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F I L E D	FEDERAL COURT COUR FÉDÉRALE October 05, 2022 05 octobre 2022
Stacey Stark	
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Court File No.

FEDERAL COURT

BETWEEN:

KOULA ALDER, JACQUELINE AUVIGNE, CIARA BARRATT, ANDREW BARTELL, DAWSON BASTIAN, JOSEPH BAYDA, CHERYL LYNN BEATTY, BRETT BECKETT, TAMMY BELANGER, JODINA BELANGER, MICHELLE BERTIN, VALERIE BISSONNETTE, RAYMOND BOYD, NEIL BRADFORD, BRIDGET BRECK, WILLIAM BRENT, ROBERT BROWN, KATHERINE BROWN, COLLEEN BRYSON, TOBY-LEE BUDDEN, CHARMAINE BUHLER, BERNARDINE CADIZ, CARMELA CASIMIRRI, DANIELLE CASUGA, SHANNON CHORNEY, ANETA COLE, SANDRA COTE, MIRJANA DAKOVIC, ALYSSA DASILVA, TERRA DAVIS, BRIDGITTE DENEVE, COLETTE DESOUSA, SIMONA DONG, LOUISE DOUCET, JAMIE ELLIOTT, MATTHEW ENGELMANN, ROBERT EUSTACE, SHAILA EWING, REBECCA FALKNER, JEFF FEDORCHUK, RANDY FEHR, VIRGINIA FERGUSON, DORIS FORTIN, MICHAEL FRENA, JESSICA FRIAS, PAM FRY, JACQUELENE GAGLIARDI, ALEX GALVAO, YVON GAUTHIER, KRISTEN GEORGE, ANDREAS GIESBRECHT, KIM GIGANTE, PRISCILA GONZALEZ, CARA GOODE, KIERA GOSSE, IAN GREEN, MONICA GUERRERA, MICHAEL GUSTAVSEN, ANVEET HAJRAN, KRISTINA HALEY, KELSEY HARPER, MARIA HASWELL, DAVID HATHAWAY, LISA HAUSER, ADAM HECKBERT, JACLYN HELFRICH, SHELDON HEMINGWAY, BJARNI HENRIKSON, TANYS HIELKEMA, JANET HIGHGATE, ERIC HILL, LINDSAY HILL, COREY HILLMAN, MELISSA HODDINOTT, DOMINIQUE HOFSTETTER, VANESSA HOUGHTON, MICHAEL HUBER, DARREN HUNTER, JOSEPH JACOBSON, JAYME KESSLER, JUGDEEP KHUNKHUN, KRISTINE KINNER, MATTHEW KIRZINGER, DELLA KRYGER, SHAKTI KULYK, MICHAEL LARSON, ALAN CAMERON LAW, RYAN LEGASSICK, LYNNETTE RAE-ANN LEWIS, TANYA LEWIS, CHERYL LEWIS, SPOMENKA LICINA, LORI ANN LUCAS, SHANNON LYONS, DARREN MACDOUGALL, KRISTI MACLEOD, LARRY MACLEOD, CHRISTENE MADSEN, TARA MAINLAND, ANNA MARCOS MATURINO, JENNIFER MASTERMAN, HEATHER MCCULLOCH, STEPHEN MCKENNA, RANDY MENGERING, JOCELYN MIELNICHUK, ERYN MILLER, JAMES MILLER, ANTHONY MILLWATER, PETER MIS, JEFFREY MOHLAM, CARY MOORE, LILIAN MSIGWA, JAY MURDOCH, BRENNAN NAGY, CHRYSAL NELSON, SAMANTHA NICASTRO, OLENA NIKITINA, KYLEE NORDEN, RHONDA O'LEARY, ERIC ORCHARD, WENDY PARRY, JEAN-CLAUDE PASCHE, CHRISTINA PAUL, DANIEL PETERSEN, LORI LEE PITCHER, DARLENE POIER, TARA-LYNN PRETE, JESSICA MARIE QUADE, JAMIE RAAYMAKER, JACKIE RANDLE, SEAN REID, JULIE REIMER, DARRIN REIMER, SARAH RICHARDSON, ERIKA RILEY, MICHAEL RITCHIE, JEFF ROBERTS, LISA ROGERS, JENNIFER ROINE, MICHELLE RONDQUIST, NICOLE ROSA, ALICJA ROSNOWSKI, WAYNE ROWAN, GAETANNE

SABOURIN, JESSYLYN SANTIAGO, ALICIA SAUNDERS, DOUGLAS SCHMIT, ELIZABETH SCHRETTLINGER, LEON SCHULZ, JEANETTE SCHWARZ, SANDRA SEIBEL, ERIN SHANNON, ANTHEA SIDGWICK, ROB SIMPSON, LISA SIMPSON, CAMERON SMITH, VALERIE ST. JACQUES, MARYN STAMENKOVSKI, BOBBI STAPLES, VERONICA STEPHENS, BRENT STEWART, PATRICIA STUNDEN, DARYL SYMONS, FRANK TALBOT, EYRIN TALBOT, VIVIANA TELLO, DEBRA THOMPSON, JEANNETTE THOMS-KLEIN, WARD TOWER, VAN TRINH, STEVEN VANDERWEL, NADA VIGNJEVIC, IVANA VUKUSIC, SHANNON WHYLIE, DUONG YEE, JAMES ZACKS, ANDREA ZIMMERMAN

Plaintiffs

and

HIS MAJESTY THE KING IN RIGHT OF CANADA, ATTORNEY GENERAL OF CANADA, WESTJET GROUP INC., WESTJET AIRLINES LTD., WESTJET ENCORE LTD., WESTJET VACATIONS INC. and SWOOP INC.

