AFFIDAVIT OF PETER MCCULLOUGH, M.D., MPH

STATE OF TEXAS)
) ss.
COUNTY OF COLLIN)

PETER MCCULLOUGH, MD, MPH declares under penalty of perjury for the state of Texas, New York and all other states in the United States this affidavit may be used, I declare that the foregoing is true and correct:

1. For over 27 years I have been board certified in internal medicine and cardiovascular disease and hold an additional certification in clinical lipidology, and previously echocardiography.
2. Over 30 years ago, I received my master's degree in public health in the field of epidemiology. A full detail of my career accomplishments and credentials are outlined in my CV attached and incorporated as Exhibit 1
3. I began my medical career by receiving my bachelor's degree from Baylor University and completed my medical degree as an Alpha Omega Alpha graduate from the University of Texas Southwestern Medical School in Dallas.
4. I went on to complete my internal medicine residency at the University of Washington in Seattle, and I completed a cardiology fellowship including service as Chief Fellow at William Beaumont Hospital, after which I completed master's degree in public health in the field of epidemiology at the University of Michigan.
5. As a clinician and researcher, I have served as the chairman or as a member of over 20 randomized trials of drugs, devices, and clinical strategies. Sponsors of these trials have included pharmaceutical manufacturers, biotechnology companies, and the National Institutes of Health.

6. Also, I have served as Chairman of Data Safety Monitoring Committee responsible for monitoring the safety and integrity of various clinicals trials.

7. Since the outset of the 2020 Covid-19 pandemic, I have been a leader in the medical response to the COVID-19 disaster and have published "Pathophysiological Basis and Rationale for Early Outpatient Treatment of SARS-CoV-2 (COVID-19) Infection," the first synthesis of sequenced multidrug treatment of ambulatory patients infected with SARS-CoV-2 in the *American Journal of Medicine* and updated in *Reviews in Cardiovascular Medicine*.

8. Due to my extensive experiences leading and managing clinical drug trials, in 2022 I was called upon to testify before the U.S. Senate Panel to explain vaccines and specifically the Covid-19 vaccine and how they work from a clinical and research perspective.

9. Also, due to my over 40 years as a clinician with extensive leadership in drug therapy research and having testified before the U.S. Food and Drug Administration and extensive research and government testimony regarding the Covid-19 vaccine and other drug therapies, I have been retained as an expert by Attorney Jo Saint-George to provide my medical expert opinions in various litigation cases involving Covid-19 vaccine mandates by public and private employers including the City of New York and various hospitals and other private sector employers.

10. The main purpose of this affidavit is to answers the following critical medical questions regarding the Covid-19 virus and the Covid-19 vaccines in relation to the Occupational Safety and Health Act (OSHA) standards and regulations:

    a. Medically, is the Covid-19 respiratory disease considered workplace illness or injury covered by OSH Act that requires employers to comply with OSHA standards and regulations to protect employees from serious illness, injury or death?

    b. Can any vaccine, including any Covid-19 vaccine, prevent, mitigate, control or abate the human exposure to and/or the spread to humans any recognized airborne contagious communicable hazardous diseases like Covid-19 in the atmosphere of any workplace or public space?

c. Was it "necessary" for the health and safety of City of New York (City) residents for the City's Health Commissioner Dr. Dave A. Chockshi, MD, MSc to issue several emergency Orders between August 24, 2021 December 21, 2021 that required City employees, City contractors and City private sector employees to submit to the Covid-19 vaccinations to prevent, mitigate, control and abate the Covid-19 pandemic?

9. I am qualified to provide the following medical opinions and answers to the above questions based on my medical training, and over 40 years of clinical medical experience and over 30 years in public health epidemiology specific to drug therapy development along with my years of continuing medical education training, and experience and study of and implementation of the Occupational Safety & Health Administrations (OSHA) standards and regulation.

10. As a practicing clinician/hospitalist providing direct patient care, I served as Medical Director at St. John Providence Health System, Vice Chief at Baylor University Medical Center, Chair of the Cardiology Department at William Beaumont Hospital, I practiced at Henry Ford Health System in the Henry Ford Heart and Vascular Institute, and I was an emergency medicine attending at Mission Health McPherson Hospital, Oakwood Beyer Hospital Center and Mercy Hospital.

11. As a hospitalist in each medical facility, I have been required to complete training in Occupational Safety and Health standards and regulations, including standards and regulations specifically applicable to the health care industry and I am required to complete periodic online training as part of my workplace safety compliance requirements to maintain hospital privileges.

12. Furthermore, I have completed Continuing Medical Education in OSHA standards and regulations and am competent to give opinions regarding OSHA workplace safety issues

related specifically to infectious diseases, public health policy, implementation and epidemiology.

13. I am further qualified to provide this affidavit and opinions to answer the above questions because I am an active scholar in medicine with roles as an author, former editor-in-chief of a peer-reviewed journal, editorialist, and reviewer of dozens of major medical journals and textbooks.

14. I have led clinical, education, research, and program operations at major academic centers, including the Henry Ford Hospital, Oakland University William Beaumont School of Medicine, as well as academically oriented community health systems.

15. I have served as the chairman or as a member of over 20 randomized trials of drugs, devices, and clinical strategies. Sponsors of these trials have included pharmaceutical manufacturers, biotechnology companies, and the National Institutes of Health.

