

1 EXPEDITE
2 No hearing set.
3 Hearing set for:
Date: _____
Time: _____
4 Judge/Calendar: _____

5 **SUPERIOR COURT OF WASHINGTON**
6 **FOR THURSTON COUNTY**

7 CANDIS RUSH, JUSTIN AUTREY, and
8 GREGORY STEEN, on behalf of themselves
and all others similarly situated,

9 Plaintiffs/Petitioners,

10 vs.

11 WASHINGTON STATE DEPARTMENT OF
12 CORRECTIONS, a state agency; STEPHEN
13 SINCLAIR, Secretary of the Washington State
14 Department of Corrections; WASHINGTON
STATE DEPARTMENT OF HEALTH, a state
agency; and DR. UMAIR SHAH, Secretary for
the Washington State Department of Health;

15 Defendants/Respondents.
16

CLASS ACTION

No.

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
PETITION FOR JUDICIAL REVIEW

17 **I. PRELIMINARY STATEMENT**

18 1. This case is about ensuring that our most vulnerable communities in Washington
19 are not forgotten in the allocation of the new COVID-19 vaccines. Plaintiffs/Petitioners¹ and the
20 class they seek to represent, are currently incarcerated in the custody of the Department of
21 Corrections (DOC).
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¹ Plaintiffs/Petitioners will be referred to as Plaintiffs to avoid confusion.

1 2. As a group, people in DOC custody have suffered horribly over the last year.
2 Thousands of them have fallen ill from COVID-19, some have died, and all have suffered
3 horrendous conditions as Defendants/Respondents² have unsuccessfully managed the COVID
4 pandemic in our prisons. To date almost 40% of the people in DOC custody have contracted
5 COVID, a rate more than 8 times greater than the general public. There is likely no other large
6 population cohort in Washington that has been infected at a greater rate than people in our
7 prisons.

8 3. The very nature of Washington’s prisons led to the introduction and rapid spread
9 of COVID. Close living conditions, poor hygiene and sanitation, decrepit buildings and facilities,
10 limited access to PPE, and the constant coming and going of people from the outside into prisons
11 have all had predictable results—massive outbreaks. These are results that Defendants were
12 warned about by public health experts and community members at the outset of the pandemic.

13 4. However, since January 2021, Defendants have had the ability to protect people
14 living in Washington’s prisons and to end the terrible conditions that COVID has caused.
15 Unfortunately, they made the conscious decision not to do so. To date, the state has given over
16 3,000,000 COVID vaccinations, but has refused to give the vast majority of the 15,000 people
17 living in our prisons a single one. As a result of Defendants’ unwillingness to take this simple
18 step, thousands of people remain at serious risk of contracting COVID.

19 5. While refusing to give people in prison access to the vaccine, Defendants have
20 also permitted correctional staff who have been offered but refused the vaccine to have continued
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23 ² DOH and Secretary Shah are the Respondents in this case. DOC and Secretary Sinclair are the defendants. To avoid confusion, Defendants and Respondents will be referred to as Defendants. Plaintiffs/Petitioners will be referred to as Plaintiffs. DOC and DOH will include Secretary Sinclair and Secretary Shah.

1 direct face-to-face contact with people living in our prisons – the precise means by which
2 COVID has entered Washington’s prisons in the past.

3 6. Defendants’ refusal to provide people living in Washington’s prisons with the
4 life-saving vaccines, refusal to protect those same people from staff who refuse the vaccine, and
5 refusal to end the deplorable conditions that they have foisted upon the people under their care
6 all violate Defendants’ duty to keep Plaintiffs and the putative class free from cruel punishment
7 in violation of both Article I, § 14 of Washington’s Constitution and their common law duty to
8 protect their health, welfare and safety.

9 7. Accordingly, Plaintiffs ask this Court to certify the proposed class, to order
10 Defendants to immediately administer the vaccine to all people in DOC custody who want to
11 take the vaccine and order DOC to prohibit staff who have refused to take the vaccine from
12 having contact with anyone who lives in Washington’s prisons.

13 **II. PARTIES**

14 1. Plaintiff Candis Rush is a person in prison at Washington Corrections Center for
15 Women (WCCW) in Gig Harbor, Washington.

16 2. Plaintiff Justin Autrey is a person in prison at Monroe Corrections Center (MCC)
17 in Monroe, Washington.

18 3. Plaintiff Gregory Steen is a person in prison at Clallam Bay Corrections Center
19 (CBCC) in Clallam Bay, Washington.

20 4. For purposes of this Petition the mailing address of all Plaintiffs and the Plaintiff
21 Class shall be:

22 c/o Nicholas B. Straley
23 Columba Legal Services
101 Yesler Way, #300
Seattle, WA 98104

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2 5. Defendant Washington State Department of Corrections (DOC) is a state agency
3 and operates Washington's state prisons.

4 6. Defendant Stephen Sinclair is the Secretary of the Washington State Department
5 of Corrections.

6 7. Defendants DOC and Sinclair are responsible to supervise, train and manage
7 DOC administrators, staff and contractors.

8 8. Defendant Washington State Department of Health (DOH) is a state agency and is
9 responsible for Washington State public health matters, including the State's COVID-19
10 response and vaccine allocation and distribution. DOH's mailing address is:

11 Washington State Department of Health
12 111 Israel Rd SE,
13 Tumwater, WA 98501

14 9. Defendant Dr. Umair Shah is the Secretary for the Washington State Department
15 of Health.

16 10. The Defendants are all state actors and are responsible for implementing and
17 enforcing the policies and practices described herein. Each of the acts described herein were
18 done under color of law and constitute state action for all purposes.

19 **III. JURISDICTION AND VENUE**

20 1. The events giving rise to this action occurred at DOC facilities that are all located
21 in the State of Washington.