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules, serve it on the plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the Federal Courts Rules.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: _____

Issued by:
(Registry Officer) _____

Address of local office: Canadian Occidental Tower
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3rd Floor
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T2P 3M3

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TO: THE ATTORNEY GENERAL OF CANADA
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Department of Justice Canada
10423 101 Street
3rd Floor, Epcor Tower
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T5H 0E7

TO: THE MINISTER OF TRANSPORT
Transport Canada
330 Sparks St
Ottawa, Ontario K1A 0N5

TO: WESTJET GROUP INC
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Toronto ON M5J 2S1
Canada

TO: WESTJET AIRLINES LTD
Burnet, Duckworth & Palmer LLP
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Calgary, Alberta T2P 1G1

TO: WESTJET ENCORE LTD
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TO: WESTJET VACATIONS INC
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TO: SWOOP INC
Burnet, Duckworth & Palmer LLP
Attention: Colby T. Dewart
Suite 2400, 525 8th Ave SW
Calgary, Alberta T2P 1G1

CLAIM

A. RELIEF SOUGHT BY THE PLAINTIFFS

1. The Plaintiffs claim:

- a. A Declaration pursuant to section 24(1) of the *Constitution Act, 1982* that the Government of Canada's 6 October 2021 announcement that employers in the federally regulated air transportation sector be required to establish vaccination policies ensuring the Plaintiffs were fully vaccinated (the "**Order**"), which violates sections 2(a), 7, 8, and 15 of the Plaintiffs' constitutional rights and freedoms protected by the *Canadian Charter of Rights and Freedoms* (the "**Charter**"), as set out below, and that these violations are not demonstrably justified under section 1 of the *Charter*;
- b. A Declaration pursuant to section 24(1) of the *Constitution Act, 1982* that the WestJet COVID-19 Vaccination Policy (the "**Policy**") that implemented the Order's vaccine requirements violates sections 2(a), 7, 8, and 15 of the Plaintiffs' constitutional rights and freedoms protected by the *Charter*, as set out below, and that these violations are not demonstrably justified under section 1 of the *Charter*;
- c. A Declaration that WestJet Group Inc., WestJet Airlines Ltd., WestJet Encore Ltd., WestJet Vacations Inc., and Swoop Inc. (jointly and severally referred to as "**WestJet**"), His Majesty the King In Right of Canada (the "**Crown**"), and the Attorney General of Canada (the "**Attorney General**") (collectively, jointly and severally, the "**Defendants**") discriminated against the Plaintiffs on the grounds of genetic characteristics, disability, and religion, by adversely differentiating against the Plaintiffs due to their vaccine status contrary to section 7(b) of the *Canadian Human Rights Act* (the "**Act**");
- d. A Declaration that the Policy deprives the Plaintiffs of employment opportunities, on the grounds of genetic characteristics, disability, and religion, due to their vaccine status contrary to sections 10(a) and 10(b) of the *Act*;
- e. A Declaration that the Order violates sections 1(a), 1(b), 1(c) and 2(b) of the *Canadian Bill of Rights* ("**Bill of Rights**"), as set out below;
- f. A Declaration that the Policy violates sections 1(a), 1(b), 1(c) and 2(b) of the *Bill of Rights*, as set out below;
- g. A Declaration pursuant to sections 217, 217.1 and 219(1) of the *Criminal Code of Canada* ("**CCC**") that the Policy violates sections 124 and 125 of the *Canada Labour Code*, specifically sections (q),(s),(w) and (y), wherein the Defendants demonstrated criminal negligence causing harm by not providing the Plaintiffs the necessary "Informed Consent" regarding any of the potential adverse

effects or dangers associated with the vaccines they provided the Plaintiffs as options;

- h. A Declaration pursuant to sections 217, 217.1 and 219(1) of the CCC that the Defendants violated sections 124 and 125 of the *Canada Labour Code*, specifically sections z.03, z.04, z.05, z.06, z.11, z.13 and z.19, by failing to capture within each of the national safety minutes, any discussion to either educate, review, or document any of the potential hazards or dangers associated with their vaccination options on any of the national collective bargaining agencies that operate under WestJet;
- i. A Declaration pursuant to sections 217, 217.1 and 219(1) of the CCC that the Defendants violated sections 124 and 125 of the *Canada Labour Code*, specifically sections (t), (v), (w) and (z), by failing to provide the Plaintiffs with the knowledge and understanding necessary to properly use the newly implemented personal protective equipment, namely the COVID-19 vaccines, and failing to ensure that said personal protective equipment be deemed safe;
- j. A Declaration pursuant to sections 217, 217.1 and 219 of the CCC that the Defendants violated sections 127.1(1) and 128 of the *Canada Labour Code*, by refusing to properly investigate the Plaintiffs' health and safety concerns regarding the vaccine products mandated for use by the Defendants, and instead, deeming the Plaintiffs as "non-compliant" and placing them on leave without pay status;
- k. A Declaration pursuant to sections 217, 217.1 & 219 of the CCC that the Defendants violated subsections 125.1(a)-(g) of the *Canada Labour Code*, by failing to review, document, and disclose to the Plaintiffs the proprietary ingredients recognized as known dangerous goods contained within the vaccines assigned to the Plaintiffs as personal protective equipment, and by failing to inform the Plaintiffs of the potential direct exposure to ethylene oxide as it pertains to the nasopharyngeal swabs used for COVID-19 testing;
- l. A Declaration pursuant to sections 2(g) and 5(1)(f) of the *Assisted Human Reproduction Act*, 2004, wherein the Defendants potentially irreparably and permanently damaged the Plaintiffs' genetic makeup by suggesting, through their vaccination practice, the use of mRNA vaccine technologies from Pfizer and Moderna;
- m. A Declaration pursuant to sections 2(g) and 5(1)(f) of the *Assisted Human Reproduction Act*, 2004, wherein the Crown potentially irreparably and permanently damaged the Plaintiffs' genetic makeup by approving and directing the use of mRNA vaccine technologies from Pfizer and Moderna;
- n. A Declaration pursuant to section 265(1) of the CCC that the Policy violated sections 122.(1) & 122.1 of the *Canada Labour Code*, by not only subjecting the Plaintiffs to confusing and ineffective work place processes and