16. I have over 1,000 related scientific publications, including the "Interface between Renal Disease and Cardiovascular Illness" in *Braunwald's Heart Disease Textbook*. My works have appeared in the *New England Journal of Medicine*, *Journal of the American Medical Association*, and other top-tier journals worldwide.

17. Most recently, I published the first detoxification approach titled "Clinical Rationale for SARS-CoV-2 Base Spike Protein Detoxification in Post COVID-19 and Vaccine Injury Syndromes" in the *Journal of American Physicians and Surgeons* and updated in the *Cureus Journal of Biomedical Science in 2024*.

18. I have contributed extensively to public policy making on issues surrounding the COVID-19 crisis through a series of OPED's for *The Hill* in 2020. Since 2021, I have been publishing a weekly contribution on *America Out Loud, The McCullough Report.* Since 2022, I have

daily postings with graphical abstracts, interviews, and reports on *Courageous Discourse Substack.*

19. Moreover, I have over 80 peer-reviewed publications on the COVID-19 infection cited in the National Library of Medicine.

20. My expertise on the SARS-CoV-2 infection and COVID-19 syndrome also includes the review of hundreds of manuscripts and the care of many patients with acute COVID-19, post-COVID-19 long-hauler syndromes, and COVID-19 vaccine injury syndromes, including neurologic damage, myocarditis, and a variety of other internal medicine problems that have occurred after the mRNA and adenoviral DNA COVID-19 vaccines.

21. I have formed my opinions regarding the Covid-19 syndrome in close communications with many clinicians around the world based in part on our collective clinical experience with acute and convalescent COVID-19 cases as well as closely following the preprint and published literature on the outbreak. I have specifically reviewed key published rare cases and reports concerning the possible recurrence of SARS- CoV-2 in patients who have survived an initial episode of COVID-19 illness.

22. To prepare this affidavit, I have carefully reviewed the OSHA Act and standards and regulations along with CDC guidelines mentioned in this affidavit along with the various peer reviewed studies I have published and published regarding Covid -19.

Prior Testimony.

23. Pursuant to Fed. R. Civ. P. 26(a)(2)(B)(v), in the last four years, and in addition to the numerous times I have provided expert testimony to state legislatures and the committees of the United States Congress, I have provided expert testimony multiple districts and federal courts as indicated in appendices.

Compensation.

24. Pursuant to Fed. R. Civ. P. 26(a)(2)(B)(vi), I hereby state that I did not request or receive compensation for the study and testimony provided herein.

OPINIONS

I. COVID-19 VIRAL INFECTIONS THAT OCCUR IN THE WORKPLACE IS A WORKPLACE/OCCUPATIONAL ILLNESS THAT CAUSES WORK PLACE INJURIES AND/OR DEATH

25. To determine if Covid-19 is a workplace or occupational injury or illness covered by the OSH Act with its standards and regulations, the terms injury and illness must first be defined medically and defined within the context of how the OSHA standards/regulations define injury and illness for purposes of application of the OSH Act and its definitions outlined and explained below.

26. Based on my basic medical training, an injury is defined as any physiological damage to the living tissue of any organism, whether in humans, animals, or in plants that manifests in symptoms, signs and abnormal results in clinical testing that may require medical treatment.

27. The term illness in medical terminology is a generic term for an unhealthy condition of the body or mind that a person may suffer that may require medical treatment when the illness manifests in symptoms, signs and abnormal results in clinical testing.

28. A disease is medically defined as a pathological change in the structure and function of the living tissue of the human body that impairs the body's normal functioning that manifests in symptoms, signs, abnormal results from clinical testing that is diagnoses by doctors.

29. There are acute and chronic illnesses or diseases, wherein acute illnesses or diseases that manifest symptoms in a period of time and generally lasts a short duration and the symptoms

appear abruptly and are intense and often subside after a relatively brief period and a chronic illnesses or diseases usually lasts longer than six months and symptoms may not manifests until after a long period of time.

30. Diseases and/or illnesses are generally caused by pathogens, which are organisms or biological agents that include bacteria, viruses, fungi, protozoa, worms, or infectious proteins called prions that can enter the human body through various routes including but not limited to through the mouth, nose, ears, eyes, rectal area, reproductive openings, and skin through natural absorption or an open cut, that may or may not trigger an immune response specifically in humans that manifest in symptoms that include, but are not limited, to fever, chills, cough, sore throat, eye redness, shortness of breath, nasal congestion, stiff neck, painful urination, unusual reproductive organ discharge, redness, soreness, or swelling, diarrhea, vomiting, abdominal or rectal pain, just to name a few.

31. When a biological agent enters a human and causes symptoms those symptoms are signs of what is medically termed an "Infection."

32. Biological agents that cause illness/disease can be naturally occurring bacteria, viruses, fungi, protozoa, worms, or prions that naturally exists in or are indigenous to the human body or naturally occurring in the environment or biological agents can be manufactured in laboratories, which are also called biological weapons.

33. Some diseases are also defined as "contagious biological hazards" or "communicable diseases," because the biological agent that causes the disease (the virus, bacteria, fungi, parasites or prions) can be transmitted or spread from one infected person to another person when a non-infected person comes in contact with or is exposed to the bodily fluids of the infected person, either through physical touching of the infected person through a handshake,

kissing, sexual intercourse, or some other skin to skin contact or through in inhalation of the air/breath, sprays, vapors, midst, or droplets that contain the biologic hazard that emit from the mouth or nose of an infected person into the atmosphere that is inhaled by the non-infected person, or transmission can occur through human contact with surfaces that are contaminated with the fluids, sprays, midst or droplets of any communicable biological hazard that is touched by a non-infected person or transmission can occur through insects bites that bite various humans it comes into contact with.

