No. S-233275
Victoria Registry

In the Supreme Court of British Columbia

Between:

Jedediah Jeremiah Merlin Ferguson and Terri Lyn Perepolkin

Plaintiffs

And:

His Majesty the King in right of the Province of British Columbia and Dr. Bonnie Henry in her Capacity as Provincial Health Officer For the Province of British Columbia

Defendants

No. S-233427
Victoria Registry

In the Supreme Court of British Columbia

Between:

Jason Baldwin

Plaintiff

And:

His Majesty the King in right of the Province of British Columbia and Dr. Bonnie Henry in her Capacity as Provincial Health Officer For the Province of British Columbia

Defendants

Reply Submissions of the Plaintiffs

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WRITTEN SUBMISSIONS

Part 1: Introduction and Overview

1. This reply addresses the Defendants' submissions and demonstrates why the Baldwin and Ferguson class actions should proceed. The Defendants seek to strike or dismiss the claims and oppose class certification on multiple grounds. The Plaintiffs respectfully submit:

    a. The Court retains jurisdiction notwithstanding the Defendants' reliance on labour arbitration exclusivity principles from *Weber v Ontario Hydro*, [1995] 2 SCR 929 ("*Weber*") and *Northern Regional Health Authority v Horrocks*, 2021 SCC 42 ("*Horrock*s").[1]

    b. Each cause of action, including misfeasance in public office, breach of privacy, Canadian *Charter of Rights and Freedoms, Constitution Act, 1982* ("*Charter*") infringement of s. 2(d), and inducement of breach of contract (Ferguson) is properly pleaded with factual and legal support.

    c. Statutory immunity does not bar claims alleging bad faith acts at this stage.

    d. Genuine factual and evidentiary disputes (including competing expert reports on the vaccine mandates' necessity and effects) underscore that these matters require a trial, not summary disposition.

[1] *Weber v. Ontario Hydro,* 1995 CanLII 108 (SCC) at para 54*; Northern Regional Health Authority v. Horrocks,* 2021 SCC 42 at paras 11–12.

e. All certification criteria under CPA s. 4(1) are satisfied. The claims disclose causes of action, there are identifiable classes with common issues, a class action is the preferable procedure, and the representative plaintiffs are adequate. Both actions challenge a uniform course of conduct by the Defendants, making a class proceeding not only appropriate but necessary for access to justice.

Reply to the Defendants' Submissions

Court's Jurisdiction and the Exclusive Arbitration Argument

2. The Defendants submit that this Court lacks jurisdiction because of the principle in *Weber* and *Horrocks*.[2] They argue that the claims arise out of collective agreements and thus must proceed, if at all, by way of labour grievances or arbitration, not in Court. In particular, they characterize the Plaintiffs' allegations as disputes about discipline or dismissal of unionized employees for vaccine non-compliance, matters typically within a labour arbitrator's exclusive domain.[3]

3. In so doing, the Defendants misapply *Weber* and *Horrocks*. Those cases dictate arbitration where disputes arise from a collective agreement. Here, the essential character of the claims is public law illegality and constitutional overreach by government actors. The challenged vaccine mandates, *Public Service COVID-19 Vaccination Regulation* ("*Regulation*") under the *Public Service Act*, RSBC 1996, c 385 ("PSA"), and Provincial Health Officer ("PHO") Orders ("*Orders*") under the *Public Health Act*, SBC 2008, c 28 ("PHA") - were unilateral governmental actions external to collective agreements, not negotiated employment terms.

4. Unlike *Bagri v City of Quesnel*, 2022 BCSC 2003, where the challenged policy directly arose from collective agreements, these claims challenge government measures beyond arbitrators' jurisdiction. As in *Hill v Canada*, 2022 FC 1367 ("*Hill*"), and *Payne v Canada*, 2022 FC 1425 (under appeal) ("*Payne*"), these disputes properly remain within judicial purview as they involve questions of statutory authority and *Charter* compliance, remedies arbitrators cannot grant.