expectations in relation to their COVID-19 protocols, but also by subjecting the Plaintiffs to psychological violence;

- o. Damages pursuant to section 24(1) of the *Constitution Act*, 1982 for violation of the Plaintiffs' sections 2(a), 7, 8, and 15 *Charter* rights in the amount of \$500,000.00 per Plaintiff.
- p. Damages for violation of the Plaintiffs' rights pursuant to sections 1(a), 1(b), 1(c) and 2(b) of the *Bill of Rights* in the amount of \$500,000.00 per Plaintiff;
- q. Damages for violation of the Plaintiffs' rights pursuant to sections 2, 122, 122(1) 124, 125, 125.1, 127.1(1), and 128 of the *Canada Labour Code* as well as section 217, 217.1, 219, and 265(1) of the *CCC*, in the amount of \$500,000.00 per Plaintiff;
- r. Punitive and exemplary damages in the amount of \$500,000.00 per Plaintiff;
- s. Prejudgment and post-judgment interest pursuant to the *Federal Courts Rules*, as amended;
- t. Costs on a full indemnity scale plus any applicable taxes; and
- u. Such further and other relief as this Honourable Court may permit.

B. DEFINITIONS

2. The following definitions apply for the purposes of this Statement of Claim:

- a. **"Employment Insurance Benefits"** ("EI Benefits") means those benefits established under the *Employment Insurance Act*, SC 1996, c 23;
- b. **"Fully Vaccinated"** means having received the complete series of doses (or a single dose of the Janssen (Johnson & Johnson) COVID-19 vaccine) of a Health Canada approved vaccine that provides protection against COVID-19 and having allowed the time recommended by public health authorities to produce an immune response to COVID-19 elapse (14 days from receipt of a single-dose vaccine or of the second dose of a two-dose series). In time, being Fully Vaccinated may mean having received booster shots, when and as recommended by the applicable public health authorities.
- c. **"Informed Consent"** means the ability to exercise free power of choice, without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion, with sufficient knowledge and comprehension of the elements of the subject matter involved as to enable the individual to make an understanding and enlightened decision.

- d. **“Partially Vaccinated”** means having received the first dose of a two-dose series of a Health Canada approved vaccine that provides protection against COVID-19.
- e. **“Privacy”** means the fundamental right of individuals to create boundaries limiting access to their person, communications, or personal information, including but not limited to, medical and health records.
- f. **“Proof of Vaccination”** means providing to WestJet official documentation issued by the government or the non-governmental entity that is authorized to issue the evidence of COVID-19 vaccination in the jurisdiction in which the vaccine was administered (including a QR code, if issued by the applicable authorities) confirming receipt of the complete series of doses (or a single dose of the Janssen (Johnson & Johnson) COVID-19 vaccine) of a Health Canada approved vaccine that provides protection against COVID-19. In time, this may require providing proof of receipt of booster shots, when and as recommended by the applicable public health authorities.

C. OVERVIEW OF THE ACTION

The Plaintiffs

- 3. All of the Plaintiffs are employees of WestJet and subject to the Policy.
- 4. The majority of the Plaintiffs are neither Partially nor Fully Vaccinated against COVID-19. The Plaintiffs oppose being Partially Vaccinated or Fully Vaccinated (collectively referred to as **“Vaccinated”**) for COVID-19 for reasons which vary, as described below.
- 5. The Plaintiffs all oppose being required to attest to their medical records regarding the COVID-19 vaccination as a broader public policy objective to increase vaccination rates, coerced through the termination of employment and or administrative or disciplinary measures.
- 6. The Plaintiffs claim that vaccination absent informed consent and forced disclosure of their private health information regarding their COVID-19 vaccination status to WestJet, under the threat of administrative and/or disciplinary measures ranging from unpaid leave to termination of employment, constitutes serious human rights and *Charter* violations.
- 7. The Plaintiffs claim that the Policy was part of a broad public policy objective by the federal government through direction from His Majesty the King in Right of Canada to increase vaccination rates of Canadians. Canada did not implement a vaccine mandate to Canadian citizens, rather it directed employers to do so, thereby achieving a mandate of vaccines without having to resort to a Canada-wide mandate.