34. Covid-19 is an airborne communicable biological hazard caused by the Sars-Cov-2 virus that enters the human body generally through oral ingestion or through inhalation of salivary vapors, sprays, droplets or midst that are emitted from the mouth of an infected person and transmitted into the atmosphere that can be inhaled by a non-infected person or the salivary vapors, sprays, droplets or midst emitted from an infected person and lands on and contaminates any surface in a public or workplace that is touched by a non-infected person who touches their own mouth, nose or eyes, which are entry ways into the human body that can result in an infection.

35. Based on general medical definitions and terminology, Sars-Cov-2 virus is one of many biological hazards that can cause a serious infectious injury to or illness in the human respiratory system and/or death when inhaled from the atmosphere or touched and ingested into the body through the skin or touching of the mouth or nose after touching a surface contaminated with the Sars-Cov-2 virus.

36. When a person is infected with Sars-Cov-2 virus/Covid-19 disease the infection can cause respiratory injury with the following symptoms, which include, but are not limited to: fever

chills, cough, shortness of breath, difficulty breathing, fatigue, muscle or body aches, headache, loss of taste or small and sore throat, abdominal pain including diarrhea and death.

37. Sars-Cov-2 is a biological hazardous virus that is transmitted and spreads from people to people either through the salivary vapors, sprays, midst or droplets containing the Sars Cov-2 virus that emits from the mouth or nose of a person into the atmosphere of a workplace or when the contaminated salivary vapors, sprays, midst, or droplets land on and contaminate workplace surfaces so that other employees become exposed to Sars-Cov-2 airborne hazard in the workplace either through inhalation through the employees respiratory system or touching of the contaminated surface.

38. The Center for Disease Control (CDC) has also concluded that the Covid-19 viral biological hazard, like all other airborne communicable diseases, is transmitted when a person infected with the Sars-Cov-2 virus talks, sneezes or coughs the sprays, vapors, midst or droplets from the talking, sneezing or coughing that contains the Sars Cov-2 virus that then emits into the atmosphere of an indoor room, workplace or public place of the infected person, which then exposes other people in the same location to the now airborne biological airborne hazard that when inhaled by others can result in a serious respiratory infection injury and/or death. See Exhibit 2

39. In addition, OSHA has determined that employee exposure to the SARS–CoV–2 virus (the virus that causes COVID–19) presents a grave danger to workers. See Exhibit 3, ETS June 21, 2021 – Page 32377

40. The OSHA 2021 ETS reported that the Covid-19 biological airborne virus can remain suspended in the air and inhaled by others and travel distances beyond 6 feet. Id. at Page 32392

41. In general, enclosed environments, particularly those without good ventilation, increase the risk of airborne transmissions of Covid-19 or any other airborne viral hazard. Id. at Page 32392

42. When a person is exposed to and inhales human salivary sprays, vapors, midst, or droplets in the atmosphere containing the Sars-Cov-2 virus, or any airborne communicable biological viral hazard can cause an infectious disease, in this case called Covid-19 that can injure the human respiratory system and cause long term respiratory illness and other illnesses, including death.

43. Because most workplaces, in general, require employees to talk either to customers or other employees as an essential function of most jobs, whenever an employee infected with the Covid-19 biological hazard or any other airborne communicable biological hazard, talks into the workplace atmosphere while working, the Covid-19 biological airborne virus is transmitted into the workplace atmosphere exposing other employees and/or customers to the airborne hazard that can cause a serious respiratory injury and/or death.

44. Illnesses and injuries in the workplace setting is specifically defined by the OSHA regulations starting in 29 CFR Section 1904.46(3) as follows:

> "An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illness includes both acute and chronic illnesses, such as, but not limited to, skin disease, **respiratory disorder**, or poisoning." See Exhibit 4

45. The OSHA regulation 29 CFR Subtitle B, Section 1904.5 goes on to define work-relatedness as follows:

> "You must consider an injury or illness to be work-related if an event or **exposure in the work environment** either caused or contributed to the resulting condition…. Work -relatedness is presumed for injuries and illnesses resulting from events or **exposures**

occurring in the work environment, unless an exception in Section 1904.5(2) specifically applies." See Exhibit 5

46. OSHA standard 29 CFR 1904.5(b)(1) defines "work environment" as:

> "the establishment and other locations where one or more employees are working or are present as a condition of their employment.

47. Also, the OSHA Ventilation standard 29 CFR Section 1910.94(a)(1)(vi) places an affirmative duty on all employers to provide a workplace atmosphere that contains clean air which is defined as follows:

> *"Clean air*. Air of such purity that it will not cause harm or discomfort to an individual if it is inhaled for extended periods of time." See Exhibit 7

48. The OSHA Respiratory standard 29 CFR Section 1910.1034(b) makes clear that occupational/workplace illnesses include illnesses that arise from employee exposures to airborne contaminates that exists in the workplace based on the definition of "employee exposure as follows:

> "Employee exposure means exposure to a concentration of an airborne contaminant that would occur if the employee were not using respiratory protection." See Exhibit 8

49. Also, the OSHA Respiratory standard 29 CFR Section 1910.134(a)(1) specifically states that employers are to protect employees from occupational disease cased by breathing air contaminated with harmful sprays and vapors as follows:

> "In the control of those **occupational diseases caused by breathing air contaminated** with harmful dusts, fogs, fumes, mists, gases, smokes, **sprays, or vapors**, the primary objective shall be to prevent atmospheric contamination. This shall be accomplished as far as feasible by accepted engineering control measures (for example, enclosure or confinement of the operation, general and local ventilation, and substitution of less toxic materials). When effective engineering controls are not feasible, or while they are being instituted, appropriate respirators shall be used pursuant to this section."

