against All Defendants)***

22 72. Plaintiffs incorporate herein by reference each and every allegation contained
23 in the preceding paragraphs of this Complaint as though fully set forth herein.

24 73. Plaintiffs are entitled to constitutional protection for certain rights or "liberty
25 interests" related to privacy under the Due process clause of the Fourteenth Amendment.

1 74. Plaintiffs' right to privacy under the Fourteenth Amendment includes the right to
2 medical treatment and maintain bodily integrity. *See Washington v. Harper, 494 U.S. 210, 221-*
3 *22 (1990) and Winston v. Lee, 470 U.S. 753, 766-67 (1985).*

4 75. The Constitution protects Plaintiffs' freedom of choice in medical care, including
5 the right to refuse or receive medical treatment and rights preserving the doctor-patient
6 relationship.

7 76. Plaintiffs' have a constitutionally protected liberty interest in their own medical
8 autonomy, especially when those interests are secured by state laws.

9 77. Defendants cannot satisfy strict scrutiny, because their arbitrary Tier systems are
10 not narrowly tailored measures that further compelling government interests, for the reasons
11 stated above.

12 78. All of the actions taken by Defendants and/or those acting on behalf of
13 Defendants and referred to herein, were done by Defendants while acting under color or state of
14 law and had the effect of depriving Plaintiffs of rights secured by the Constitution and laws of
15 the United States .

16 79. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable
17 harm to their constitutional rights unless Defendants are enjoined from implementing and
18 enforcing these Tier systems and precluding vaccinations.

19 80. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory
20 relief and temporary, preliminary, and permanent injunctive relief invalidating and restraining
21 enforcement of the Tier systems.
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1 81. Plaintiffs found it necessary to engage the services of private counsel to vindicate
2 their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant
3 to 42 U.S.C. § 1988.

4 **THIRD CLAIM FOR RELIEF**
5 **VIOLATION OF EIGHTH AMENDMENT PROHIBITION**
6 **AGAINST CRUEL AND UNUSUAL PUNISHMENT**
7 ***(Against All Defendants)***

8 82. Plaintiffs incorporate herein by reference each and every allegation contained in
9 the preceding paragraphs of this Complaint as though fully set forth herein.

10 83. The Eighth Amendment to the United States Constitution states, "Excessive bail
11 shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

12 84. Defendants have violated Plaintiffs' Eighth Amendment rights by demonstrating
13 a deliberate indifference to a known, substantial risk of serious harm in violation of clearly
14 established Eighth Amendment rights of which a reasonable person would have known, given
15 the Supreme Court's decisions proscribing the deprivation of medical care to vulnerable and
16 elderly populations.

17 85. Defendants' policies to delay and to deny care have been intentionally
18 promulgated and executed for financial, political and arbitrary reasons in complete disregard for
19 the medical needs of Plaintiffs and those similarly situated.

20 86. Defendants' policies and arbitrary Tier structure was not promulgated on the basis
21 of legitimate differences in medical opinion but solely on the basis of political, social and
22 economic considerations and in disregard of the serious medical needs of the elderly population
23 and Plaintiffs herein.

24 87. Defendants were, at all relevant times, employed by the State of Nevada and
25 acted under color of law to deprive Plaintiffs' constitutionally protected rights including, but not

1 limited to, the right to be free of cruel and unusual punishment, guaranteed by the Eighth
2 Amendment to the United States Constitution, made applicable to the states through the
3 Fourteenth Amendment.

4 88. As alleged herein and above, Defendants' failure to provide Plaintiffs the COVID
5 19 vaccines constitutes a violation of Plaintiffs Eighth Amendment rights because Defendants
6 are denying and delaying treatment with deliberate indifference to Plaintiffs' serious medical
7 needs.

8 89. All of the actions taken by Defendants and/or those acting on behalf of
9 Defendants and referred to herein, were done by Defendants while acting under color or state of
10 law and had the effect of depriving Plaintiffs of rights secured by the Constitution and laws of
11 the United States .

12 90. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable
13 harm to their constitutional rights unless Defendants are enjoined from implementing and
14 enforcing these Tier systems and precluding vaccinations.

15 91. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to declaratory
16 relief and temporary, preliminary, and permanent injunctive relief invalidating and restraining
17 enforcement of the Tier systems.