8. Certain Plaintiffs exercise their work functions remotely, while the remainder do so in person.

The Defendants

9. The Defendant, WestJet Group Inc., is a federally incorporated business governed by the *Canada Business Corporations Act*. Prior to 2020, WestJet Group Inc. operated under the corporate name Kestrel Midco Inc. WestJet Group Inc. is the parent company of WestJet Airlines Ltd. and owns 100% of its voting shares.
10. The Defendant, WestJet Airlines Ltd., is an Alberta Business Corporation and direct subsidiary of WestJet Group Inc. after being purchased by same in 2019. WestJet Airlines Ltd. owns 100% of the voting shares of both WestJet Encore Ltd. and Swoop Inc. WestJet Airlines Ltd. is Canada's second-largest airline.
11. The Defendant, WestJet Encore Ltd., is an Alberta Business Corporation and direct subsidiary of WestJet Airlines Ltd. WestJet Encore Ltd. was formed in 2013 to increase the frequency of regional flights and service routes with less accessibility.
12. The Defendant, WestJet Vacations Inc., is an Alberta Business Corporation and direct subsidiary of WestJet Airlines Ltd. WestJet Vacations Inc. launched in 2006 as "affordable and flexible flight and vacations packages".
13. The Defendant, Swoop Inc., is an Alberta Business Corporation and direct subsidiary of WestJet Airlines Ltd. Swoop Inc. was founded in 2017 as the "ultra low-cost carrier" of WestJet Airlines Ltd.
14. The Defendant, His Majesty the King in Right of Canada (the "Crown"), is represented by
 - a. the Governor General in Council;
 - b. the Attorney General of Canada on behalf of the Governor General in Council;
 - c. the Minister of Health;
 - d. the Minister of Transport;
 - e. the Minister of Public Safety; and
 - f. the Minister of Employment, Workforce Development and Disability Inclusion.

Background of the Order

15. In 1996, the *Canadian National Report on Immunization*, prepared by the Canadian Department of Health, reported that in Canada compulsory vaccination is unconstitutional and cannot be made mandatory because of the Canadian Constitution.

16. On 2 June 2020, Canada's Chief Public Health Officer, Dr. Theresa Tam ("**Dr. Tam**") announced that COVID-19 vaccination would not be mandatory in Canada.
17. On 31 August 2020, the Honourable Patty Hadju, Minister of Health, stated that COVID-19 vaccines would not be mandatory in Canada and that people will have the choice to become vaccinated with a COVID-19 vaccine or not.
18. On 12 February 2021, the Right Honourable Prime Minister Justin Trudeau (the "**Prime Minister**") announced that COVID-19 vaccines would not be mandatory in Canada.
19. On 13 July 2021, the Prime Minister announced that in Canada, people will have a choice to get COVID-19 vaccines and that COVID-19 vaccination mandates would not be implemented in Canada.
20. On 5 August 2021, the Prime Minister announced that he instructed the clerk of the Privy Council to make COVID-19 vaccinations mandatory for all federal employees, employees of federal Crown corporations, and employees of federally regulated industries.
21. On 5 August 2021, Dr. Tam, announced that mandatory vaccination in Canada was necessary for the purpose of public health and for the purpose of protecting the greater community of Canada and the world.
22. On 12 August 2021, Dr. Tam announced the federal government was making the COVID-19 vaccines mandatory in Canada.
23. On 13 August 2021, the Treasury Board Secretariat of Canada announced that mandatory COVID-19 vaccinations were implemented by Canada to ensure protection of public health in Canada and across the world.
24. On 13 August 2021, the Transport Minister announced that mandatory COVID-19 vaccines in the transportation sector will help protect the safety of families, communities and all Canadians and will promote the economic, social, and public health interests of Canada.
25. On 6 September 2021 the Prime Minister announced that the Government of Canada would protect WestJet from legal liability for requiring the vaccination of WestJet employees and in all matters related to the implementation of the Policy.
26. In the months leading up to the issuance of the Order, and in particular on 16, September 2021, the Prime Minister made pejorative and discriminatory statements toward Canadians who made the decision to not receive the Covid-19 vaccine by calling them racists, misogynists and asking if Canadians should tolerate these people, referring to the unvaccinated.

27. On 6 October 2021, the Honourable Chrystia Freeland, Deputy Prime Minister and Minister of Finance ("**Deputy Prime Minister**") announced that the mandatory COVID-19 vaccinations will permit the Canadian government to keep the economy open and keep school-aged children attending in-person schooling.
28. On 29 October 2021, the Minister of Transport, the Honourable Omar Alghabra (the "**Transport Minister**") announced that mandatory COVID-19 vaccinations will keep Canadians safe.
29. On 16 December 2021, the Prime Minister wrote to the Transport Minister, directing that his immediate priority is to enforce vaccination requirements across the federally-regulated transport sector.
30. On 21 January 2022, Dr. Tam announced that the Canadian public health agency would be changing its terminology for COVID-19 vaccination status. The term "fully vaccinated" would be replaced with the term "up-to-date vaccination status" ("**Up-To-Date**") which includes a complete primary series of authorized COVID-19 vaccines and a booster dose of an authorized COVID-19 vaccine ("**Booster**").
31. On 16 June 2022, the Honourable Jean-Yves Duclos, Minister of Health, announced that Canada further revised the definition of Up-To-Date to mean an individual who has received a complete primary series of authorized COVID-19 vaccines, plus a Booster within the previous 9 months, with Booster doses to be administered to that individual every 9 months on an ongoing basis for an indeterminate period of time.
32. The National Advisory Committee on Immunization of Canada ("**NACI**") reports to the Public Health Agency of Canada and Dr. Tam on COVID-19 vaccination in Canada. On 1 September 2022, the NACI announced that people in Canada will require a Booster dose of the COVID-19 vaccine every 90 days to stay Up-To-Date.
33. It was a term of the Order that if the Policy was implemented by federally regulated industries, including WestJet, the government of Canada would not resort to further lockdown measures affecting Canadian businesses, Canadian families, Canadian children and the economy.
34. Under the terms of the Order, WestJet became an agent of the Crown in implementing public health policies on behalf of and for Canada. In the alternative, even if WestJet is not considered an agent of the Crown via the terms of the Order, it has effected Crown public health and economic policy by issuing its COVID-19 vaccination Policy.