50. Finally, OSHA standard at 20 CFR 1910.1020(c)(13) defines "toxic substance or harmful physical agent" as:

> "any chemical substance, ***biological agent (bacteria, virus, fungus, etc.),*** or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo-or hyperbaric pressure, etc.)" – Emphasis added
> See Exhibit 9

51. Based on the forgoing OSHA definitions and basic medical terminology and definitions of illnesses and disease, I can say with 100% degree of certain that an employee exposed to the Covid-19 virus in the workplace atmosphere would be an occupational workplace illness under the OSHA Act for the following reasons.

52. First, based on the anatomical structure of the human mouth that always contains saliva, it is impossible for an employee not to emit vapor, spray, droplet or midst when an employee is talking for and during work.

53. Because communicable airborne biological hazards, including the Covid-19 virus, can be emitted by any infected employee who talks in the workplace at any time, it is my medical opinion that all communicable airborne biological hazards, including Covid-19, are always occupational injuries or illnesses because employees infected with some type of airborne communicable biological hazard, including Covid1-19, will always emit vapors, sprays, droplets or midst when an employee talks while doing their job therefore creating an "employer exposure" to the airborne biological hazard in the workplace atmosphere.

54. According to the OSH Act General Duty Clause, employers are required to "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees," which means that an employer has a duty to either remove any recognized hazard from the workplace or in the case of recognized airborne hazards the OSH Act

standards and regulations require employers to at least shield employees from exposure to any recognized airborne hazard.

55. While an employer's duty under the OSH Act General Duty Clause is to remove all recognized airborne hazards from the workplace atmosphere or shield employees from exposure to airborne biological hazard, that duty under the General Duty Clause does not arise until an employer "recognizes" the airborne hazard is in the workplace.

56. In the context of the existence of airborne communicable biologic hazards, it is obvious that all employers would recognize that an airborne communicable biologic hazard can be present in the workplace when the U.S. Surgeon General or any state or federal health department or agency, officer or commissioner issues a hazard alert or a state of emergency executive order declaring that an airborne communicable biological hazard exists and that the hazard could cause death or serious physical harm to workers either as a pandemic or epidemic in the U.S. or in any state or locality.

57. In addition, an employer is on notice and can recognize that any airborne communicable biological hazard is in the workplace atmosphere when two or more employees report symptoms of infection from an airborne communicable biological hazard and alternative, an employer is on notice and can recognize that any airborne communicable biological hazard is in the workplace atmosphere by testing the workplace atmosphere through air quality testing.

58. The OSHA Respiratory standard codified in 29 CFR 1910.132 requires employers to affirmatively investigate and identify potential workplace respiratory hazards, and employers are to conduct a hazard assessment to determine the hazards are present, or are likely to be

present, which means employers can recognize hazards before any public announcement to determine if the hazards necessitates the use of PPE.

59. Once on notice either through investigation, employee symptomology of infection or by public health alerts, like with the Covid-19 Pandemic declaration in March 2020, the communicable disease is recognized and an employer's duty to comply with the OSHA General Duty Clause is triggered mandating employers to comply with the OSHA standards and regulations that provide the safety methods an employer can use to either remove the pandemic recognize airborne biologic hazard out of the atmosphere of a workplace or shield employees in the workplace from exposure to the airborne biological hazard.

60. While the OSHA regulation 29 CFR §1910.1020(c)(8)[1] defines "exposure" (as listed below) in a way that appears to exempt certain types of biological hazards from the general definition of an "occupational or workplace injury or illness" (which can be hazards that may exists in non-workplace environments like a private home), based on my practical preventative medicine experience and understanding of the OSHA regulations, Section 1910.1020(c)(8) regulation regarding non-workplace hazards does not eliminate or create an exception or exemption from an employer's primary duty under the OSH Act General Duty clause, which is to provide a workplace "free from recognized hazards."

61. To interpret Section 1910.1020(c)(8) as an exemption from employer compliance with the OSHA General Duty Clause would mean that all hospitals and all other workplaces would never be required to do anything to protect workers during an outbreak of any pandemic or

[1] 29 CFR §1910.1020(c)(8) defines employee "exposure" or "exposed as: "an employee is subject to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.)…., but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not…. present in the workplace in any manner different from typical non-occupations situations."

epidemic airborne biological communicable hazard like the Covid-19 virus that is recognized as present in the workplace simply because the airborne biological communicable hazard can be transmitted in non-occupational workplaces.

62. While a communicable airborne biological hazard may originate from and/or exists in other non-workplace environments as referenced by the OSHA Regulation under 19 CFR §1910.1020(c)(8), it is my opinion based on my preventive medicine clinical experience with 100% degree of certainty that an employer's duty under the OSHA General Duty Clause is still triggered when a biological hazard is recognized in the workplace regardless of whether a hazard also exists in other non-workplace spaces. The General Duty Clause mandates and holds employers accountable to prevent any and all foreseeable and presently existing hazards in the workplace irrespective of its origination in a non-workplace because any employee infected with a an airborne biological hazard can cause an exposure and transmission of the hazard at any time the infected employee talks into the workplace atmosphere where other employees or customers can be exposed.