18 92. Plaintiffs found it necessary to engage the services of private counsel to vindicate
19 their rights under the law. Plaintiffs are therefore entitled to an award of attorneys' fees pursuant
20 to 42 U.S.C. § 1988.
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FOURTH CLAIM FOR RELIEF
VIOLATION OF THE NEVADA CONSTITUTION
ARTICLE I DECLARATION OF RIGHTS
(Against All Defendants)

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3 93. Plaintiffs incorporate herein by reference each and every allegation contained in
4 the preceding paragraphs of this Complaint as though fully set forth herein

5
6 94. Since 1864, the Nevada Constitution has provided intrinsic and unalienable rights
7 and liberties to its citizens.

8 95. Chief among those rights and liberties are those found in Article 1 of the Nevada
9 Constitution.

10 96. Article 1, §1 of the Nevada Constitution provides, in pertinent part: “[A]ll men
11 are by Nature free and equal and have certain inalienable rights among which are those of
12 enjoying and defending life and liberty; Acquiring, Possessing and Protecting property and
13 pursuing and obtaining safety and happiness[.]

14 97. Similarly, Article I, §8 provides No person shall be deprived of life, liberty, or
15 property, without due process of law.

16 98. Defendants’ arbitrary allocation of vaccines according to arbitrary Tiers and
17 prevention of vaccinations have interfered with Plaintiffs’ rights and liberties as set forth under
18 Article 1, §1 of the Nevada Constitution.

19 99. Plaintiffs have no adequate remedy at law and will suffer serious and irreparable
20 harm to their constitutional rights unless Defendants are enjoined from implementing and
21 enforcing this arbitrary Tier vaccine allocation.

22
23 100. Plaintiffs have found it necessary to engage the services of private counsel to
24 vindicate their rights under the law. Plaintiffs are entitled to an award of attorney’s fees thereon.
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FIFTH CLAIM FOR RELIEF
VIOLATION OF THE NEVADA CONSTITUTION
Right to Life (Nev. Const. Art. 1, § 8)
(Against All Defendants)

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3 101. Plaintiff incorporates herein by reference each and every allegation contained
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5 in the preceding paragraphs of this Complaint as though fully set forth herein.

6 102. Article 1, Section 8 of the Nevada Constitution provides, in pertinent part: “No
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8 person shall be deprived of life, liberty, or property, without due process of law. “

9 103. Plaintiffs have a constitutional right to prolonged life through medical treatment,
10 including receiving vaccinations located in the State of Nevada for distribution to preserve said
11
12 life.

13 104. Defendants have precluded Plaintiffs from receiving medical treatment that
14
15 preserves and prolongs their life.

16 105. Plaintiffs have no adequate remedy at law and will suffer serious and
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18 irreparable harm to their constitutional rights unless Defendants are enjoined from
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20 implementing the arbitrary Tier system which prevents their vaccinations.

21 106. Plaintiffs have found it necessary to engage the services of private counsel to
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23 vindicate their rights under the law. Plaintiffs are therefore entitled to an award of attorney
24
25 fees and costs thereon.

REQUESTED RELIEF

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2 WHEREFORE, Plaintiffs respectfully prays that this Court grant the following relief.

3 1. An immediate hearing on Plaintiffs’ Motion for Temporary Restraining
4 Order, and, upon hearing, enter an Order restraining Defendants from further withholding
5 vaccinations to the Elderly Communities of the State of Nevada.

6 2. Permanently enjoin Defendants and all persons and entities in active concert or
7 participation with Defendants from dilatory distribution and use of the vaccines.

8 3. Issue a TRO and a preliminary injunction preventing Defendants from
9 enforcing or implementing their arbitrary Tiered vaccine program until this Court decides the
10 merits of this lawsuit.

11 4. Permanently enjoin Defendants and all persons and entities in active concert or
12 participation with Defendants from enforcing the allocation of vaccines in accordance with their
13 Tier program unless they comply with all procedural and substantive due process requirements
14 of the U.S. Constitution.

15 5. Award Plaintiffs damages arising out of their Section 1983 Claims, and

16 6. For an award of reasonable attorney’s fees and his costs on his behalf
17 expended as to such Defendants pursuant to the Civil Rights Act of 1871, 42 U.S.C.
18 Section 1988.
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20 7. Such other relief as the Court deems just and proper.
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JURY TRIAL DEMAND

Plaintiffs hereby demand a trial by jury on all counts so triable.

Dated this 11th day of January, 2021

CHATTAH LAW GROUP

/s/ Sigal Chattah

SIGAL CHATTAH, ESQ.

Nevada Bar No.: 8264

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