The Policy

35. On 8 September 2021, WestJet announced:

[E]ffective October 30, 2021, all WestJet Group employees will be required to be fully vaccinated against COVID-19.

...

Employees who fail to attest their vaccination status by September 24 or achieve full vaccination status by October 30, 2021, will face unpaid leave or termination of employment. As part of its vaccine mandate, the airline will not provide testing as an alternative to vaccination.

36. On 6 October 2021, the Government of Canada enacted the Order, requiring employers in the federally regulated air transportation sector to establish vaccination policies ensuring their employees are fully vaccinated.

37. WestJet proceeded with the implementation of the Policy pursuant to the Order and on 16 October 2021, WestJet released the Policy.

38. Section 1.1 of the Policy, "Background", provides in part:

To date, Vaccination, in combination with public health measures, continue to work to reduce disease spread and severe outcomes regardless of the variant circulating in the community. Evidence continues to demonstrate that a complete series of Health Canada approved COVID-19 Vaccines provides substantial protection against hospitalization and the severe outcomes associated with the virus.

39. Section 1.2, "Overview", falsely and erroneously states:

WestJet, an Alberta Partnership (the "Company") is committed to providing a safe environment for employees, contractors, guests, and members of the general public who interact with the Company, and will not tolerate any unacceptable risks to employees, contractors, guests, or the general public.

...

Vaccination is a key element in the protection of employees, contractors, and guests from the hazard of infection with COVID-19.

40. The Policy required the Plaintiffs to receive the COVID-19 vaccine, a medical treatment, outside the premises of WestJet. The Policy required the Plaintiffs to receive the medical treatment from a health professional operating as an officer, contractor, employee or agent of Canada.

41. The Policy was implemented to further the objectives of Canada, to protect the healthcare system of Canada and to protect the economy of Canada. The Policy was implemented pursuant to the Order for the specific purposes of safeguarding the health of Canadians and to advance the public health policy of Canada. Additionally,

federally regulated employees were used as “examples” by the Crown to demonstrate the necessity to be vaccinated against COVID-19, and the supposed effectiveness of the COVID-19 vaccines.

42. Section 2.1 of the Policy requires, effective 31 October 2021, all WestJet employees “to be Vaccinated with a COVID-19 Vaccine series, subject to accommodations as outlined below.” Proof of vaccination was to be submitted “upon request” of WestJet.
43. Section 2.4, “Non-Compliance”, stated that WestJet employees who failed to provide proof of vaccination would be “subject to discipline up to and including termination of employment for cause.”
44. This Policy unlawfully required every Plaintiff to disclose their private health information, namely their COVID-19 vaccination status, in order to protect the general public, Canada’s economy and increase vaccination rates of Canadians.
45. The Policy has also created a hostile and toxic work environment inside and outside WestJet and no viable alternatives were offered following implementation.
46. The Policy claims to provide accommodations “pursuant to the *Canadian Human Rights Act* and in accordance with the Company’s Accommodation Policy and Procedure.” However, these accommodations were illusory at best, and it has become clear that WestJet failed to take requests for accommodations seriously despite being bound by the *Act*. During its 8 September 2021 announcement, WestJet stated that the airline would not provide testing as an alternative to vaccination. This was despite claiming WestJet was committed to providing a safe environment for employees and would not tolerate any unacceptable risks to employees. Requiring mandatory COVID-19 vaccination directly contradicts this position.
47. While the very act of having to ask for an accommodation is discriminatory as the individual is forced to disclose their personal information, many Plaintiffs applied for accommodation under the *Act*; the vast majority of them were denied despite legitimate grounds.
48. The Policy discriminates against an identifiable group of Canadians (those who have not received a COVID-19 vaccine) and does not provide exemptions for those who have natural immunity to COVID-19, those with conscientious objections, those with religious objections, those working remotely or for those with little to no contact with other colleagues or members of the general public.
49. The Policy also discriminates by mandating that the Plaintiffs attest to their medical status regarding the COVID-19 vaccine. Those who did not were punished financially through leave without pay and threatened termination. This discriminates against an identifiable group based upon medical records.
50. The Plaintiffs are subject to the Policy, which requires that they be Fully Vaccinated against COVID-19 as defined above and that they disclose their vaccination status to WestJet “in an approved method” and “upon request”.

51. Pursuant to the Policy, the Plaintiffs were placed on involuntary unpaid leaves of absence despite there being no authorization within any agreement between the Defendants, the Plaintiffs' Union, or the Plaintiffs.
52. The Policy does not allow mandatory COVID-19 testing to be implemented as an appropriate alternative to the COVID-19 vaccination for those who do not consent to vaccination or who do not consent to providing their vaccination status to their employer.
53. The Policy discriminates against those who do not consent to the vaccination or who do not consent to providing their vaccination record to their employer, effectively forcing these individuals to consent to a medical treatment they cannot accept or risk losing their employment.
54. On 15 October 2021, Employment and Social Development Canada ("ESDC") announced new codes for the Record of Employment ("ROE") relating to the termination of employees in relation to COVID-19.
55. The ESDC's announcement demands that employers who terminate an employee because of failure to comply with a mandatory COVID-19 vaccination policy are to indicate **code M** (dismissal) on that employee's ROE, disqualifying them from eligibility.
56. The ESDC website has been further updated to advise potential claimants that "[i]n most cases, if you lose or quit your job because you didn't comply with your employer's mandatory COVID-19 vaccination policy, you won't be eligible for EI regular benefits."
57. The ESDC website states:

When the employee doesn't report to work because they refuse to comply with your mandatory COVID-19 vaccination policy, use **code E (quit)** or **code N (leave of absence)**.