63. My opinion is supported by the fact OSHA standard Section 1904.5(2)(viii)[2] specifically states that "contagious diseases such as tuberculosis, brucellosis, hepatitis A, or plague are considered work-related if the employee is infected at work" and all airborne biological

[2] OSHA Regulation 1904.5(b)(2)You are not required to record injuries and illnesses if . . .
(i) At the time of the injury or illness, the employee was present in the work environment as a member of the general public rather than as an employee. (ii)The injury or illness involves signs or symptoms that surface at work but result solely from a non-work-related event or exposure that occurs outside the work environment. (iii) The injury or illness results solely from voluntary participation in a wellness program or in a medical, fitness, or recreational activity such as blood donation, physical examination, flu shot, exercise class, racquetball, or baseball. (iv) The injury or illness is solely the result of an employee eating, drinking, or preparing food or drink for personal consumption (whether bought on the employer's premises or brought in). For example, if the employee is injured by choking on a sandwich while in the employer's establishment, the case would not be considered work-related.Note: If the employee is made ill by ingesting food contaminated by workplace contaminants (such as lead), or gets food poisoning from food supplied by the employer, the case would be considered work-related. (v) The injury or illness is solely the result of an employee doing personal tasks (unrelated to their employment) at the establishment outside of the employee's assigned working hours. (vi) The injury or illness is solely the result of personal grooming, self medication for a non-work-related condition, or is intentionally self-inflicted. (vii) The injury or illness is caused by a motor vehicle accident and occurs on a company parking lot or company access road while the employee is commuting to or from work. (viii) The illness is the common cold or flu (Note: contagious diseases such as tuberculosis, brucellosis, hepatitis A, or plague are considered work-related if the employee is infected at work). (ix) The illness is a mental illness. Mental illness will not be considered work-related unless the employee voluntarily provides the employer with an opinion from a physician or other licensed health care professional with appropriate training and experience (psychiatrist, psychologist, psychiatric nurse practitioner, etc.) stating that the employee has a mental illness that is work-related.

hazards, including the Covid-19 virus, are a type of "plague," which is medically defined as an "infectious disease" or "contagious disease" that affects humans.

64. Moreover, the OSHA's Respiratory Protection standard, 29 CFR § 1910.134(a)(1), requires use of respirators to prevent occupational diseases caused by "harmful dusts, fogs, fumes, mists, gases, smokes, sprays, or vapors" when engineering controls are infeasible.

65. N95 masks and Powered Air Purifying Respirators that are 99.7% effective in shielding employees who wear them from exposure to any airborne communicable biological hazard are approved safety methods employers are mandated to use according to the Respiratory Standard at 29 CFR § 1910.134(a)(1) to protect employees from workplace airborne hazards, which where used all through the Covid-19 pandemic and the prior H1N1 Pandemic of 2009 Pandemic.

66. In promulgating the Respiratory standard, OSHA emphasized in 63 Fed. Reg. 1152, 1180 (1998) that it "does apply to biological hazards," including "bioaerosols" that may lead to "epidemics of infections including colds, viruses, tuberculosis, and Legionnaires Disease." See Regulation at Exhibit 10

67. Another reason that my opinion is correct is the fact that the OSHA standard at 19 CFR §1910.1020.(c)(13) defines the phrase "toxic substance" used in the definition of "exposure" to include the toxic substance "Chlorine," which is one of many toxic substances listed as an OSHA Occupational Chemical Substance that employers must prevent or limit employee exposure to in the workplace/occupational location; but yet chlorine is also a toxic substance used in the average house hold kitchen, bathroom or laundry room.

68. Although chlorine along with many other toxic substances or hazardous agents are used or present both in the occupational setting and in non-occupational private homes, I am

confident to a 100% degree of certainty that OSHA Regulation 19 CFR §1910.1020(c)(8) does not exempt an employer from meeting its obligations under the General Duty Clause, because in the case of Chlorine (like many other workplace toxic substances) if an employer requires employees to use or handle Chlorine on the job, then the employer must follow the OSHA Respiratory standards and regulations to prevent an employee's unreasonable exposure to Chlorine fumes, which if inhaled for periods of time can cause lung injury that would be an occupational injury.

69. The use or presence of Chlorine in the workplace and in private homes is just one example that demonstrates that OSHA Regulation 19 CFR §1910.1020(c)(8) cannot be interpreted to exempt employers from compliance with the OSHA General Duty Clause or any other applicable standard or regulation; otherwise, the General Duty Clause would be meaningless and render many of the OSHA Regulations for general industry and healthcare as unenforceable because of the mere presence or use of a workplace hazardous agent or toxic substance that also exists in a private home.

70. Finally, while the OSHA standard at Section 1904.5(2) lists nine (9)[3] situations when an injury or illness may not related to the workplace and may not covered by the OSHA reporting requirements, (which generally are situations when injuries are sustained outside of the work environment), it is my opinion based on my experience with Workers Compensation workplace injury claims that those exceptions do not exempt employers from compliance with the General Duty Clause.

