

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

DINA CHECK, on behalf of Minor MC,	AMENDED COMPLAINT
Plaintiff,	Docket No. 13-CIV-00791- WFK-LB
-against-	Hon. William F. Kuntz, U.S.D.J.
NEW YORK CITY DEPARTMENT OF EDUCATION; ERIC T. SCHNEIDERMAN, in His Official Capacity as Attorney General, State of New York	
Defendants.	Hon. Lois Bloom, U.S.M.J.

-----X

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x AMENDED COMPLAINT

NICOLE PHILLIPS, Individually and on behalf of BP and SP, Minors;	Docket 12-civ-00098-WFK-LB
Plaintiffs,	
-v.-	Hon. William F. Kuntz, U.S.D.J.
THE CITY OF NEW YORK; ERIC T. SCHNEIDERMAN, in His Official Capacity as Attorney General, State of New York, NIRAV R. SHAH, in His Official Capacity as Commissioner, New York State Department of Health,	Hon. Robert M. Levy, U.S.M.J.
Defendants.	

-----x

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x AMENDED COMPLAINT

FABIAN MENDOZA-VACA, Individually and on behalf of MM and VM, Minors;	Docket 1:12-cv-00237-WFK-LB
Plaintiffs,	
-v.-	Hon. William F. Kuntz, U.S.D.J.

THE CITY OF NEW YORK;  
ERIC T. SCHNEIDERMAN, in His Official Capacity as  
Attorney General, State of New York, NIRAV R. SHAH,  
in His Official Capacity as Commissioner, New York State  
Department of Health,

Hon. Robert M. Levy, U.S.M.J.

Hon. Robert M. Levy, U.S.M.J.  
Defendants.

-----X

Plaintiffs, by and through their attorney, allege as follows:

### **Nature of Action**

- 1) This action involves alleged constitutional, statutory and human rights violations stemming from a denial for the Plaintiffs to religious and/or medical exemption(s) from vaccines required to attend school. The collective actions of all the Defendants named herein are alleged to violate the New York State Public Health Law Section 2164(7)(9), New York City and New York State Human Rights laws, New York State Civil Rights Laws and the First, Ninth, and Fourteenth Amendments to the United States Constitution. Defendant City of New York [“Defendant City”] refuses to permit Plaintiffs' children to remain in their school(s) unless the children are vaccinated even though all Plaintiffs hold sincere and genuine religious objections contrary to the practice of vaccinating, and in Plaintiff’s Check’s case there is an additional, valid medical reason for abstaining from childhood immunizations. New York State statute provides for both a medical and religious exemption from vaccines and Plaintiff Check has both.
- 2) All of the Plaintiffs claim that they and their families fall within the religious exemption provision of the statute and claim to have rights of bodily autonomy, privacy and a substantive due process right that allows for them to refuse unwanted vaccines, and that

Defendant City is impermissibly, unconstitutionally, arbitrarily, unreasonably and capriciously denying the medical and religious exemptions thus violating Plaintiffs' rights to the statutorily-provided exemptions, and in violation of their guaranteed rights under the State of New York and United States Constitution(s). NYS Public Health Law sections 2164 (7) (9) is unconstitutional both facially and as applied to the Plaintiffs in this matter. The Defendant Attorney General and Defendant Commissioner of Health are by enforcing these statute(s) against Plaintiff violating the First, Ninth and Fourteenth Amendments rights of the Plaintiffs.

### **Jurisdiction and Venue**

- 3) This case involves questions of law pursuant to the First, Ninth, and Fourteenth Amendments to the United States Constitution by way of 42 U.S.C. § 1983, as well as state Constitutional, statutory, and regulatory interpretation and preemption issues, giving this Court subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 over the federal claims and supplemental jurisdiction pursuant to 28 U.S.C. § 1367.
- 4) Upon information and belief, Defendant City is a duly-organized City situated in New York State and organized by New York State law, subjecting Defendant City to general personal jurisdiction by this Court.
- 5) Upon information and belief, Defendants Attorney General and Health Commissioner work in capacities organized by New York State law, subjecting them to specific personal jurisdiction by this Court.
- 6) All acts as alleged against Defendants were committed in New York State within the State of New York, subjecting Defendants to specific personal jurisdiction by this Court.