When you suspend or terminate an employee for not complying with your mandatory COVID-19 vaccination policy, use **code M (dismissal or suspension)**.

If you use these codes, we may contact you to determine:

- if you had adopted and clearly communicated to all employees a mandatory COVID-19 vaccination policy
- if the employees were informed that failure to comply with the policy would result in loss of employment
- if the application of the policy to the employee was reasonable within the workplace context
- if there were any exemptions for refusing to comply with the policy

58. The ESDC uses the facts provided by the employer and the terminated employee to determine if the employee will be entitled to EI Benefits, which they will likely not be, by the ESDC's own admission.
59. The Honourable Carla Qualtrough, Minister of Employment, Workforce Development and Disability Inclusion, stated in a CBC Radio interview on 21 October 2021 that employees who do not comply with the Policy will be ineligible for EI Benefits, stating that if getting vaccinated is "a condition of employment that hasn't been met and the employer [is] choosing to terminate someone for that reason, [then that] would make that person ineligible for EI". This also does not explain the main reason for the Policy, which was to protect Canada's citizens from COVID-19, and its economy from lockdowns and mandates. The Policy was in fact purposed to increase vaccination rates to combat COVID-19, and not solely to protect employees of federally regulated employers.
60. As of 31 October 2021, the Plaintiffs all lost their sole or primary source of income and were rendered ineligible for EI Benefits.
61. The Plaintiffs all oppose the blanket Policy requirement to reveal their medical records and say that being forced to provide medical information in order to protect the public and greater Canadian community is discriminatory.
62. Most of the Plaintiffs are members of the following unions:
- a. CUPE Local 4070;
 - b. Air Line Pilots Association; and
 - c. UNIFOR.
63. The Policy is not expressly or implicitly, directly or indirectly part of any collective agreements between the Plaintiffs' employers and the Plaintiffs unions.
64. The subject matter of this Statement of Claim is not directly or indirectly, expressly nor tacitly, addressed or provided for in any collective agreement between the unionized Plaintiffs, their respective unions and WestJet.
65. The dispute raised in this Statement of Claim is not a dispute within the meaning of the Plaintiffs' collective agreements. Rather, the Policy was implemented for broad, public policy reasons; namely public health objectives, political objectives, and economic objectives. Collective bargaining agreements are interpreted liberally by Canadian case law, but still only within the bounds of labour and employment matters, not provincial public health or economic policy.
66. No grievance, arbitration, nor adjudication procedure provided for in the Plaintiffs' respective collective agreement or any applicable law applies to the present issue.

67. Consequently, no arbitrator, adjudicator, nor board has exclusive jurisdiction over the issues raised in the present Statement of Claim.

The Vaccines

68. Four vaccines were authorized in Canada to treat symptoms of COVID-19 at the time the Policy was implemented: AstraZeneca, Moderna, Pfizer, and Johnson & Johnson. All COVID-19 vaccines are still undergoing clinical trials until 2023 or later. None of these vaccines prevent the infection or transmission of COVID-19, or any of its variants.
69. These vaccines are experimental. Long-term effects have not been sufficiently studied and there are significant risks. These vaccines have not undergone the same stringent scientific approval process by Health Canada as have previous vaccines and medications. The vaccines could cause side effects that remain unknown at this time due to their relatively recent development. No one can be certain about the long-term effects of a vaccine that has not been in existence for the long term and has not been studied over a span of years.
70. The COVID-19 vaccines recommended by Canadian public health authorities, are also known to cause severe adverse effects and injuries for some individuals. Health Canada has warned about various serious adverse reactions from the COVID-19 vaccinations.
71. The recent and continued release of Post Authorization Adverse Events Reports, by the US Food and Drug Administration (“FDA”) regarding the Pfizer COVID-19 vaccine, indicates that adverse reactions and side-effects, up to and including death, are not only more severe, but more frequent than anticipated based on initial data released to the public. Reported serious adverse effects include myocarditis, pericarditis, Bell’s Palsy, anaphylaxis, dyspnea, thrombosis, immune thrombocytopenia, Guillain-Barré syndrome, hypoesthesia, urticaria, arrhythmia, cardiogenic shock, coronary artery disease, haemorrhaging, hypertransaminasaemia, and venous thromboembolism. Further, the FDA’s own documentation reports that 1,223 deaths were reported with 9,400 cases having an unknown outcome.
72. Vaccinated and unvaccinated Canadians can be infected with and transmit COVID-19. The vaccines do not provide full immunity to COVID-19 or its known variants. They merely claim to provide some “benefits” or “protection” that in certain circumstances at best lessens severity of symptoms or potentially reduces the risk of hospitalization.
73. The “benefits” or “protection” of the vaccines vary depending on numerous factors that are still being observed and studied, including any underlying health conditions, the individual’s age, and when the vaccine was administered in relation to any variant of concern.

74. The policies relating to mandatory COVID-19 vaccination for the Plaintiffs and their potential to obtain EI benefits are rapidly evolving.

Charter Violations

75. The Plaintiffs say that their *Charter* right to freedom of conscience protected under section 2(a) is violated by the Order and the Policy requiring attestation of being Vaccinated with Proof of Vaccination as this offends their conscientiously held beliefs in a matter that is more than trivial or insubstantial.

76. The Plaintiffs say that their *Charter* right to freedom of religion as protected under section 2(a) is violated by the Order and the Policy requiring attestation of being Vaccinated with Proof of Vaccination as this offends their sincerely held religious beliefs in a manner that is more than trivial or insubstantial.