71. Rather, the nine situations in Section 1904.5(2) are regulations that limit employer liability when employees make a Workers Compensation workplace injury claim because the

[3] See OSHA Section 1904.5(2) attached as Exhibit 5.

regulation states that each of the exceptions applies only when the employer can prove that injury or illness that took place outside the workplace is the "sole" cause of the injury or illness, which indicates that the regulation's limitation was not intended that exempt an employer from their duty under the General Duty Clause to remove all workplace hazards because it would take time for an employer to figure out whether an injury or illness occurred "solely" outside the workplace and that would defeat the purpose of the General Duty Clause and the entire goals of the OSH Act to keep employees safe.

72. Based on my review of the OSHA definition of a work-related illness, and based on my experience managing and treating Covid-19 infected patients and my knowledge of how the Covid-19 biological viral hazard can be transmitted in the workplace, Covid-19 infections of workers in the workplace is a workplace injury and/or illness covered by the OSHA regulations that employers have a duty to prevent and track through compliance with the OSHA Respiratory Standards (which include the PPE regulation, Respiratory, and Ventilation regulations) that are the only methods capable of either removing any airborne communicable biologic hazard, including the Covid-19 virus) from the workplace atmosphere or shielding employees from exposure to airborne hazards including the Covid-19 virus.

73. In conclusion, the Covid-19 disease and any other airborne communicable biological hazard is a covered occupational illness and injury when an employee exposed to from the workplace atmosphere the Covid-19 Sars-Cov-2 or any other airborne biological viral hazard recognized to be found in the workplace atmosphere.

II. VACCINES ARE NOT CAPABLE OF PREVENTING, MITIGATIN, CONTROLING OR ABATING THE HUMAN EXPOSURE TO AND/OR TRANSMISSION TO HUMANS ANY RECOGNIZED AIRBORNE COMMUNICABLE BIOLOGICAL HAZARDS IN THE WORKPLACE

74. The General Duty Clause of the Occupational Safety and Health Act (OSH Act) makes clear that when a workplace airborne biologic hazard is recognized to be in the atmosphere of a workplace, all employers have a duty to "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm to his employees," which includes a workplace environment free of the Covid-19 biologic airborne hazard.

75. The OSHA standards, regulations and guidance are written to supply employers with the approved methods, equipment, processes, procedures and mechanisms to meet the requirements of the General Duty Clause.

76. The OSHA Ventilation standard 29 CFR 1910.94(a)(1)(vi) makes it a duty for employer to provide workers with "clean air" in the workplace as stated below:

> *Clean air*. Air of such purity that it will not cause harm or discomfort to an individual if it is inhaled for extended periods of time.

77. OSHA Hygienist and expert Bruce Miller in his supportive affidavit attached as Exhibit 11, and incorporated herein makes clear that OSHA regulations, in general, specifically places the duty on the employers to identify and correct safety and health hazards in the workplace and have a duty to first try to eliminate or reduce hazards by making feasible changes in working conditions, either through: 1) installation of workplace engineering controls, that include but are not limited to using ventilation systems to capture airborne particulates or aerosols, like portable or installed high-efficiency particulate air (HEPA) filtration systems,

downdraft ventilation capture systems, and isolation of hazard sources with barriers to name a few; 2) implementing administrative controls, which include, but are not limited to, changes to "how" an employee performs the essential functions of their job.

78. Based on my hospitalist medical facility experience, once any airborne hazard, like the Covid-19 Sars Cov-2 airborne biological hazard is "recognized" in the atmosphere of any workplace regardless of where the airborne hazard comes from or originates, an employer has the duty to either remove the airborne hazard or shield employees from exposure to the recognized airborne hazard in the workplace atmosphere?

79. From a epidemiological preventative medicine public health perspective, in order to effectively control and prevent the spread of any pandemic or epidemic airborne hazardous communicable biologic hazardous disease in the U.S., including the Covid-19 virus that can cause serious respiratory injury illness or death, the OSHA General Duty Clause is a necessary mandate that all employers must comply with due to the simple fact that hundreds of millions employees spend on average up to 8 hours a day in workplace environments and any airborne hazardous communicable disease that is likely to be emitted in the workplace atmosphere from any infected employee while talking will cause an exposure to other employees that is likely to result in an infection of millions of other employees.

80. Without the OSHA General Duty Clause the U.S. could never control, mitigate or abate the transmission and spread of any national pandemic or even reginal epidemic health emergency caused by an airborne communicable biologic hazardous diseases in the U.S.

81. The OSHA standards and regulations specific to preventing, mitigating and abating the transmission and spread of any airborne communicable biologic hazardous diseases include the OSHA Personal Protective Equipment standard codified at 29 CFR 1910.132 (See

Exhibit 12, the OSHA Respiratory standard codified at 29 CFR 1910.134[4], and the OSHA Ventilation standard codified at 29 CFR 1910.94, which specifically requires employers in subsection 29 CFR 1910.94(a)(1)(vi) to provide clean air defined as "air of such purity that it will not cause harm or discomfort to an individual if it is inhaled for extended periods of time." (collectively the "OSHA Respiratory Standards")

82. It would be near impossible without the OSHA General Duty Clause and Respiratory Standards for the U.S. to combat any pandemic or epidemic outbreak of any airborne communicable disease the U.S. because there would be no duty on any business or public facility to prevent, mitigate or control the spread of any airborne hazardous communicable disease in workplaces and public places which would be an national health crisis of epic proportions.