- 7) All acts alleged against Defendants were further committed in Queens County and Richmond County, making venue proper in the Eastern District of New York (Brooklyn Division).

### **Parties**

- 8) Plaintiff Check is the natural parent and guardian to her minor child (MC) who has been excluded from the Defendant City's school because the child is not vaccinated.
- 9) Infant Plaintiff Check was attending school in New York City since September of 2010 for two years on a previously granted religious exemption to vaccines, but the religious exemption was revoked in September of 2012 as a result of an alleged paperwork error on the part of the Defendant City's school nurse.
- 10) Plaintiff Check's daughter also has specific medical conditions and contraindications to vaccines confirmed by her treating pediatric physician which state it would be potentially "life threatening" to vaccinate infant Plaintiff with the battery of vaccines required under the NYC Childhood Immunization Program estimated to be more than 36 vaccines of over 70 different diseases in the form of mists, injections and cocktails.
- 11) Both medical and religious exemptions available under the state statute apply to Plaintiff Check because she has both reasons for refusing vaccines, and both are allowable under the New York State Public Health Law Section 2164.
- 12) The Defendants actions in excluding the Plaintiff's children from school and improperly denying the exemptions are the events that gave rise to this Amended Complaint. At all

times Plaintiff Check hereinafter was domiciled with her daughter as citizens of the State of New York.

13) Plaintiff Phillips is the natural mother to her two (2) minor children designated in this action as who had been granted a religious exemption to vaccines by the Defendant City of New York on or about October of 2008.

14) Plaintiff Phillips however is in effect being denied the benefits of the religious exemption because their children have repeatedly been improperly excluded from school each time another child allegedly became ill with a so-called “vaccine preventable illness.” During these events that gave rise to this Verified Complaint, and at all times hereinafter, Plaintiff Phillips was domiciled with her two children as citizens of the State of New York.

15) Plaintiff Mendoza-Vaca is father to his two minor children designated in this proceeding (“Mendoza-Vaca Plaintiffs”), who were also granted religious exemption to vaccines by the Defendant, but their children likewise were improperly excluded from their schools each time another child allegedly became ill with a so-called “vaccine preventable illness” during the events that gave rise to this Verified Complaint and at all times hereinafter Plaintiff Mendoza-Vaca was domiciled with his two minor children as citizens of the State of New York.

16) Defendant City has promulgated regulations and rules and through its administrative agencies, enforces the regulation(s) and rules in concern, specifically New York City Chancellor’s Regulation A-701(III)(A)(4)(c), that is alleged to be unconstitutional facially and as applied to the Plaintiffs in the specific situation in question.

17) Defendant Attorney General enforces New York State Public Health Law Section 2164, which requires parents to have an estimated 36 vaccines injected into their children for more than 70 different diseases by the age of five before any child can attend any New York State school.

18) In the alternative to the vaccines in order to obtain an exemption parents must subject themselves to an unreasonable, ad hoc medical evaluation(s) and/or unconstitutional “religion test” to demonstrate the sincerity of their religious beliefs contrary to vaccinating. This application of the statute is both unconstitutional on its face and as applied to the Plaintiffs.

19) Defendant Shah (hereinafter “Commissioner”), the Commissioner of the New York State Department of Health, enforces 10 NYCRR Section 66-1.10, which excludes children from school during periods of so-called outbreaks of certain illnesses. This regulations is both unconstitutional on its face and as applied and is preempted by Public Health Law Section 2164.

### **Factual Allegations**

20) All of the Plaintiffs have demonstrated to the Defendant City that they possess sincere and genuine religious beliefs contrary to the practice of vaccinating. Said beliefs are imputed to all of the minor children, including all minor children named in this Complaint entitling them to the religious exemption allowable under state statute.

21) All Plaintiffs applied for a religious exemption from their respective public schools in Queens, New York, and Staten Island, New York (hereinafter “Schools”), operated by Defendant City.

22) All Plaintiffs previously submitted documentation to School that reflected and detailed said religious beliefs. Plaintiffs Phillips and Plaintiffs Mendoza-Vaca were granted religious exemptions.