22 2. As to DOH and Dr. Shah, this case arises under the Administrative Procedure Act,
23 RCW 34.05.001 *et seq.*

1 3. As to DOC and Secretary Sinclair, this case arises under RCW. RCW 2.08.010.³

2 4. Proper venue for this action is in Thurston County, pursuant to RCW 34.05.514
3 and RCW 4.12.020(2).

4 **IV. DESCRIPTION OF AGENCY ACTION AND FACTUAL ALLEGATIONS**

5 **Facts related to COVID-19 and its impact in prisons:**

6 1. COVID-19 is a novel coronavirus that was first identified in late 2019. It is easily
7 spread from person to person by airborne particles/droplets, and in some cases by exposure to
8 contaminated surfaces.

9 2. COVID-19 infections can range in severity, with the mildest cases showing few to
10 no symptoms, the majority presenting as moderate to severe respiratory symptoms (e.g., cough,
11 difficulty breathing, congestion, sore throat, loss of smell and/or taste, and fever), while the most
12 serious cases can result in critical illness or death.

13 3. COVID-19 has been classified by the World Health Organization as a worldwide
14 pandemic, and as of March 28, 2021, there have been 126,359,540 confirmed cases worldwide,
15 as well as 2,769,473 deaths from this virus.⁴

16 4. On a national scale, the United States has confirmed 29,976,179 COVID-19
17 cases, and 545,273 deaths since the outset of the pandemic.⁵

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21 ³ The APA does not apply to DOC. RCW 34.05.030(1)(c).

22 ⁴ WHO Coronavirus (COVID-19) Dashboard, World Health Organizations, <https://covid19.who.int/> (last visited
Mar. 28, 2021).

23 ⁵ COVID Data Tracker, Centers for Disease Control and Prevention, <https://covid.cdc.gov/covid-data-tracker/#datatracker-home> (last visited Mar. 28, 2021).

1 5. In Washington State alone, there have been a total of 361,115 cases, and 5,218
2 deaths.⁶ In short, COVID-19 has proven to be the most significant global health crisis in living
3 memory.

4 6. For people in prisons, this public health crisis has been exponentially more severe.
5 As of March 26, 2021, more than 396,000 people in prison and 96,000 correctional staff
6 members throughout the United States have tested positive for COVID-19; 2,435 people in
7 custody and 159 staff members have died.⁷

8 7. In Washington State, 6,189 individuals in DOC custody have tested positive for
9 COVID-19, and 14 people in prison have died as a result of their infections.⁸ Another 1,149
10 DOC staff members have also become ill, and two died.⁹

11 8. As of March 26, 2021, just over 39% of the people in DOC custody have tested
12 positive for COVID-19.¹⁰

13 9. This is more than eight times the rate of infection compared to the rest of
14 Washington State, where the infection rate equals just under 4.7% of the total state population.¹¹
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16 ⁶ COVID-19 Data Dashboard, Washington State Department of Health,
17 <https://www.doh.wa.gov/Emergencies/COVID19/DataDashboard> (last visited Mar. 28, 2021).

18 ⁷ National COVID-19 Statistics, COVID Prison Project, <https://covidprisonproject.com/data/national-overview/> (last
19 visited Mar. 28, 2021).

20 ⁸ Confirmed Cases, Washington Department of Corrections, [https://www.doc.wa.gov/corrections/covid-
19/data.htm#confirmed](https://www.doc.wa.gov/corrections/covid-19/data.htm#confirmed) (last visited Mar. 27, 2021).

21 ⁹ Id.

22 ¹⁰ COVID-19 Comparative Jurisdictions, Washington Department of Corrections,
23 <https://www.doc.wa.gov/corrections/covid-19/data-comparative-jurisdictions.htm> (last visited Mar. 27, 2021).

¹¹ According to the Office of Financial Management, the total population for Washington State as of April 2020 is 7,656,200. *See*, Total Population and Percent Change, Washington State Office of Financial Management, [https://www.ofm.wa.gov/washington-data-research/statewide-data/washington-trends/population-changes/total-
population-and-percent-change](https://www.ofm.wa.gov/washington-data-research/statewide-data/washington-trends/population-changes/total-population-and-percent-change) (last visited Mar. 27, 2021).

1 10. Residents and staff of correctional institutions are at a particular risk of harm from
2 exposure and spread of COVID-19.

3 11. Prisons are crowded congregate environments where people live, eat, and sleep in
4 close quarters. By structural design, people in correctional institutions cannot achieve the social
5 distancing necessary to prevent the spread of COVID-19.

6 12. While the general public can take proactive steps to continue to effectively social
7 distance and continue masking, people inside correctional facilities do not have those same
8 opportunities.

9 13. Additionally, much like social distancing, effective masking cannot always take
10 place. When people go to shower, eat, sleep, or simply forget to wear a mask, these individual
11 gaps in mitigation efforts are not isolated incidents. Instead, they compound with every single
12 person who may be doing the same activity at any given time inside the facility.

13 14. Like other congregate environments, such as nursing homes and cruise ships,
14 diseases like COVID-19 that are transmissible by air or touch, can spread more rapidly in a
15 carceral setting. This fact alone means that any person in DOC custody has a heightened risk.

16 15. Certain people are at heightened risk for a severe or even fatal outcome from
17 COVID-19 because of their advanced age or because they suffer from some other health-related
18 condition which may exacerbate COVID's symptoms.

19 16. However, COVID poses a serious risk of harm not only to people of advanced age
20 or those with underlying medical conditions. In the United States, younger adults with COVID-
21 19 have been severely affected by the disease as well. People between the ages of 18-64 make up
22 74% of positive cases and 19% of deaths.¹²

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¹² COVID Data Tracker, CDC, *supra*.