5. In *Hill*, unionized aviation employees challenged a vaccination mandate issued by government order. The Federal Government sought to strike the claim in part due to a reliance on *Weber*. The Court retained jurisdiction, rejecting the argument that *Weber* ousted it.[4]

6. Likewise, *Payne* allowed unionized Federal public servants to pursue a *Charter* challenge to the Federal Government vaccine policy in Court, rejecting the argument that *Weber* ousted jurisdiction.[5]

7. In both *Hill* and *Payne*, the challenge was to the legality of the government action itself rather than any term of the collective agreement.

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[2] *ibid*
[3] Defendants' Submission Page 44-48, Para 184-216.
[4] *Hill v. Canada (Attorney General)*, 2025 FC 242 at paras 20–24.
[5] *Payne v. Canada (Attorney General)*, 2025 FC 5 at para 4.

8. Moreover, the Defendants' assertion that any dispute about discipline of unionized employees is necessarily arbitrable is an overgeneralization.[6] The Supreme Court in *Weber* never held all disputes involving unionized employees belong to arbitration, only those whose core is the interpretation or application of the collective agreement.[7]

9. The core of the Plaintiffs' dispute is the legality of the *Regulation* and *Orders* and their consistency with the *Charter* and statutes like the *Privacy Act*. No labour arbitrator could decide, for example, whether the PHO exceeded her statutory powers under the *PHA* or whether the PHO *Orders* and *Regulation* are infringements of s.2(d) of the *Charter*; those are questions for the Courts. Indeed, an arbitrator cannot strike down a provincial *Regulation* or declare a PHO *Order* unconstitutional; that remedy lies exclusively with the Courts.

10. In summary, both class actions raise public law questions that are outside the exclusive jurisdiction of labour arbitrators. The essential character of the disputes is government overreach and *Charter* infringement, not breach of a collective agreement. Therefore, *Weber* and *Horrocks* do not deprive this Court of jurisdiction. The Court properly retains jurisdiction over all claims and resolving them here is necessary to afford the full scope of remedies beyond the power of arbitrators or grievance processes.

No Abuse of Process - Distinct Claims and Proceedings

11. The Plaintiffs' claims are neither duplicative nor abusive. The Defendants wrongly assert prior adjudication. *Hoogerbrug v British Columbia*, 2022 BCSC 1200 (appeal pending), involved different parties, no class claims, and no *Charter* damages or misfeasance allegations. *Canadian Society for Advancement of Science in Public Policy* ("CSASPP") litigation addresses public gathering limits, not employment mandates, and does not resolve collective bargaining rights or public officer misfeasance. Union grievance arbitrations have not adjudicated the legality of the *Orders* or the *Regulation* under the *Charter* or tort law. [8,9,10,11,12]

12. *Saskatchewan v Métis Nation*, 2023 SCC 3 ("*Métis Nation*") clarifies overlapping cases are not abusive if broader or distinct issues arise and the mere existence of some related proceedings is not sufficient for an abuse of process unless those proceedings truly decided the same essential issues.[13]

13. Allegations of bad faith, *Charter* infringement, and interference with collective agreements present distinct and novel matters deserving judicial determination. Union grievance arbitrations similarly fail to resolve the overarching constitutional and tortious allegations at issue.

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[6] Defendants' Submission, Page 45-47, Paras 186-190
[7] *Weber* at paras 54 and 67.
[8] *Hoogerbrug v. British Columbia*, 2024 BCSC 794.
[9] *Canadian Society for the Advancement of Science in Public Policy et al v. British Columbia and Dr. Henry*, S.C.B.C. Vancouver Registry No. S-210831.
[10] Defendants' Submission, Page 2-3, Paras 2-3
[11] Defendants' Submission, Page 36-37, Paras 145-146
[12] Defendants' Submission, Page 119, Para 11
[13] *Saskatchewan (Environment) v. Métis Nation – Saskatchewan*, 2025 SCC 4 at para 40

14. These class actions are novel and necessary. There is no duplication of a final judgment, no re-litigation of an identical issue already decided, and no unfairness to the Defendants in holding them to account. On the contrary, refusing to hear these claims would leave serious allegations untested, undermining confidence in the justice system. Consistent with *Métis Nation*, proceeding with the class actions is not an abuse of process but a proper vehicle for justice given the scope and nature of the claims.