23) As to Plaintiff Check, the Defendant City previously allowed for Infant Plaintiff Check to attend school under a religious exemption from the required vaccines, but later thereafter revoked Defendant Check's religious exemption in the fall of 2012 after the child had been attending school in New York City for over two years under the previously granted religious exemption from vaccines.

24) Plaintiff Check appealed the denial of the religious exemption which Defendant City upheld.

25) Defendant City alleged that Plaintiff Check's beliefs were not religious in nature, and that Defendant Check only applied for the religious exemption on behalf of her daughter because she had been denied a purported application for a medical exemption allegedly submitted in error by the school nurse at Infant Plaintiff's school without her mother's consent or knowledge on or about September of 2012.

26) Defendant City refused to consider or recognize that Infant Plaintiff Check had been attending school in New York City with a previously obtained religious exemption from vaccines pursuant to NYS PHL 2164 (9).

27) Upon information and belief, sometime during the fall of 2012 the school nurse where Infant Plaintiff Check was attending school received medical information from the child's treating physician in connection with her 504 education plan.

- 28) Upon information and belief, the school nurse allegedly and inadvertently submitted the 504 medical documentation and paperwork, without Plaintiff Check's consent or knowledge, seeking a medical exemption from Defendant City for Plaintiff Check's daughter.
- 29) Prior to the fall of 2012, Infant Plaintiff Check had been attending preschool in New York City since 2010 under a formerly-granted religious exemption, and her mother had no need to apply for a medical exemption having been granted the former religious exemption although Defendant Check is eligible to and entitled to both under the statute.
- 30) Pursuant to New York State Public Health Law as enforced by Defendant Attorney General, Defendant City thereafter subjected Plaintiff Check to a "religion test" in order to ascertain the sincerity of Plaintiff Check's religious beliefs contrary to vaccinating. Defendant City failed Plaintiff Check deeming her religious beliefs insincere and revoked the previously granted religious exemption.
- 31) Specifically, Defendant City's health coordinator who denied Plaintiff Check's religious exemption indicated Plaintiff Check did not assert that the tenets of Catholicism prohibit immunization, and it was her understanding that all New York City Catholic school require immunization in the normal course.
- 32) The actions of the Defendant City's health coordinator in denying the religious exemption for Plaintiff Check violated her constitutional right of religious freedom guaranteed by the First Amendment. *Sherr v. Northport-East Northport Union Free School Dist.*, 672 F.Supp. 81,92 (E.D.N.Y.1987), *Farina v. Board of Education of City of New York*, 116 F.Supp.2d 503 (2000).



- 33) Pursuant to New York State Public Health Law as enforced by Defendant Attorney General, Defendant City also improperly denied the purported application for a medical exemption and wrongfully excluded Infant Plaintiff from school deeming her ineligible for either the medical or the religious exemption(s).
- 34) With regard to the Plaintiffs Phillips and Mendoza-Vaca families, although both families have been granted religious exemptions by Defendant City to the subject vaccination requirements they have been denied the benefit of the exemptions by the children being excluded from school each time another child at their school reports a suspected case of a so called “vaccine preventable disease.”
- 35) Upon information and belief, Plaintiff Phillip’s children were excluded from school in November of 2011 because a vaccinated classmate had allegedly contracted chicken pox an ordinarily benign childhood illness.
- 36) This came after Plaintiff Phillip’s child, BP, had been excluded for over a month in the 2007-08 academic year under the same rules and regulations. These exclusions are unreasonable and result in a constructive denial of the benefits of the religious exemption and an impermissible burdening of Plaintiffs’ religious beliefs contrary to vaccinating.
- 37) Janet Caraisco, Ed.D., Principal at Phillip’s school (hereinafter “Principal”) claimed that she was acting under color of Chancellor’s Regulation A-701(III)(A)(4)(c), covering exclusions during outbreaks of disease preventable by vaccination against the Phillips Plaintiff.
- 38) In January 2012, the Mendoza-Vaca Plaintiff’s children were also excluded from school for an indefinite period of time when a student at their school contracted the chicken pox

effectively likewise constructively denying the families the benefits of the religious exemption and impermissibly burdening their religious beliefs contrary to vaccinating.