77. The Plaintiffs say that their right to life interest as protected under section 7 of the *Charter* is violated by the Order and the Policy requiring attestation of being Vaccinated with Proof of Vaccination as it is state action imposing an increased risk of death not in accordance with the fundamental principles of justice.

78. The Plaintiffs say that their right to liberty under section 7 of the *Charter* is violated by the Order and the Policy requiring attestation of being Vaccinated with Proof of Vaccination as this interferes with the protected sphere of personal autonomy involving private choices and the right to refuse medical treatment. The Order and Policy are state interference that are not in accordance with the principles of fundamental justice.

79. The Plaintiffs say that their right to security of the person interest protected under section 7 of the *Charter* is violated by the Order and the Policy requiring attestation of being Vaccinated with Proof of Vaccination as this interferes with personal autonomy, and one's ability to control one's own physical or psychological integrity. Such state action that seriously impairs one's physical health and has caused severe psychological harm that is not in accordance with the principles of fundamental justice. It has also caused the deprivation of economic rights fundamental to human survival that are not in accordance with the principles of fundamental justice.

80. The Plaintiffs say that their privacy rights protected by sections 7 and 8 of the *Charter* are violated by the Order and the Policy requiring attestation of being Vaccinated with Proof of Vaccination as they require the disclosure of personal medical information.

81. The Plaintiffs claim discrimination, in violation of equality rights under section 15 of the *Charter* by the Order and the Policy requiring attestation of being Vaccinated with Proof of Vaccination. Being forced to either attest or be put on unpaid leave of absence under the threat of discipline or termination is discrimination based on medical status.

82. The Plaintiffs say that the Order and the Policy is a form of state control and state sanction for exercising their *Charter* rights, by suspending them without pay as of 31 October 2021 and depriving them of any EI Benefits.
83. The Order and Policy violate the Plaintiffs' *Charter* rights and punish them for the lawful exercise of their fundamental constitutional rights and freedoms.
84. The Order and Policy are not demonstrably justified under section 1 of the *Charter*. They are not in the public interest, nor a rational means to pursue the stated objective as there is no evidence to show that terminating the employment of those who do not attest to being vaccinated reduces the spread of COVID-19. Neither the Order nor the Policy cause minimal impairment to the rights of the Plaintiffs. Further, the deleterious and negative impacts of the Order and the Policy are disproportionate to the minimal or non-existent benefits they may have.

Human Rights Violations

85. The Order and Policy violate the Plaintiffs' human rights and punish the Plaintiffs for the lawful exercise of their fundamental human rights and freedoms.
86. The Plaintiffs say that their human rights and freedoms under the *Bill of Rights* have been violated, namely:
- a. The human right to life, liberty, security of the person protected under section 1(a) is violated by the Order and the Policy requiring attestation of being Vaccinated with Proof of Vaccination as it is an action imposing an increased risk of death not in accordance with due process of law.
 - b. The human right to life, liberty, security of the person protected under section 1(a) is violated by the Order and the Policy requiring attestation of being Vaccinated with Proof of Vaccination as it is an action imposing an increased risk of physical harm not in accordance with due process of law.
 - c. The human right to security of the person under section 1(a) is violated by the Order and the Policy requiring attestation of being Vaccinated with Proof of Vaccination as this interferes with personal autonomy, and one's ability to control one's own physical or psychological integrity. Such action seriously impairs one's physical health and has caused severe psychological harm that is not in accordance with due process_of law.
 - d. The human right to security of the person and enjoyment of property under section 1(a) is violated by the Order and the Policy requiring attestation of being Vaccinated with Proof of Vaccination as it has caused the deprivation of economic rights fundamental to human survival that is not in accordance with due process of law.
 - e. The human right to liberty under section 1(a) is violated by the Order and the Policy requiring attestation of being Vaccinated with Proof of Vaccination as

this interferes with the protected sphere of personal autonomy involving private choices and the right to refuse medical treatment. The Order and Policy are interference that are not in accordance with due process of law.

- f. The human right to equality before the law under section 1(b) is violated by the Order and the Policy requiring attestation of being Vaccinated with Proof of Vaccination. Being forced to either attest or be put on unpaid leave of absence under the threat of discipline or termination is discrimination based on medical status.
- g. The human right to freedom of religion under section 1(c) is violated by the Order and the Policy requiring attestation of being Vaccinated with Proof of Vaccination as this offends the Plaintiffs sincerely held religious beliefs.
- h. The human right to be free from the imposition of cruel and unusual treatment or punishment under section 2(b) is violated by the Order and the Policy requiring attestation of being Vaccinated with Proof of Vaccination. Being forced to be Vaccinated or be put on unpaid leave of absence under the threat of discipline or termination is cruel and unusual treatment or punishment.

D. CRIMINAL ASSAULT

87. Forcing a medical intervention on employees under threat of loss of livelihood is a clear violation of the CCC which states in part:

265(1) A person commits an assault when

(a) Without consent of another person he applies force intentionally to the person directly or indirectly...

265(3) For the purposes of this Section, no consent is obtained where the complainant submits or does not resist by reason of...

(d) The exercise of authority. [emphasis added]

88. Forcing employees to be vaccinated under threat of loss of livelihood is a violation of the CCC. Every one of the Defendants who supports the Policy supports the criminal assault of his or her fellow Canadians.

89. Any alleged criminal misconduct must be investigated thoroughly. It is unlikely that such action has been taken by police services, or internal investigations by the Defendants. However, such investigations should have been commenced

immediately upon the possible misconduct of the Defendants in implementing the Order and the Policy on the Plaintiffs.