Misfeasance in Public Office: Properly Pleaded

15. The Plaintiffs allege that the PHO acted ultra vires and with reckless indifference to harm, satisfying *Odhavji Estate v Woodhouse*, 2003 SCC 69. PHOs statutory immunity under PHA s. 92 protects only good-faith actions, not bad-faith misfeasance alleged here. [14]

16. The Federal Court of Appeal noted in *Paradis Honey Ltd. v. Canada*, 2015 FCA 89, ("*Paradis*") when considering a similar statutory immunity, such a defense cannot bar a claim at the outset when bad faith is alleged; the claim must be allowed to proceed to determine the facts. [15] Thus, s. 92 does not oust the claim at the pleadings stage, it simply frames an issue to be tried (good faith vs. bad faith).

17. Similarly, the Federal Court in *Hill* refused to strike analogous misfeasance claims, emphasizing that intent and state-of-mind issues require evidentiary determination. Here, the Plaintiffs have at least as strong, if not stronger, pleadings of bad faith and unlawful conduct as in *Hill.* These claims thus merit trial. [16][17]

18. Regarding the PHO's statutory immunity under s.92: that section protects the PHO and others from liability for acts done in good faith in the performance of their duties. By its own terms, it does not protect bad faith or unlawful conduct. The Plaintiffs claim explicitly alleges lack of good faith; indeed, misfeasance is premised on bad faith or knowing unlawful conduct.[18] At the pleadings stage, the Court must assume the truth of the Plaintiffs' allegations of bad faith. If those allegations are proven, the immunity would not apply; conversely, if the PHO ultimately proves she acted in good faith, then the misfeasance claim fails on the merits, but that is a factual determination for trial.

19. Misfeasance in public office is a recognized tort that squarely fits the Plaintiffs' allegations. This claim addresses the gravity of a public official potentially abusing their power. The pleadings carefully track the legal elements with specific factual assertions. There is ample authority that similar pleadings have been allowed to proceed. Therefore, it is not plain and obvious that the misfeasance claim will fail. It should be allowed to move forward to discovery and trial, where evidence (including cross-examination of the PHO and expert testimony on what was known at the time) will determine the truth of the allegations.

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[14] Ferguson Amended Notice of Civil Claim, Page 4-5,13-18, Paras 13-15, 30-35, 47-49, Baldwin Amended Notice of Civil Claim, Page 7-11 Paras 18-20-26, 30,27-39, Ferguson Plaintiff's Submissions, Page 21-22, Paras 47-49; Baldwin Plaintiff's Submissions, Page 8, Paras 18-20

[15] *Paradis Honey Ltd. v. Canada (Attorney General),* 2015 FCA 89 at paras 128–130.

[16] *Hill v. Canada (Attorney General*), 2025 FC 242

[17] Ferguson Amended Notice of Civil Claim, Page 4-5,13-18, Paras 13-15, 30-35, 47-49, Baldwin Amended Notice of Civil Claim, Page 7-11 Paras 18-20-26, 30,27-39, Ferguson Plaintiff's Submissions, Page 21-22, Paras 47-49; Baldwin Plaintiff's Submissions, Page 8, Paras 18-20

[18] Ferguson Amended Notice of Civil Claim, Page 13-18, Paras 30-35, 47-49, Baldwin Amended Notice of Civil Claim, Page 8-11, Paras 21-26, 37-39, Ferguson Plaintiff's Submissions, Page 21-22, Paras 47-49; Baldwin Plaintiff's Submissions, Page 8, Paras 18-20

Dismissing it now would prematurely shut down a serious claim of governmental wrongdoing.