- 39) The applicable regulation states in subsection (i), “Exclusions during Outbreaks of Diseases Preventable by Vaccination: The DOHMH has the right to require a school to exclude a student from the school if a student is granted either a medical or religious exemption and another student in the school is diagnosed with a vaccine preventable disease (e.g., chickenpox, measles, mumps).”
- 40) The regulation refers to “outbreaks,” but upon information and belief, only one child was diagnosed with the chicken pox which is not an “outbreak.”
- 41) Furthermore, New York State Public Health Law Section 2164 subsections (2), (7), (8) and (9) provide as follows, in relevant part:
- (2) “Every person in parental relation to a child in this state shall have administered to such child an adequate dose or doses of an immunizing agent against poliomyelitis, mumps, measles, diphtheria, rubella, varicella, Haemophilus influenzae type b (Hib), pertussis, tetanus, pneumococcal disease, and hepatitis B, which meets the standards approved by the United States public health service for such biological products, and which is approved by the department under such conditions as may be specified by the public health council.”
- (7) “No principal, teacher, owner or person in charge of a school shall permit any child to be admitted to such school without the certificate provided for in Subdivision 5 of this Section or some other acceptable evidence of the child’s immunization against poliomyelitis, measles, diphtheria, rubella...”
- (8) “If any physician licensed to practice medicine in this state certifies that such immunization may be detrimental to a child’s health, the requirements of this section shall be inapplicable until such immunization is found no longer to be detrimental to the child’s health.”
- (9) “This section shall not apply to children whose parent, parents, or guardian hold genuine and sincere religious beliefs which are contrary to the practices herein required, and no certificate shall be required as a prerequisite to such children being admitted or received into school or attending school.”

- 42) The New York State Legislature could have included provisions for schools to exclude student when their classmates had illnesses considered vaccine-preventable.
- 43) The New York Public Health statute never mentions the ability of schools to exclude children who receive the religious exemption, indicating field preemption that would invalidate Defendant City and Defendant Shar's rules and regulations.
- 44) Defendant Commissioner enforces 10 NYCRR 66-1.10, which states in pertinent part, “(a) In the event of an outbreak of diphtheria, polio, measles, rubella or mumps in a school, the commissioner may order the appropriate school officials to exclude from attendance all students without documentation of immunity, as specified in section 66-1.3(a) or (b) of this Subpart, including those who have been excused from immunization under section 66-1.3(c) or (d) of this Subpart.
- (b) The exclusion shall continue until the commissioner determines that the danger of transmission has passed or until the documentation specified in section 66-1.3(a) or (b) of this Subpart has been submitted.”

The actions of the Defendants in excluding the Plaintiffs Phillips and Mendoza-Vaca from school violated the Plaintiffs' First, Ninth, and Fourteenth Amendment substantive due process rights.

- 45) Plaintiffs have faith in a belief system contrary to the practice of vaccinating bringing the Plaintiffs within the above-mentioned statutory exemptions allowable in Public Health Law 2164 Section (8) and (9), thereby bringing Plaintiffs within the statutory religious exemption set forth in Public Health Law Section 2164(9) and allowing for the exemption.

46) The Phillips and Mendoza-Vaca Plaintiffs' children were excluded from school and will be continued to be excluded at any time another child becomes ill in their schools with a purported "vaccine-preventable illness" pursuant to the Chancellor's Regulation at issue impermissibly burdening their religious beliefs.

47) Plaintiff Check's daughter is now excluded from the Defendant City's school absent relief from this Court in the form of a permanent injunction ordering Defendant City to admit her to its schools under a medical or religious exemption to which Plaintiff Check is eligible for both.

48) Because of the sincere and genuine religious beliefs contrary to vaccinating, Plaintiffs do not intend to have their children vaccinated. Thus future exclusions of their children from school are likely as well.

### **FIRST CAUSE OF ACTION**

(Violation of New York State Public Health Law Section 2164(9) by

All Plaintiffs against All Defendants)

49) Plaintiffs reiterate and restate the allegations in the Amended Complaint in previous paragraphs and incorporates them therein.