1 17. COVID-19 can also cause long-term health issues for people of all ages.¹³ These
2 conditions can include fatigue, shortness of breath, cough, joint pain, chest pain, difficulty
3 thinking or concentrating, depression, muscle pain, intermittent fever, and heart palpitations.¹⁴
4 These complications can cause long term or permanent damage to different systems in the body,
5 including the cardiovascular, respiratory, renal, dermatologic, and neurologic systems.¹⁵

6 18. COVID’s potential neurological impacts are particularly concerning. People who
7 have contracted COVID have experienced long term issues like brain fog, memory loss, and
8 other neurological problems.¹⁶ Doctors are increasingly reporting “psychotic symptoms
9 emerging weeks after coronavirus infection in some people with no previous mental illness.”¹⁷

10 19. The COVID-19 virus has evolved since its initial discovery. Today, there are at
11 least three different COVID-19 related variants circulating in the United States, B.1.17 first
12 identified in the United Kingdom, B.1.351 originally detected in South Africa, and P.1 first
13 identified in travelers from Brazil.

14 20. Each of these variants has been found in Washington State over the last two
15 months.¹⁸

18 ¹³ Long Term Effects, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/long-term-effects.html> (last visited Mar. 28, 2021).

19 ¹⁴ Id.

20 ¹⁵ Id.

21 ¹⁶ Id.

22 ¹⁷ Pam Belluck, “First Covid, Then Psychosis: ‘The Most Terrifying Thing I’ve Ever Experienced,’” The New York Times, Mar. 22, 2021, available at: <https://www.nytimes.com/2021/03/22/health/covid-psychosis.html>.

23 ¹⁸ COVID-19 Variants, Washington State Department of Health, <https://www.doh.wa.gov/Emergencies/COVID19/Variants> (last visited Mar. 28, 2021).

1 21. Each variant has unique properties that potentially make them more dangerous
2 than the original COVID-19 strain.

3 22. For example, available information indicates that B.1.1.7 may be more infectious
4 and potentially more lethal. The CDC indicates that B.1.1.7 may become the most dominant
5 strain of COVID-19 in the United States.

6 23. Concerns have been raised that the P.1 strain may lead to reinfections because
7 viral mutations may limit existing COVID-19 immuno-responses.¹⁹

8 24. These existing or future strains are particularly concerning because they may
9 reduce the effectiveness of current vaccines.

10 25. For example, there is evidence to suggest that the Johnson and Johnson vaccine
11 may be less effective against the B.1.351 variant.

12 26. Plaintiffs and putative class members are both more likely to contract COVID
13 and are more likely to suffer long term, adverse complications than are other groups of people
14 who do not live in prisons.

15 27. They live in extremely close quarters with many other people where social
16 distancing is impossible.

17 28. They often lack proper personal protective equipment and have no ability to stay
18 away from others who do not take appropriate protective measures. They cannot avoid contact
19 with correctional officers who may be infectious with COVID-19.

20 29. They live in decrepit facilities with poor ventilation and unhealthy sanitation
21 systems.

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¹⁹ Id.

1 30. Generally, health care provided in Washington’s prisons is under-resourced and
2 as a consequence has been inadequate to meet the needs of those infected with COVID.

3 31. Moreover, it is also well recognized that people incarcerated in prisons age at a
4 much faster rate than people in the general public, because of the harsh realities of prison life, the
5 prevalence of pre-existing conditions, the incidence of long term, untreated substance abuse or
6 mental health disorders, and the lack of appropriate health care both while in prison and before
7 entry.

8 32. Furthermore, people in prison are more likely to suffer from co-morbidities that
9 can lead to serious illness and death from COVID-19. Those conditions include, hypertension,
10 diabetes, chronic kidney disease, heart conditions, compromised immune systems, obesity,
11 cardiovascular disease, sickle cell disease, history of smoking, and type 2 diabetes.

12 33. As more becomes known about COVID, indications are that adults of any age
13 with the following conditions *might* be at an increased risk for severe illness: Asthma, cystic
14 fibrosis, auto-immune diseases, neurologic conditions such as dementia, liver disease, pulmonary
15 fibrosis, thalassemia, and type 1 diabetes.²⁰ Many people in prisons suffer from these different
16 maladies.

17 34. For these reasons, the risk associated with COVID-19 and its variants are much
18 greater for Plaintiffs and the class they seek to represent than almost any other population cohort.
19 Each person in DOC custody remains at grave risk of serious illness or death from this virus.

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²⁰ Id.

1 **Facts regarding DOC's ineffective efforts to combat COVID 19 and the horrendous**
2 **conditions that have resulted.**

3 35. From the outset of the pandemic until the end of 2020, the only effective means of
4 controlling the spread of this disease was through social distancing and use of personal protective
5 equipment.

6 36. The past year has demonstrated that the nature of congregate settings (and
7 correctional facilities in particular) makes the effective implementation of these measures
8 exceedingly difficult, if not impossible. As a result, thousands of individuals in DOC custody
9 have fallen ill over the past year.

10 37. Early on in the pandemic, Defendants created policies and protocols they claimed
11 would avoid huge outbreaks in Washington's prisons.

12 38. They implemented a variety of practices and other measures in an attempt to keep
13 COVID from entering the prisons and to reduce its spread once that occurred.

14 39. Unfortunately, as evidenced by the large number of people who have become
15 infected those efforts have proven to be disastrously ineffective.

16 40. DOC experienced a huge explosion of COVID-19 cases in a number of prisons
17 beginning in November 2020 and continuing into January and February 2021.

18 41. On November 2, 2020, DOC had reported a total of 531 confirmed COVID cases
19 amongst people in prison over the previous 10 months (with a total of 34 active cases). By
20 November 30, 2020, those numbers had grown to 931 confirmed cases (including 378 active
21 cases). On December 15, 2020, DOC had confirmed a total of 2,630 cases (1,727 active cases).
22 By January 4, 2021, that number had nearly doubled again to 4,901 cases, with 1,792 active
23 cases. There have been nearly 2,000 additional cases since the beginning of the year, with new
cases reported each week.