Breach of Privacy: Actionable Under *Privacy Act*

20. The Plaintiffs' privacy claims are properly pleaded and raise a legitimate question that should be determined at trial. Section 1 of the *Privacy Act* creates a statutory tort for wilful violation of privacy of another subject to defenses of lawful justification. The elements are essentially: (1) a wilful act, (2) violation of privacy of the plaintiff, and (3) done without claim of right or justification.[19]

21. The Plaintiffs have pleaded that the *Regulation* and the *Orders* forced them to disclose vaccination status or be disciplined. They have stated that this was a deliberate intrusion into personal privacy without demonstrated lawful justification, attributed to lack of scientific necessity, overbreadth, and coercion.[20]

22. The Plaintiffs acknowledge that public health objectives can sometimes justify intrusions, but whether public health concerns reasonably justified these intrusions is a factual inquiry unsuitable for disposition at this stage.

23. *Milner v Manufacturers Life Insurance*, 2005 BCSC 1661 ("*Milner*"), establishes that whether an intrusion is justified is a factual question. The Court emphasized that context matters, and one must balance the privacy right against any purported justification. Applying that here, the balancing of privacy versus public health is exactly the kind of issue that should be determined on a full evidentiary record, not assumed in the Defendants' favor at the pleadings stage. [21] At this stage, it is not plain and obvious that the privacy claims will fail, given the unprecedented nature of the mandates and the serious privacy implications for employees.

***Charter* 2(d) Infringement: Substantial Interference Pleaded**

24. The *Regulation* and *Orders* substantially interfered with collective bargaining rights by unilaterally imposing employment terms and conditions of employment. *Health Services v British Columbia*, 2007 SCC 27; *Meredith v Canada*, 2015 SCC 2; and *British Columbia Teachers Federation v British Columbia*, 2016 SCC 49, affirm that unilateral nullification or alteration of negotiated terms by the state can breach s. 2(d). [22][23][24]

25. Recent cases further support the legitimacy of the Plaintiffs' s. 2(d) claim. In *Hill*, the Federal Court allowed a *Charter* s. 2(d) claim by unionized employees challenging a federal vaccine mandate to proceed, rejecting the argument that it was purely a labour

[19] *Privacy Act*, RSBC 1996, c 373, s 1
[20] Baldwin Plaintiff's Submissions, Page 18-19, Paras 15-16, Ferguson Plaintiff's Submissions, Page 19-20, Paras 67-69, Affidavit of Alan Cassels
[21] *Milner v. Manufacturers Life Insurance Co*., 2005 BCSC 1661 at paras 76–77.
[22] *Meredith v. Canada (Attorney General)*, 2015 SCC 2 at paras 23–25.
[23] *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, 2007 SCC 27 at paras 82–84.
[24] *British Columbia Teachers' Federation v. British Columbia*, 2016 SCC 49 at para 1.

relations issue. The Court noted that a government's direct order affecting employment conditions could amount to substantial interference with associational rights.[25]

26. *Payne* similarly recognized that where a policy is imposed by the state (even if its impact is in the labour sphere), employees may pursue s.2(d) *Charter* claims in Court. The existence of a grievance process did not negate the 2(d) *Charter* issue; and the Court could assess whether the policy curtailed collective activity or bargaining.[26]

27. The Plaintiffs claim of a 2(d) *Charter* infringement is properly pleaded. They raise fundamental issues about the balance between public health measures and protected collective rights. The Courts have not yet ruled on such a fact-specific *Charter* challenge, but they have signaled (in cases like *Hill* and *Payne*) that the issue is legitimate. The Plaintiffs are entitled to advance this claim and require the government to defend its actions under s. 1 at trial. The question is whether the claims are arguable, not whether they will ultimately succeed.

28. Whether the *Regulation* or *Orders* were a reasonable limit under s. 1 involves complex factual inquiries (e.g., Were the *Regulation* or *Orders* rationally connected to their objective? Were there less impairing means, like testing or PPE? Was the overall benefit proportional to the harm to rights?). These questions require evidence from both sides (epidemiological data, comparators, etc.).

29. For example, the Defendants have put in an expert report to argue the *Regulation* and *Orders* were justified. The Plaintiffs have submitted an expert report arguing the opposite. This alone shows that justification is a live issue that cannot be resolved without a trial. It would be unjust to strike the *Charter* claim now and thereby short-circuit the Plaintiffs' ability to challenge the government's justification with evidence.