E. DUTY OF PERSONS DIRECTING WORK

90. The CCC imposes a duty on all organizations and individuals directing the work of others in Canada to take reasonable steps ensuring the safety of their workers. The CCC states:

217.1 Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.

91. The experimental nature of the Canadian COVID-19 vaccination program was evident from the outset. The Astra-Zeneca vaccine was withdrawn from circulation in Canada because it caused thrombosis in 1 out of 58,000 citizens over the age of 80. That vaccine was then mixed and matched with Pfizer and Moderna vaccines, without adequate research having been done as to possible adverse effects.

92. There are recent admissions that the Pfizer and Moderna vaccines are clearly linked to myocarditis in 18 to 24-year-olds. Further evidence has emerged that those previously infected with COVID-19 are at increased risk or harm from subsequent mRNA vaccines', including myocarditis.

93. By forcing its loyal employees to take experimental injections as a requisite to employment, WestJet, in concert with the Crown has breached its legal duty to take reasonable steps to prevent bodily harm to its employees contrary to section 217.1 of the CCC.

F. CHARTER VIOLATION DAMAGES, HUMAN RIGHTS VIOLATION DAMAGES AND AGGRAVATED, PUNITIVE AND "BAD FAITH" DAMAGES

94. The Plaintiffs have suffered significant mental anguish as a result of the rapidly evolving situation. They are left to contemplate whether or not they will have the funds available to meet their basic needs, including the purchase of food, clothing, and shelter for themselves and their families.

95. The Plaintiffs claim punitive damages for the prejudice suffered by them and their families as a result of the implementation of the Order and the Policy, which is discriminatory. The Plaintiffs reserve their rights to amend the amounts claimed for punitive damages to account for future economic losses, including but not limited to loss of income due to suspension or dismissal as a result of their refusal to comply with the Policy.

96. In addition to damages for *Charter* and human rights violations, the Plaintiffs claim further aggravated and punitive damages stemming from the unduly harsh, insensitive manner in which the Defendants carried out the termination.
97. The Plaintiffs have suffered measurable damages, including mental distress, anxiety, and, in particular, injury to dignity and self-respect. The Plaintiffs are therefore entitled to significant damages due to the manner in which WestJet suspended and/or terminated their employment, including a claim for punitive aggravated damages arising from flagrant human rights and *Charter* violations.
98. Scientific data shows that the COVID-19 virus poses no serious health risk to 99.97% of Canadians, and that nearly all deaths directly attributable to the virus occur in persons over 80 years of age suffering from multiple co-morbidities and compromised immune systems. Such persons are not part of the Canadian workforce. The risk of serious illness or death to persons under the age of 60, which includes the majority of the Plaintiffs, remains vanishingly low.
99. The best scientific data available shows that there is but a 0.7% risk of asymptomatic spread of the COVID-19 virus, even among persons living in the same household.
100. There is no scientific data to support the conclusion that the COVID-19 vaccines have had any impact upon reducing the spread of the virus. In fact, Israel is the most universally vaccinated nation in the world, and yet is experiencing a huge spike in new cases.
101. There are many reasonable and practical alternatives to mandatory vaccination that are more effective at controlling the spread of the virus among the Plaintiffs, all of which are far less prejudicial than summary termination of the Plaintiffs exercising their human right and civil liberty to not attest as to their medical record status regarding the COVID-19 vaccination.
102. The collection of vaccine status is not confidential. When an employee is placed on unpaid leave, their medical and vaccination status is immediately apparent.
103. As a result of these breaches, the Plaintiffs have each suffered the following damages:
- a. Severe and permanent psychological, physical and emotional trauma;
 - b. Loss of employment opportunities;
 - c. Worsening physical health because of inadequate medical support;
 - d. Threats and assaults;
 - e. Depression;
 - f. Anxiety;
 - g. Loss of sleep;

- h. Loss of trust in others;
 - i. Loss of self-confidence;
 - j. Loss of income;
 - k. Loss of opportunity for future income;
 - l. Post-traumatic stress disorder; and
 - m. Other such damages as will be proven at the trial of this action.
104. The Defendants actively, knowingly, and willfully participated in harming the Plaintiffs. The Defendants' conduct was high handed and discriminatory.
105. The Plaintiffs seek all of their common law and or statutory entitlements.
106. The Plaintiffs plead and rely upon the following:
- a. *Federal Courts Act*, R.S.C. 1985, c. F-7;
 - b. *Federal Courts Rules*, SOR/98-106;
 - c. *Constitution Act, 1867*, 30 & 31 Victoria, c. 3 (UK);
 - d. *Constitution Act, 1982*, s. 35(1), being Schedule B to the *Canada Act, 1982* (UK) c. 11;
 - e. *Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c. 11, s. 91(24);
 - f. *Canadian Human Rights Act*, R.S.C., 1985, c. H-6;
 - g. *Canadian Bill of Rights*, S.C. 1960, c. 44;
 - h. *Financial Administration Act*, R.S.C., 1985, c. F-11;
 - i. *Criminal Code*, R.S.C., 1985, c. C-46;
 - j. *Canada Labour Code* R.S.C., 1985, c. L-2;
 - k. *Genetic Non-Discrimination Act*, S.C., 2017, c. 3;
 - l. *Assisted Human Reproduction Act*, S.C., 2004, c. 2; and
 - m. Such further and other authorities and legislation as counsel may advise and this Honourable Court may accept.

The Plaintiffs propose that this action be tried at Calgary, Alberta.

3rd October 2022



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