1 42. To date, the facilities that have been hardest hit by COVID-19 outbreaks include:
2 Airway Heights Corrections Center (1,671 cases); Coyote Ridge Corrections Center (400 cases);
3 Larch Corrections Center (281 cases); Monroe Correctional Complex (551 cases); Stafford
4 Creek Corrections Center (1,204 cases); Washington Corrections Center (976 cases); and the
5 Washington State Penitentiary (985 cases).²¹

6 43. Though Defendants have failed to explain how COVID entered these facilities, it
7 is extremely likely these massive outbreaks were caused by infectious correctional staff or
8 contractors who infected the people who live there and other staff members.

9 44. Once inside, the virus spread quickly and dangerously throughout the facilities
10 because of the lack of social distancing, poor facility designs, failure by staff and others to follow
11 safety protocols and other shortcomings.

12 45. Overwhelmed with the magnitude of the disaster and with limited options, DOC
13 took to utilizing long term, extreme isolation and quarantine and they have denied some people
14 basic needs such as access to bathrooms, food, and the out-of-doors.

15 46. People held in medical isolation have not been allowed to contact family for
16 extended periods of time; have been denied access to personal hygiene or other personal items;
17 and had only limited access to showers and clean clothes.

18 47. Similarly, people held in quarantine have experienced long periods of degrading
19 and disgusting conditions.

20 48. Some prisons have experienced severe overcrowding in certain cell blocks with
21 people forced to sleep on the floor in small cells as DOC staff attempts to manage the huge
22 number of people under their care, many of whom have fallen seriously ill with COVID.

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²¹ Confirmed Cases, DOC, *supra*.

1 49. In attempting to control the spread of COVID-19 in the prisons, DOC staff have
2 repeatedly shuffled people between units and cell blocks.

3 50. These movements have spread COVID as people with the virus come into contact
4 with people who are not yet infected. The constant churn of people throughout the prisons and
5 the lack of available locations to hold them has led to widespread contamination between units.

6 51. In addition, Plaintiffs and other putative class members have, at times, lacked
7 both basic hygiene products like bleach, Lysol, or other disinfectants, along with appropriate
8 personal protective equipment such as masks.

9 52. DOC initially provided everyone with surgical masks that had a proven
10 effectiveness against COVID, but those were replaced with cloth masks/bandannas made by
11 correctional industries.

12 53. Early in the pandemic public health experts, community members and others
13 pleaded with DOC and other state officials to reduce the number of people in DOC custody as
14 the only potentially effective means of reducing the likelihood of mass infections.

15 54. Unfortunately, only a small number of people in custody were released which
16 proved ineffective at controlling the spread of COVID in state correctional facilities.

17 55. The winter outbreaks are the utterly foreseeable result of those decisions.

18 56. In fact, history has proven that there is no policy or practice that DOC could have
19 put in place to avoid these outbreaks that would have been effective, short of actually reducing
20 the prison population.

21 57. As a result of the State's decisions, thousands of people in custody got sick and 14
22 people died.

1 58. Undoubtedly, due to the number of people exposed to the coronavirus because of
2 the DOC’s actions, many people will likely suffer the health effects of these avoidable COVID
3 infections. However, the State continues to refuse to provide information on how many people
4 who contracted COVID continue to suffer from related long-term health effects.

5 59. The poor state of health care in Washington’s prisons before COVID is now
6 going to be only more strained with the additional burden of caring for people with COVID
7 related chronic health needs.

8 60. The Defendants have neither yet reckoned with this long term obligation nor
9 received the resources necessary to meet it.

10 61. The State’s efforts to date have not protected people in Washington’s prisons
11 from contracting COVID.

12 **Facts regarding the COVID vaccines and Defendants’ refusal to provide them to people in**
13 **custody.**

14 62. Now, with the introduction of three COVID-19 vaccines, the State has the means
15 to more effectively protect people in prison from grave illness and death due to this virus.

16 63. In fact, DOH prominently advertises on its website that the “COVID-19
17 vaccination is one of the most important tools to end the COVID-19 pandemic.”²²

18 64. Because of the conditions in prison facilities (overcrowding, limited access to
19 cleaning supplies and sanitation, limited access to medical care), it is essential that people in
20 prisons and prison staff be offered the vaccine immediately.

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²² COVID-19 Vaccine, Washington State Department of Health,
<https://www.doh.wa.gov/Emergencies/COVID19/vaccine> (last visited Mar. 28, 2021).

1 65. Learning more about these variants and their response (or lack of response) to
2 vaccines will be a critical, ongoing part of the global fight against COVID-19. It highlights the
3 need for vaccinations to be administered immediately, however, particularly in high-risk
4 congregate settings like prisons and other correctional facilities, so as to reduce the risk of
5 infection by the strains that are known to be responsive to the vaccines.

6 66. Given the nature of disease evolution, there is every reason to assume that other
7 variants will continue to emerge as time passes, which means that COVID-19 is likely to
8 represent an ongoing health risk, even once vaccines are fully distributed.

9 67. Just as the medical community does not yet fully understand how the vaccines
10 will protect against the existing variants, they also do not know how emerging variants will
11 respond to the existing vaccine protocols, nor if and/or how often recurring inoculation will be
12 needed to protect against new infections.

13 68. It is critical that correctional facilities are prepared to address this issue as an
14 ongoing need, and not a one-time vaccination undertaking. Otherwise, there may very well
15 continue to be catastrophic rates of infection, severe illness, and death due to COVID in
16 Washington's prisons, whether from existing strains or new variants that emerge in the future.

17 69. But as long as people in prisons do not have meaningful access to the vaccine, nor
18 the information to make informed choices about whether or not to be vaccinated based on their
19 individual health and circumstances, there remains a substantial risk of another mass outbreak at
20 any one of DOC's facilities.

21 70. Unfortunately, Defendants have made the conscious and deliberate decision to not
22 provide many people in DOC custody with immediate access to the vaccines.
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1 71. Currently, the vaccine is widely available to many thousands of people in
2 Washington, including people who are not part of any eligible group.