Inducing Breach of Contract (Ferguson): Valid Cause of Action

30. The Ferguson Plaintiffs have pleaded all elements of inducing breach of contract (*Canada Steamship Lines v Elliott*, [1953] 2 SCR 303); the *Orders* intentionally compelled employers to breach collective agreements, causing harm to employees. The Defendants' statutory authority or justification defense depends on disputed legality issues suitable only for trial. [27][28]

31. No Court has decided a claim like this in the exact circumstances, but the elements fit, and it cannot be said to be plainly hopeless. The inducement claim in Ferguson ensures that if the evidence shows the PHO knowingly forced employers to break their contracts (which the Plaintiffs allege), the class of affected employees has recourse against the Province/PHO for that harm. It is a distinct cause of action that complements the *Charter* claim: one focuses on constitutional rights, the other on common law rights via contract. Both are legitimate. Therefore, the Court should allow the inducing breach of contract claim to proceed as part of the Ferguson action.

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[25] *Hill v. Canada (Attorney General)*, 2025 FC 242 at paras 20–24.??? VERIFY
[26] *Payne v. Canada (Attorney General*), 2025 FC 5 at para 4. VERIFY
[27] *Canada Steamship Lines Inc. v. Elliott*, 2006 FC 609 at para 23.
[28] Ferguson Amended Notice of Civil Claim, Page 2, 5-15, 19-20, Paras 1-2, 13-35, 50-66, Ferguson Plaintiff's Submissions, Page 16-17, Paras 53-61

Rule 9-6: Genuine Factual Disputes Require Trial

32. Rule 9-6 summary judgment is inappropriate due to significant factual disputes, including competing expert opinions on vaccine efficacy, necessity of mandates, and PHOs state of mind. As per *Hryniak v Mauldin*, 2014 SCC 7 ("*Hryniak*"), cross-examination and discovery are essential for proper adjudication.

33. Summary judgment is unsuited to cases where intent and motive are at issue. In *Hryniak* the Supreme Court of Canada emphasized that while summary judgment can be appropriate in certain circumstances, it may not be suitable for cases involving complex issues of intent or credibility. The Court stated that summary judgment should be granted only when there is no genuine issue requiring a trial, and that cases turning on the assessment of credibility or intent may necessitate a full trial.[29]

34. The Plaintiffs have filed extensive exhibits (e.g., excerpts from government communications, scientific studies, affidavits from class members about their experiences). The Defendants likewise have their exhibits. The truth will likely lie in a careful examination of all this material. It would be premature and unsafe for the Court to decide, for instance, that "the *Regulation* or *Orders* were justified" or "the PHO acted reasonably" on a paper record without hearing from witnesses and understanding context. The Rule 9-6 summary judgment rule in BC is meant for clear-cut cases with no factual disputes. Here, the disputes are complex and foundational.[30]

Class Certification Requirements (CPA s. 4(1))

35. The Plaintiffs have detailed the validity of each cause of action (misfeasance, breach of privacy, *Charter* infringement, and inducement of breach).

36. Because each claim is legally tenable and supported by factual allegations, CPA s. 4(1)(a) is satisfied as it is not plain and obvious that the claims cannot succeed. (*Hunt v Carey Canada*, [1990] 2 SCR 959*)*. The Defendants' arguments to the contrary conflate ultimate success with the threshold of disclosure. Even if they believe the claims will fail later, that is irrelevant at certification. Here the claims are not frivolous or vexatious; they raise substantive issues that deserve to be adjudicated.[31]

Identifiable Class: Objective and Clear (CPA s. 4(1)(b))

37. Baldwin and Ferguson propose clear and objective class definitions, easily meeting the identifiable class requirement (CPA s. 4(1)(b)). A class definition must simply define a group of two or more persons with common characteristics that relate to the alleged common issues, using objective criteria so individuals can know whether they are in the class. Precision to the nth degree is not required, in *Western Canadian Shopping Centres Inc. v. Dutton* 2001 SCC 46, [2001] 2 SCR 534*, Sun-Rype Products Ltd. v. Archer Daniels Midland* 2013 SCC 58.[32]

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[29] *Hryniak v. Mauldin*, 2014 SCC 7 at para 52
[30] Supreme Court Civil Rules, BC Reg 168/2009, r 9-6(5)
[31] *Hunt v. Carey Canada Inc.*, [1990] 2 SCR 959 at 980
[32] *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46, [2001] 2 SCR 534 at para 39, *Sun-Rype Products Ltd. v. Archer Daniels Midland Company*, 2013 SCC 58 at para 110.