83. There are hundreds of millions workplaces and public spaces in the U.S. where airborne communicable biological hazards are emitted into the atmosphere by employees and person infected by airborne communicable biological hazards and to exempt employers from the OSHA General Duty Clause simply because airborne communicable biological hazards also can be transmitted in private homes would leave all person residing in the U.S. defenseless in combating airborne communicable biological hazards because there would be no duty on person to prevent the transmission and/or spread of the airborne communicable biological hazard once they know they are infected when a person exhibits infection symptoms.

84. Although OSHA has not created minimum standards and regulations specific to Covid-19 disease or to any airborne communicable virus, the General Duty Standard along with the

[4] Section 1910.134(a)(1) specifically states: "In the control of those occupational diseases caused by breathing air contaminated with harmful dusts, fogs, fumes, mists, gases, smokes, sprays, or vapors, the primary objective shall be to prevent atmospheric contamination. This shall be accomplished as far as feasible by accepted engineering control measures (for example, enclosure or confinement of the operation, general and local ventilation, and substitution of less toxic materials). When effective engineering controls are not feasible, or while they are being instituted, appropriate respirators shall be used."

Respiratory Standards have been written as broad minimum standards that covers any and all airborne communicable biological hazards so that all employers can comply with and meet the objective of the General Duty Clause when new and emerging airborne biological hazards may arise.

85. The OSHA Respiratory Standards and General Duty Clause are environmental laws and regulations that protect citizens from environmental hazards or hazards that present in the atmosphere of any workplace or public environment.

86. Based on the basic understanding of how airborne communicable biologic hazards are transmitted from person to person in the atmosphere of any workplace, it is obvious that neither vaccines nor immunizations of any kind can meet the necessary environmental safety objectives of the OSH Act which is to provide safe workplace atmospheric environments for employees because neither vaccines nor immunizations can remove recognized airborne communicable biological hazards emitted into the workplace atmosphere by employees infected with airborne communicable disease to eliminate employee exposure and neither can vaccines nor immunizations shield employees from exposure to a recognized airborne communicable biological hazard already emitted and present in the workplace atmosphere at any time by talking employees infected with an airborne communicable disease.

87. Vaccines and immunizations are pharmacological medical treatments approved by the Federal Food and Drug Administration that regulate food and drugs that are consumed by humans that could cause serious injury or death.

88. Having completed hundreds of FDA clinical trials, I can opine with 100% degree of certainty that no vaccine is designed to provide humans protection from environmental hazards that invade the human body through the nose, mouth and eyes.

89. Medically defined, vaccines or immunizations are immunogens that are either needle injected into the human body or taken by mouth or sprayed into the nose intended to stimulate the immune system to help reduce or eliminate the symptoms of a human infection by a biological disease.

90. Vaccines are considered both a drug and a biological product that is regulated by the Food and Drug Administration through the FDA CFR Title 21, parts 600 through 680.

91. Because vaccines and/or immunizations are intended for internal human use, it is impossible for any FDA approved vaccine or immunization, including the Covid-19 vaccines, to meet the objectives of the OSHA General Duty Clause, which is to use methods, processes and administrative procedures that remove any airborne communicable biological hazard from the workplace atmosphere to make the workplace environment safe.

92. Specifically, the Pfizer, Moderna, and J&J vaccines are considered "genetic vaccines," or vaccines produced from gene therapy molecular platforms which, according to US FDA regulatory guidance, are classified as gene delivery therapies and should be under a 15-year regulatory cycle with annual visits for safety evaluation by the research sponsors.

93. In my medical opinion based on my public health, if there is a recognized pandemic or epidemic outbreak of any communicable disease, including the Covid-19 disease, vaccines can never replace or be a substitute for the OSHA General Duty Clause and neither can vaccines replace the effective preventative, mitigation and abatement methods, equipment and processes required under the OSHA Respiratory Standards because vaccine are incapable of removing any airborne communicable biological hazard from any public place or workplace and neither can vaccines shield workers from airborne communicable biological hazard whether recognized or not.

94. The OSHA Respiratory Standards are the only means and methods that can provide the millions of U.S. employees with a safe workplace free of recognized airborne communicable biological hazards that can cause serious injury or death.

95. Without the OSHA General Duty Clause and Communicable Disease Respiratory Standards applying to all airborne communicable biological hazards in existence now or in the future in any workplace or public place, the human population would be wiped out without any duty on employers to use the effective and approved OSHA Respiratory Standards to combat communicable diseases.

96. It is and has always has been my opinion that all of the vaccines do not prevent infection, do not stop transmission, and have never been demonstrated to reduce hospitalization and death as a primary or secondary endpoint in properly conducted, prospective, randomized, placebo-controlled trials.

97. Furthermore, because vaccines and immunizations are medical treatments, most state laws require a state licensed medical provider to prescribe or recommend and to inject vaccines.

98. It is state law that determines who is eligible to prescribe or recommend any medical treatment, which in all 50 states only medical professionals can “prescribe” or “mandate” or require” for any human person to submit to the injecting the vaccine/immunization medical treatment into a human body.

99. In New York, according to the New York Education Law §6521- §6522 any employer who prescribes, requires or mandates an employee to take any vaccine, including the Covid-19 vaccine, must be an authorized medical professional to prescribe or even recommend any person to take a medical treatment including vaccines or immunizations like the Covid-19 vaccine.