3 72. People outside of prisons have the opportunity to find multiple vaccine providers
4 in many different areas and travel to those locations to get a vaccination.

5 73. Many locations across the state have excess vaccine to meet their current need
6 and are vaccinating people who are not currently “eligible” for the vaccine.

7 74. By contrast, people in prison are utterly reliant on Defendants to provide them
8 access to the vaccines. They cannot shop around or travel in order to find a location where a
9 vaccine might be available.

10 75. In addition to allowing thousands of people to “jump the line,” the State has also
11 moved certain groups up in priority over the last several months. For example, teachers were
12 moved forward in priority.

13 76. Now, the State has announced that millions more Washingtonians will become
14 “eligible” for the vaccine even while refusing to vaccinate people in prisons or even provide a
15 timeline by which DOC will vaccinate people in prison.

16 77. However, the history of vaccine distribution in Washington has shown that
17 “eligibility” does not equate to actual access to the vaccine.

18 78. In fact, Defendants very recently admitted to the Plaintiffs that they cannot
19 guarantee access to the vaccine to people in Washington’s prisons on any timeline.

20 79. The current distribution of the vaccine to “eligible” people has resulted in a wide
21 variability of where vaccine is actually available, a significant amount of it has gone unused and
22 “ineligible” people have jumped the line, often with the State’s explicit or tacit consent.
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1 80. Expanding the numbers of people who will be “eligible” will only further dilute
2 the chances that people in prison receive immediate access to the vaccine.

3 81. In fact, Defendants should have vaccinated all interested people living in
4 Washington’s prisons long ago.

5 82. The State has received more than enough doses to have vaccinated every person
6 in DOC custody without significantly limiting access to the vaccine for other high-risk
7 populations.

8 83. According to DOH, as of March 26, 2021, the average number of COVID-19
9 doses administered each day (over the past 7 days) in Washington State is 48,455.²³ This is
10 nearly three times the total population of DOC.

11 84. Effectively, the Department of Health could allocate enough doses to vaccinate
12 every person in DOC custody in a single day and there would still be more than 34,000 doses
13 remaining for distribution to other community sites.²⁴ In total, Washington state has administered
14 over 3,000,000 COVID vaccinations since January.

15 85. Vaccinating all people within DOC custody would not have significantly limited
16 access of vaccine to any other eligible group.

17 86. As of this filing, Washington is currently in Phase 1B Tier 2 of the existing phases
18 for vaccine eligibility established by DOH.²⁵ People who are currently eligible for the vaccine
19 include: high-risk critical workers in certain industries (including correctional facilities); people
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21 ²³ COVID-19 Data Dashboard, DOH, *supra*.

22 ²⁴ As of January 2021, the average total population of DOC prisons on any given day was 14,362 people. *See*,
23 Average Daily Population of Incarcerated Individuals, Washington Department of Corrections,
<https://www.doc.wa.gov/docs/publications/reports/400-RE002.pdf> (last visited Mar. 27, 2021).

²⁵ COVID-19 Vaccine, DOH, *supra*.

1 16 years or older who are pregnant or have a disability that puts them at high risk; anyone 65 or
2 older; anyone 50 and older who live in a multigenerational household; all health care workers;
3 K-12 teachers and child-care workers; and people who live or work in long-term care facilities.²⁶

4 87. Unless they have been deemed eligible under one or more of the currently eligible
5 categories above, people in correctional facilities are not eligible for vaccination until Phase 1B
6 Tier 4, which is estimated to begin March 31, 2021.²⁷

7 88. Moreover, DOH prioritized some categories of people who are similarly situated
8 to people in prisons but refused to include people in prisons within that prioritization category.
9 For example, people who live in “multi-generational households” or “long-term care facilities”
10 have been eligible to receive the vaccine for some time. Prisons share the same attributes as do
11 these living settings but have been treated differently.

12 89. DOH has not provided any explanation as to why people in prisons are excluded
13 from these subcategories, despite the fact that prisons satisfy the functional definition of both a
14 multigenerational household and a long-term care facility and have exponentially higher risks of
15 mass outbreaks than in non-carceral settings.²⁸

16 90. In addition, as detailed above, “eligibility” to receive the vaccine does not mean
17 that people in our prisons will actually receive the vaccine.

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20 ²⁶ Id.

21 ²⁷ Guidance Summary: WA State COVID-19 Vaccine Prioritization Guidance and Allocation Framework,
22 Washington State Department of Health,
<https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/SummaryInterimVaccineAllocationPrioritization.pdf>
(last visited Mar. 28, 2021).

23 ²⁸ Washington’s COVID-19 Vaccine Phases, Washington State Department of Health,
<https://www.doh.wa.gov/Portals/1/Documents/1600/coronavirus/VaccinationPhasesInfographic.pdf> (last visited
Mar. 28, 2021).

1 91. Phase 1A, which made high risk health care workers, first responders, and long-
2 term care facility staff and residents eligible for the vaccine, began on December 14, 2020.²⁹
3 Phase 1B Tier 1, which included all people 65 years and older and people 50 years and older in
4 multi-generational households began on January 18, 2021 (workers in childcare settings and pre-
5 kindergarten-12th grade educators/staff were added to this phase on March 2, 2021).³⁰

6 92. It is unclear exactly what percentage of each of these populations have been able
7 to receive the vaccine, but despite the fact that these groups have been eligible for weeks or
8 months, there are still many members of these classifications who have not yet received the
9 vaccine.

10 93. This highlights that eligibility is not synonymous with accessibility. Just because
11 people in prison may be eligible for the vaccine on a certain date, does not mean that the
12 appropriate number of doses will be allocated to them on that date, or even in a timely manner
13 thereafter.

14 94. More importantly, DOC has not offered a detailed plan or timeline for when
15 people in prison will actually be able to receive the vaccine, and instead only reiterates that
16 people in prison are estimated to be eligible beginning March 31, 2021.