38. The Baldwin putative class is delineated by objective factors: employment in the BC Public Service (verifiable by employer records), union membership status, and having been subject to the vaccine *Regulation* during the specified period of its operation. Either one was employed by the government during that period and covered by the mandate or not – it is a clear yes/no.

39. The Ferguson putative class is delineated by objective factors: working in healthcare in a union position during the relevant time and being subject to the PHO *Orders*. Whether someone was "subject to" an *Order* is determined by the *Order's* scope (the *Orders* specified which categories of workers had to vaccinate, e.g., all employees in long-term care, acute care, etc.).

40. The Defendants may criticize that the putative class may include those who complied without protest, but those individuals were still subject to the same coercive *Regulation* or *Orders*. This approach is supported by cases like *LeFrancois v Guidant Corporation*, 2008 CanLII 15770 (ON SC), where classes have been certified to include all users of a product even if not all were harmed, because the defendant's conduct was common to all.[33] [34]

41. The classes are objectively defined and identifiable. Any person in the BC Public Service subject to the *Regulation* can easily know they're in Baldwin's class. Any unionized healthcare worker forced to vaccinate or leave under *Orders* knows they're in Ferguson's class. This satisfies s. 4(1)(b).

Common Issues: Resolution Materially Advances All Claims CPA s. 4(1)(c)

42. The Plaintiffs have identified numerous common issues of law and fact that will advance the litigation for all class members, satisfying CPA s. 4(1)(c). As stated in *Vivendi Canada Inc. v Dell'Aniello* 2014 SCC 1, a common issue is one that "is necessary to the resolution of each class member's claim and is susceptible of a determination that will be common to all such claims". It need not resolve every aspect of the case, as long as it moves the case forward for everyone. [35]

43. The Defendants submit that individual differences (such as one employee was fired, another quit, another got vaccinated; or varying collective agreements) defeat commonality. That is incorrect. Common issues need not account for every factual variation. The test is whether the issue can be answered in general for the class. For instance, "Did the *Regulation* and *Orders* breach s. 2(d)?" will not depend on an individual's identity; it depends on the nature of the government's actions. The answer (yes or no) will be the same for every class member. If yes, everyone benefits; if no, everyone's claim on that point fails. That is a quintessential common issue.

Preferable Procedure: (CPA s. 4(1)(d))

44. The class proceeding is the preferable procedure for the fair and efficient resolution of the common issues (CPA s. 4(1)(d)). Preferability is assessed by looking at the goals of class actions: access to justice, judicial economy, and behavior modification, and by comparing this class action to other realistic avenues for resolution. In the Plaintiffs' class actions,

[33] *LeFrancois v. Guidant Corporation*, 2008 CanLII 15770 (ON SC) at para 75
[34] Defendants' Submission, Page 9, Paras 341-344
[35] *Vivendi Canada Inc. v. Dell'Aniello*, 2014 SCC 1 at para 46

access to justice, judicial economy, and behaviour modification strongly favour certification.[36]

45. In *AIC Limited v Fischer*, 2013 SCC 69, the Court stressed that preferability must consider access to justice. In the present cases, without certification, many class members effectively have no viable access to justice. [37]

46. There are tens of thousands of affected individuals (approximately 40,000 in Baldwin, over 175,000 in Ferguson, representing the entire unionized provincial workforce in health). It is impracticable for each to bring individual actions; the cost and burden would be enormous, and many would simply abandon their rights rather than sue the government individually. A class action allows their claims to be advanced together, pooling resources (including the use of representative plaintiffs and counsel who have already marshalled extensive evidence). Especially for those already out of work or who moved on, a class action is the only viable path to seek a remedy. This satisfies the access to justice factor clearly.