100. In all 50 states it is considered the unauthorized practice of medicine for a non-medical professional to prescribe, require or mandate another person to take a vaccine or immunization medical treatment under any circumstance including the prescribing of vaccines, including the Covid-19 vaccine as a condition of employment.

101. In New York, the New York Education Law §6522 specifically states that "only a person licensed or otherwise authorized under this article shall practice medicine" and §6521states that "[t]he practice of the profession of medicine is defined as diagnosing, treating, operating or prescribing for any human disease, pain, injury, deformity or physical condition."

102. Because Covid-19, along with all other communicable diseases is a "human disease" and any employer who "prescribes" or mandates the taking of any vaccine, including the Covid-19 vaccine to prevent or control the "physical condition" caused by the Covid-19 disease, any employer that is not licensed to practice medicine in New York would be violating New York licensing requirement if the employer requires an employee to inject any vaccine or immunization, including the Covid-19 vaccine as a condition of employment.

103. Even I as a licensed medical professional in Texas cannot prescribe any vaccine, immunization or any medical treatment to a person in New York, without committing a crime, unless I am licensed under New York Education Law §6524.

104. Based on the universal definition of the practice of medicine similar to New York's definition around in the U.S., and based on my experience practice medicine for over 20 years, it is my opinion to a degree of medical certainty that any employer who mandates any vaccine or immunization medical treatment as a condition of employment would violate most state laws, specifically the New York Law, against the unauthorized practice of medicine without a license.

III. NEW YORK CITY'S VACCINE MANDATE WAS NOT "NECESSARY" TO KEEP WORKERS AND THE PUBLIC SAFE

105. Between August 10, 2021 and December 13, 2021, the New York City Department of Health and Mental Hygiene (NYCDOHMH) issued approximate twelve (12) Covid-19 Emergency Orders applicable to New York City employees within its various City agencies and the orders applied to contracted workers and private sectors workers whose workplaces were within the New York City limits ("Emergency Orders").[5]

106. Based on my review of the language in all 12 Emergency Orders, the general purpose of the orders was stated as "necessary for the health and safety of the City and its residents ….. to protect the public health against an existing threat and a public health emergency" which was the Covid-19 Pandemic.

107. While the Emergency Orders were written for the public health and safety, the vaccine mandates in the orders only applied to City workers, contractors and private sector employees, which makes the Emergency Orders workplace safety regulations that are governed by OSHA regulations.

108. The Emergency Orders further state, in summary, that to achieve its purpose it was "necessary" to mandate City employees, contractors and private sector employees to submit to the Covid-19 vaccine "to prevent, mitigate, control and abate the current emergency" of the Covid-19 pandemic. See Exhibit 13

109. However, based on my opinions previously outlined herein, the City's Emergency Orders vaccine mandate were not necessary to protect the public or employees in the workplace due to the fact that no vaccine, including the Covid-19 vaccine, can prevent, mitigate, control or

[5] See List of New York City Department of Health & Mental Hygiene list of Orders at https://www1.nyc.gov/site/doh/about/hearings-and-notices/official-notices.page

abate the emission into the workplace atmosphere the Covid-19 Sars Cov-2 virus by infected employees who talk in their workplace and neither can the Covid-19 vaccine shield employees or the public from exposure to the Covid-19 Sars Cov-2 virus that is present in the workplace or public place atmosphere.

110. The City's Emergency Orders wrongly relied on the CDC's statement that "vaccination is an effective tool to prevent the spread of Covid-19" when the Covid-19 vaccine is incapable of preventing, mitigating or abating the spread of the Covid-19 virus in the workplace.

111. Finally, the U.S. Department of Labor Solicitor Kate O'Scannlain argued before the U.S. District Court for the District of Columbia that during the Covid-19 pandemic there was no need to issue any new "emergency temporary standards" to create any new methods to control the Covid-19 pandemic and that the existing OSHA standards, particularly the Respiratory Standards outlined herein were sufficient to mitigate and control the Covid-19 outbreak, which means that the New York City's Department of Health Mandate was not necessary. See Exhibit 14

107. In conclusion, based on my years of research, public health and clinical medicine experience and knowledge and understanding of the OSHA standards and regulations, it is my opinion that the New York City Emergency Orders mandating city and private sector vaccination were not necessary because the Covid-19 vaccine could not accomplish the public safety goals the orders were developed to achieve.

108. The statements and opinions made in this Affidavit are preliminary and I reserve the right to add to, amend or modify my opinions as more facts are provided during the course of any litigation of the claims by the Classes of Plaintiffs for which this affidavit is provided.

I declare under penalty of perjury under the laws of the State of Texas, State of New York and all other 48 state perjury laws that the foregoing is true and correct.

Dated this 26 day of September, 2024.

Peter A. McCullough, MD, MPH

DR. Peter McCullough

A NOTARY PUBLIC OR OTHER OFFICER COMPLETING THIS CERTIFICATE VERIFIES ONLY THE IDENTITY OF THE INDIVIDUAL WHO SIGNED THE DOCUMENT TO WHICH THIS CERTIFICATE IS ATTACHED, AND NOT THE TRUTHFULNESS, ACCURACY, OR VALIDITY OF THAT DOCUMENT.

Subscribed and sworn to (or affirmed) before me on this ____ day of _____, 2024, by Dr. Peter McCullough, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Witness my hand and official seal.

[Affix Notary Seal]

_____

Signature of Notary Public