17 95. It is imperative that there be no further delay in offering the vaccine to people in
18 prison who are at an exponentially higher risk of infection than the general population of
19 Washington State.

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²⁹ Id.

³⁰ Id.

1 96. Immediate access to the vaccine is critical to protecting the people in DOC
2 custody, but simply allocating the required number of doses will not be sufficient. It is also
3 essential to utilize culturally responsive resources to provide ongoing outreach, education, and
4 medical services in conjunction with immediate allocation of the vaccine doses for people in
5 prison.

6 97. These services and information and the vaccine itself must be provided to people
7 in prison in a way that is factually accurate and designed to assuage the historic and ongoing
8 distrust of DOC and the medical community at large.

9 98. Throughout our nation’s history, BIPOC (Black/Indigenous/People of Color)
10 communities have been the targets of unwanted, nonconsensual research, testing, and treatment
11 by the medical community. This legacy has led to a deeply seated wariness by many BIPOC
12 individuals of systems of medical research and care.

13 99. Furthermore, for many individuals in DOC custody, there is a pervasive distrust
14 of the medical care provided to them by DOC. Thus, for BIPOC people in prison, these
15 intersecting fears are often compounded.

16 100. Many people in prison may be reluctant to accept the vaccine when it is offered
17 due to a lack of information being made available to them about the vaccine, its effectiveness, its
18 risks/potential side effects, and who should or should not take the vaccine to protect against
19 COVID.

20 101. In light of these realities, Defendants must implement a robust, culturally
21 responsive outreach and education strategy in partnership with respected voices in the prison
22 community and general public to address issues of misinformation and to build trust around the
23 COVID-19 vaccine.

1 102. Unfortunately, Defendants have not taken these steps. Instead, little to no
2 information about the vaccine has been provided to the general population of people in prisons.

3 103. In many cases, the most information that people have received, if any, is a consent
4 form asking whether they wish to take the COVID-19 vaccine, but without any opportunity to
5 consult with medical staff, or even written information about the vaccine, its benefits, and
6 potential risks and side effects.

7 104. In addition, staff members have provided people with conflicting or plainly
8 incorrect information. Some have encouraged people to not to accept the vaccine and have
9 spread unsubstantiated conspiracy theories and incorrect information regarding COVID-19 and
10 the vaccines. Others have boasted that they have refused to take the vaccine.

11 **Facts related to Defendants’ refusal to protect Plaintiff Class from staff members who**
12 **refuse the vaccine.**

13 105. The most prevalent and highest risk of initial COVID exposure in prisons is
14 through corrections staff who come and go each day. These staff potentially expose the people in
15 prison who do not have the ability to socially distance or refuse contact with DOC staff
16 members.

17 106. As detailed above, infectious staff are the most likely cause of the outbreaks in
18 our prisons.

19 107. While denying the COVID vaccine to many people living in its facilities, DOC
20 has offered the COVID vaccine to many of its staff members. However, many have refused to
21 take it.

22 108. As many as 50% of DOC staff have refused or may refuse to take the vaccine
23 when offered.

1 109. Nonetheless, DOC has continued to allow these staff refusers to have access to
2 people in DOC facilities.

3 110. That decision puts everyone in DOC facilities at serious risk.

4 111. The danger posed by unvaccinated staff is particularly critical for individuals in
5 DOC custody who may be unable to take the COVID-19 vaccine due to individual circumstances
6 or risk factors. However, unvaccinated staff pose a danger to everyone who lives in DOC
7 facilities even if they have received the vaccine.

8 112. While Defendants must give everyone in DOC custody immediate access to the
9 vaccine, a certain as-yet unknown percentage of people in DOC custody will be unable or
10 unwilling to accept the vaccine.

11 113. Defendants cannot force anyone, staff member or incarcerated person, to accept
12 the vaccine.

13 114. Defendants have an obligation to protect people living in DOC facilities who are
14 unvaccinated from staff who refuse to be vaccinated, an obligation that will continue for an
15 unknown period of time going forward.

16 115. Staff refusal is particularly dangerous with the emergence of COVID variants that
17 are more infectious and potentially more deadly – strains against which the current vaccine may
18 have some but reduced efficacy. By refusing to take the vaccines, staff members are more likely
19 to harbor these more virulent strains of the virus and more likely to transmit those strains onto
20 people in the prisons.

21 116. In addition, the emergence of new variants has increased the likelihood that the
22 current vaccines will need to be supplemented in the near future by additional booster
23

1 vaccinations. On-going staff refusal to accept the current vaccines or future boosters will
2 continue to endanger an unknowable number of putative class members.

3 117. Further, it is unknown how people who have already been vaccinated may react to
4 new strains introduced by staff who have refused to receive even the first round of vaccines.

5 118. Current policies and procedures have not kept infectious staff members from
6 infecting thousands of people in our prisons. The vaccines are a means to limit that danger. And
7 yet, Defendants have refused to keep people safe by prohibiting staff who refuse the vaccine
8 from contact with people inside.

9 119. As described herein, the Defendants' actions and omissions constitute an
10 unreasonable and unacceptable threat to the health and safety of the Plaintiffs and the putative
11 class. They will continue to suffer irrevocable and serious physical and psychological injuries
12 unless the Court orders the Defendants to meet their legal duties.

13 **Facts relating to communications with Defendants regarding subject matter and basis for**
14 **judicial review.**

15 120. Counsel for the Plaintiffs sent the letter attached as Exhibit 1 to this Complaint to
16 Secretaries Shah and Sinclair on March 9, 2021 asking the Defendants to take immediate action
17 to protect people living in Washington's prisons.

18 121. The March 9, 2021 letter was preceded by face to face meetings with DOC and
19 DOH representatives regarding the subject matter of the letter and the allegations herein.

20 122. Plaintiffs' counsel received a response from DOC and DOH on March 19, 2021
21 which is attached as Exhibit 2.

22 123. In this letter, Defendants refused to commit to providing immediate access to all
23 people in prison who would like the vaccine.