47. Further, these cases are partly about holding government accountable for alleged systemic overreach. A class action serves the goal of behaviour modification by clarifying the legal limits of government actions in a pandemic context and, if the Plaintiffs succeed, by deterring similar unlawful conduct in the future. It signals that even emergency responses must stay within constitutional and legal bounds. If no class action proceeds and the matters are left unresolved, there is less incentive for the government to fully reckon with these allegations. A class proceeding is not just preferable; it is the only realistic means to bring these issues forward efficiently and fairly.

48. Finally, these cases are manageable as class proceedings. The Defendants' concerns about differences in individual circumstances can be handled by well-established class action tools: [38]

    a. The Court can create subclasses if needed (CPA s. 6) for any distinct groups (for example, if at remedies stage, perhaps one subclass for those terminated versus those who got vaccinated under duress, if their damage measures differ). The Plaintiffs have already indicated willingness to refine the class definition.

    b. Individual damages assessments can be done through claims processes or reference hearings after common issues. For instance, once liability is established, a simplified claims process might allow class members to submit proof of the consequences they faced (loss of income, etc.), supervised by a special master or registrar.

    c. The litigation plan can be adjusted as the case evolves to ensure practical management. The Plaintiffs have already indicated willingness to refine the litigation plan (e.g., adding timelines for document exchange and identification of common issue trial parameters) to address any concerns of vagueness.

[36] *Hollick v. Toronto (City)*, [2001] 3 S.C.R. 158 at para 27, *AIC Limited v. Fischer*, 2013 SCC 69 at para 26
[37] *AIC Limited v. Fischer***,** 2013 SCC 69 at para 26
[38] Defendants' Submission, Page 2-3, Paras 6-10

Representative Plaintiffs (CPA s. 4(1)(e)

49. Each representative's situation epitomizes the class issues. Mr. Baldwin was a BC public servant forced to vaccinate or be fired under the *Regulation*; he represents all those in that position. Mr. Ferguson and Ms. Perepolkin are healthcare workers who were forced to vaccinate or be fired due to the PHO *Orders*, exactly what happened across the healthcare class. They have no interests antagonistic to the class; to the contrary, they share the same goal of having the *Regulation* and PHO *Orders* declared unlawful and obtaining redress.

50. These individuals have demonstrated their commitment by stepping forward to sue the government, which is not trivial. They have each sworn affidavits affirming their understanding of the representative plaintiff duties (to act in the best interests of the class, to be active in the litigation, etc.). While the Defendants characterized these affidavits as inadequate, the fact remains that they have attested to their responsibilities, and there's no evidence to doubt their sincerity. They have also actively participated in the litigation so far (providing evidence, consulting with counsel, etc.).

51. There is no indication that Mr. Baldwin or Mr. Ferguson/Ms. Perepolkin have any personal interest in the litigation that conflicts with other class members. They all seek the same declarations and damages as everyone else. They are not seeking any special advantage or suffering any unique disadvantage. Their claims are entirely aligned with the class.

52. The representatives are backed by an experienced legal team. The Plaintiffs' counsel has invested significant effort in developing the case. This support bolsters the representatives' ability to prosecute the case.

53. The Plaintiffs have submitted a litigation plan outlining how the case will proceed. The Defendants say it's too general, but any perceived gaps can be easily cured by minor amendments. In fact, the Plaintiffs are prepared to augment the plan with additional detail: for example, setting specific timelines for discovery and a target schedule for a common issues trial, and identifying categories of experts that will be retained (e.g., immunology, epidemiology, labour relations) to give the Court comfort that the case is manageable. These tweaks will ensure a robust roadmap moving forward.

54. The representative Plaintiffs are appropriate, and this Court can be confident the class members' interests will be well represented.

Conclusion on Certification

55. All five certification criteria are met for both actions. The Defendants' objections to certification are either based on mischaracterizations or can be addressed through case management. It's important to emphasize that class actions are a flexible tool, even if the Court had any residual concern (say, about manageability), the solution is often to impose conditions or require subclassing, not to deny certification outright when a case has significant common issues as here.

56. Certifying these class actions will allow a single, authoritative determination of the core issues: Did the government overstep legal or constitutional limits in imposing vaccination

mandates on these workers? Getting an answer to that question in one proceeding will benefit all involved, the class gets their day in court collectively, the Defendants get finality on the claims, and the judiciary addresses a matter of broad public interest efficiently.

57. Precedent strongly supports certification in cases of mass wrongs stemming from a common policy, *Fresco v. Canadian Imperial Bank of Commerc*e, 2012, and *Fulawka v. Bank of Nova Scotia* 2012, were certified where common issues of a systemic policy (overtime not paid) trumped individual differences in hours worked. By analogy, a systemic policy (vaccine mandate) can and should be adjudicated once, with individual outcomes handled after. [39]

58. On the other hand, denying certification could leave thousands without a remedy (since individual suits are impractical) and would fragment the adjudication of issues that cry out for a unified approach.

59. The Plaintiffs' cases are exactly the type of cases for which class actions were designed, a large-scale, common dispute where individual actions are inefficient. The Court should certify both proceedings.

60. Court should certify both the Baldwin and Ferguson proceedings.

Part 3: Conclusion

61. The Plaintiffs have addressed each of the Defendants arguments and shown them to be without merit. Recent jurisprudence that has emerged after the initial filings, including *Hill, Payne*, and *Métis Nation*, consistently reinforces the Plaintiffs position: [40]

    a. Courts have jurisdiction and will hear challenges to government vaccination mandates affecting unionized employees and associative rights.

    b. Overlapping proceedings are not an abuse of process when the claims at bar are broader or different (and here, no prior case adjudicated these specific claims).

    c. Claims for misfeasance, *Charter* breaches, and related torts in the pandemic context are being allowed to proceed to trial rather than struck at the pleadings stage.

    d. Class actions are a suitable mechanism to resolve widespread harms from a common policy.

62. The Defendants' response fails to refute the core of the Plaintiffs' cases. They attempt to proceduralize the dispute away (jurisdiction, abuse of process, etc.) and to attack the pleadings, but at each turn, the law and facts permit the Plaintiffs to proceed:

[39] *Fresco v. Canadian Imperial Bank of Commerce*, 2012 ONCA 444 **at** para 103, *Fulawka v. Bank of Nova Scotia***,** 2012 ONCA 443 at para 105

[40] *Hill v. Canada (Attorney General), 2025 FC 242, Payne v. Canada (Attorney General), 2025 FC 5, Saskatchewan (Environment) v. Métis Nation – Saskatchewan, 2025 SCC 4.*

a. This Court does have jurisdiction and is the appropriate forum to decide the legality of the *Orders* and the *Regulation*.

b. These class actions are not duplicative or abusive, they raise crucial issues not decided elsewhere, and this forum can provide comprehensive relief.

c. Each cause of action is anchored in law with supporting factual allegations, easily surpassing the "no reasonable claim" threshold. There are live issues to be tried on misfeasance, privacy, *Charter*, and inducement.

d. The presence of factual disputes and expert disagreements underscores that a summary disposition would be improper, the case needs to be tried on evidence.

e. All class certification prerequisites are met, enabling these many claims to be dealt with together justly and efficiently.

63. For these reasons, the Plaintiffs respectfully request that the Court:

a. Dismiss the Defendants' applications to strike the claims or to summarily dispose of them, and

b. Grant the Plaintiffs' applications for class certification in the Baldwin and Ferguson actions.

64. This will allow the merits of the case to be heard, ensuring accountability and potential redress for the tens of thousands of workers whose rights are at stake. It will also serve the public interest by obtaining clarification from the Court on the lawfulness of the government's actions during the pandemic, a question that extends beyond just the parties to this case.

All of which is respectfully submitted, this 21st day of March 2025.

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Umar A. Sheikh
Lawyer for the Plaintiffs