1 124. They also provided no date in the future by which they will commit to providing
2 that access. Their response indicates that “eligibility” for the vaccine does not equate with actual
3 access to the vaccine.

4 125. They also acknowledge in this letter that the state has been receiving roughly
5 350,000 doses per week for some time, but has nonetheless refused to vaccinate people in
6 prisons who want the vaccine.

7 126. Defendants also refused to create an education and distribution plan that meets
8 the request made in the March 9 letter.

9 127. They also refuse to prohibit staff who refuse the vaccine from having contact with
10 people living in DOC facilities.

11 128. As indicated in their March 19, 2021 letter, Defendants have refused to take
12 action or cease on-going actions as described herein.

13 129. Defendants’ refusal to take action or on-going actions has prejudiced and will
14 continue to prejudice each of the Plaintiffs and each putative class member.

15 130. Defendants were required to consider Plaintiffs’ interests when they took the
16 actions described herein.

17 131. A judgment in this case will substantially eliminate or redress the prejudice
18 caused by Defendants’ actions.

19 **Facts relating to individual Plaintiffs**

20 **Facts relating to Plaintiff Candis Rush**

21 132. Candis Rush is currently incarcerated at the Washington Correctional Center for
22 Women (WCCW).

1 133. Plaintiff Rush like all people incarcerated at WCCW and the other prisons is at
2 serious risk from COVID-19.

3 134. Even in spite of new infections, DOC allows staff at WCCW to move around and
4 potentially expose other people to the virus.

5 135. Staff members who have been working in the isolation and quarantine areas at
6 WCCW are regularly transferred to other posts across the prison thereby, increasing the risk that
7 they may expose people living in those units to the virus.

8 136. Even though DOC is testing WCCW staff for COVID, it can take up to three days
9 for the test results to come back, so a staff member who is COVID-positive can potentially
10 expose people in prison to the virus for days before they know they're sick.

11 137. People are being put in quarantine are placed in segregation at WCCW, which is a
12 very disciplinary environment.

13 138. Residents who hold jobs that require them to go into quarantine and isolation
14 units (e.g., janitors, porters, etc.) are not given extra PPE to wear. There is additional PPE
15 available, but it is reserved for nurses and other DOC staff members.

16 139. Correctional officers do not follow social distancing requirements and have
17 continued to come into people's rooms for searches and pat downs, take off their masks, and
18 generally don't seem to take COVID precautions seriously.

19 140. Cleaning and sanitation practices throughout WCCW are inconsistent and
20 potentially leave people exposed.

21 141. People have had little to no access to programing, including educational
22 programs, because of the limitations of pods and cohorting.

1 142. DOC has made arrangements to keep certain groups of people together (such as
2 Correctional Industries employees), but similar arrangements have not been made to allow other
3 groups to program.

4 143. People have had limited access to recreation and gym space because of COVID
5 restrictions and DOC’s staff retention issues, which has a negative impact on Ms. Rush and the
6 people living at WCCW.

7 144. People at WCCW have received little information about the vaccine, except for
8 people who have been deemed essential workers.

9 145. People have been given a consent form asking whether they want the vaccine, but
10 they have not been given information about the vaccine itself or instructions on how to submit
11 the consent form.

12 146. DOC staff have been offered the vaccine, but not everyone is taking it. Many staff
13 members are refusing the vaccine because they are relying on other people to take it.

14 147. Some DOC staff members have been perpetuating conspiracy theories, telling
15 people at WCCW that the vaccine contains mind-control technology and discouraging residents
16 from taking the vaccine when it’s offered to them.

17 148. Misinformation and conspiracy theories are a big issue for both staff and people at
18 WCCW.

19 149. People who want the vaccine but aren’t yet “eligible” have not been given any
20 information about when it will be offered to them.

21 150. DOC is not providing any information about what will happen if people in prison
22 refuse the vaccine, but people are afraid of retaliation.

1 **Facts relating to Plaintiff Justin Autrey**

2 151. Mr. Autrey is currently incarcerated at the Monroe Correctional Complex. Mr.
3 Autrey suffers from multiple medical conditions including asthma with an average lung capacity
4 of 50%, bronchitis, early-stage COPD, and has elevated markers for lymphoma and cancer.

5 152. He also suffered a heart attack on February 7, 2021 while in custody at Monroe.
6 He is now on multiple blood thinners and other heart medications.

7 153. Conditions at the Monroe Correctional Complex make it impossible to abide by
8 Covid social distancing restrictions. For example, cell neighbors who have caught the virus were
9 simply quarantined in their cell. They continue to snore, cough, and talk--breathing and exhaling
10 the contagious virus throughout the facility.

11 154. Efforts to restrict movement and social interaction are only resulting in
12 punishment instead of protection from the virus. Throughout MCC, programming, chow hall,
13 and the yard are all shut down to promote social distancing and masking. However, entire units
14 are let out at a time and no social distancing occurs when that happens.

15 155. People cannot wear a mask while showering, all the showers are next to each
16 other, and overall, there are just mass groupings everywhere throughout the facility. Social
17 distancing is impossible at MCC.

18 156. The cleaning regime at Monroe is also inadequate. With 200 people in a unit, in a
19 small space, everyone touches everything at least once, and the phones for example get wiped
20 down three times a day.

21 157. Correctional Officers walk around with their masks below their chins, this
22 happens so often it is now called "chin diapers."
23

1 158. DOC has hung up memos about the vaccine, but they are vague and provide little
2 information about the effects of the vaccine, especially for people in higher risk situations.

3 159. DOC has provided the vaccine to people who work inside the facilities, but not to
4 people who are sick or who may have a compromised situation.

5 160. Before his heart attack, Mr. Autrey asked to get the vaccine. DOC refused to
6 provide it to him and informed him that he was “ineligible”.

7 161. He went to ask again after his heart attack and was told it may not be a good idea
8 but was not provided any further information.

9 162. Staff at MCC are not helping Mr. Autrey because they tell him this is not their
10 problem or they are not in a position to call anyone on that issue.

11 **Facts relating to Plaintiff Gregory Steen**

12 163. Mr. Steen is currently incarcerated at Clallam Bay Correctional Center. COVID-
13 19 has caused major disruptions in the lives of people at CBCC, even though there have not been
14 any reported COVID cases there.

15 164. People in prison have had little or no programming, even when programing does
16 not rely on volunteers.

17 165. People in Clallam Bay (CBCC) have not been regularly tested for COVID, so it is
18 unknown what the actual infection rate in that facility may have been.

19 166. There was a major flu-like illness that went through CBCC in late 2019, early
20 2020 that people in prison suspect may have been related to COVID, but no one has addressed
21 those concerns.

22 167. DOC has provided little to no information about the COVID vaccine to the
23 general population at CBCC.

1 168. DOC provided staff with information about the vaccine well before any
2 information was made available to people in prison, even those deemed essential workers.

3 169. DOC has announced that everyone will be “eligible” on March 31, 2021 but has
4 not offered any information about when people in custody will get the vaccine if they want it.

5 170. Many people in prison don’t trust vaccines, and without any information about the
6 COVID vaccine, may not want to take it when it’s offered to them.

7 171. Some people in prison are working with a lot of the same misinformation and
8 conspiracy theories that are being circulated throughout the general public and amongst some
9 staff members.

10 172. Some DOC staff have elected to take the vaccine, but others are refusing to be
11 vaccinated.

12 173. People in prison are worried about what will happen if staff continue to expose
13 them to the virus, and new variants that might develop.

14 174. People in prison want things to go back to normal: they want to see their families
15 and loved ones, and to be able to go back to programing and other aspects of normal life.

16 175. DOC needs to put a plan in place to keep people in prison safe from COVID, both
17 now and in the future.

18 V. CLASS ACTION ALLEGATIONS

19 1. Plaintiffs seek to pursue this matter as a class action under CR 23(a) and CR
20 23(b)(2).

21 2. They ask the Court to define the class as all persons currently held in DOC
22 custody and those who will be held in DOC custody in the future.

1 3. Each of the prerequisites to a class action enumerated in CR 23(a) is satisfied by
2 the proposed class.

3 4. The class is so numerous that joinder of all members is impractical. There are
4 currently an estimated 15,000 individuals in DOC custody. Regardless of their vaccination
5 status, all individuals at each facility are at risk of a COVID-19 outbreak due to the general lack
6 of access to the vaccine, lack of protocols regarding unvaccinated staff, the increasing risk of
7 possible reinfection and/or emergence of new variants that may be vaccine-resistant and the on-
8 going horrendous conditions under which all of them live. Moreover, the proposed class
9 includes an unknown number of people who will enter DOC custody in the future.

10 5. There are questions of law and fact that are common to the class, including: (1)
11 whether Defendants have violated the state constitution and legal duties owed Plaintiffs by
12 refusing to provide them with access to COVID-19 vaccinations, whether Defendants have
13 violated the state constitution and legal duties owed Plaintiffs by allowing correctional staff
14 who refuse to be vaccinated access to class members, whether Defendants have violated the
15 state constitution and legal duties owed Plaintiffs by failing to take steps to protect the class
16 from future COVID-related outbreaks, and whether the class is currently being held in illegal
17 conditions that Defendants have the ability and duty to correct.

18 6. The claims of the named Plaintiffs are typical of the class which they seek to
19 represent. Each Plaintiff is under the custody and care of DOC, each is at continued risk of
20 exposure to COVID-19 virus due to the inherent conditions inside of DOC, the general lack of
21 access to the vaccine, continued exposure to unvaccinated staff, and the increasing risk of
22 infection/reinfection/variants.

1 7. The named Plaintiffs will fairly and adequately protect the interests of the class.
2 Plaintiffs are represented by counsel, Columbia Legal Services, who are experienced in
3 representing persons and classes of people in disputes of this nature and who will vigorously
4 prosecute this action. Plaintiffs are not aware of any conflict of interest among class members.

5 8. Defendants have acted or refused to act on grounds generally applicable to the
6 proposed class, thereby making appropriate final declaratory and injunctive relief with respect
7 to the class as a whole.

8
9 **VI. REASONS RELIEF SHOULD BE GRANTED
 AND CLAIMS FOR RELIEF**

10 ***Violation of Wash. Const. Art. I, §14 – Cruel Punishment***

11 1. Defendants have a constitutional duty to protect Plaintiffs and the class they
12 represent from cruel punishment. Defendants have violated this duty by:

13 i. Failing to provide Plaintiffs and class members with vaccines that will protect
14 them from COVID-19.

15 ii. Allowing state employees, contractors or agents who have refused to take the
16 vaccine to have direct contact with Plaintiffs and members of the class.

17 iii. Creating and maintaining inhumane conditions in the prisons as described herein,
18 though they have readily available alternatives that they have chosen not to utilize.

19 ***Violation of duty to keep Plaintiffs in health, welfare and safety***

20 2. Defendants have an affirmative duty to provide for the health, welfare, and safety
21 of Plaintiffs and members of the class in DOC custody. Defendants violated this duty by:

22 i. Failing to provide the Plaintiffs and members of the class with vaccines that will
23 protect them from COVID-19.

1 what is being deployed in communities outside of carceral settings. All outreach and education
2 campaigns must (a) ascertain what medical information is needed, and (b) what outstanding
3 questions need to be answered, and (c) what misinformation must be addressed to enable
4 everyone in DOC custody to make an informed choice about whether they wish to take the
5 COVID-19 vaccine.

6 8. Enter a preliminary and permanent injunction requiring DOC to prohibit contact
7 between any DOC staff member, contractor or agent who has refused a vaccine and any class
8 member.

9 9. Grant any further relief as just and appropriate.

10 DATED this 29th day of March, 2021.

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