50) Defendant City, by and through its agents, servants and employees have violated New York State Public Health Law Section 2164, applying it in an incorrect manner, and attempting to deprive Plaintiffs of their statutory, continuing rights to a religious exemption from vaccines for school admission.

51) Plaintiffs have religious beliefs contrary to vaccinating entitling their families to the statutory religious exemption from vaccines.

52) The state legislature could have included provisions for temporarily excluding children from school in the case of an “outbreak” but did not include any exclusion provisions, and one or two cases of an ordinarily benign childhood illness such as chicken pox does not constitute a public threat.

53) The state statute does not provide for excluding children from school under any circumstances, preempting the field for vaccine exemptions and prohibiting regulations such as the local Chancellor’s Regulation in question.

54) Therefore, it is respectfully submitted that the statute intends to preempt the Chancellor's regulation which claims to permit removal of students from schools during “outbreaks.”

55) Defendant City has therefore unlawfully violated Plaintiff's rights to the consistent application of a religious vaccine exemption due to an impermissible exclusion of Plaintiffs' children by an improper application of the statute.

56) Based upon the foregoing, Defendant City has improperly applied and enforced the New York statute to Plaintiffs Phillips and Mendoza-Vaca’s situations.

## **SECOND CAUSE OF ACTION**

(Improper Application of New York City Chancellor's Regulation A-701(III)(A)(4)(c) and 10 NYCRR Section 66-1.10 by Plaintiffs Phillips and Mendoza-Vaca against all Defendants)

57) Plaintiffs reiterate and restate the allegations in the Amended Complaint’s previous paragraphs and incorporates them therein.

- 58) The Chancellor's Regulation claims to permit exclusion of students from school during an "outbreak" of a supposedly "vaccine preventable illness." *See* New York City Chancellor's Regulation A-701(III)(A)(4)(c).
- 59) Principal informed the Plaintiff Phillips of, upon information and belief, only a single case of the chicken pox within PS 188, upon the exclusion that gave rise to the original Petition filed (before removal to this Court).
- 60) Upon information and belief, only a single case of the chicken pox at PS 107Q was determined by Defendant City and its agents to be sufficient for an "outbreak" to exclude Plaintiff Mendoza-Vaca's children from school.
- 61) It is respectfully submitted that a single case of an illness is not an "outbreak."
- 62) It is respectfully submitted that there are no "vaccine preventable illnesses," and Defendant(s) have failed to offer proof and cannot prove that "vaccine preventable illnesses" exist.
- 63) To the contrary, there is contravening proof that the childhood immunization program that Plaintiffs' children are being subjected to is dangerous to the children, dangerous to the public health and has not been proven effective in controlling the spread of childhood illnesses or diseases.
- 64) The manipulation of disease is a dangerous practice and could potentially trigger an outbreak of benign or dormant illnesses, and local, state and federal authorities have demonstrated an inability to manufacture, transport, implement and deliver an effective childhood immunization program.

65) Based upon the foregoing, Defendant City has improperly applied the New York City Chancellor's regulation to the Plaintiffs' situations.

### **THIRD CAUSE OF ACTION**

(Impermissible Burdening of Free Exercise of Religion in Violation of United States Constitution-First and Fourteenth Amendment Rights, New York State Constitution Article I, Section 3 by All Plaintiffs against All Defendants)

66) Plaintiffs reiterate and restate the allegations in the Amended Complaint's previous paragraphs and incorporates them therein.

67) Defendant City has arbitrarily, capriciously, unreasonably and unconstitutionally denied Plaintiffs the right to free exercise of their religions, as they was forced to keep their children from school as a result of their religious beliefs that prevent Plaintiffs from injecting their children with potentially harmful substances.

68) The actions of Defendants have resulted in a denial of Plaintiffs' rights to freedom of religion in violation of the First Amendment of the United States Constitution under the Free Exercise clause, made applicable to state and local government entities through the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

69) However, the statute itself is riddled with unconstitutionality. It forces parents to detail their religious beliefs and submit to a "test," and the determinations of whether or not to grant the religious exemptions falls to the subjective judgment of one school official who is unqualified to make such a determination.

70) Many inconsistencies result. Children are excluded from one school system that grants religious exemptions reluctantly and then admitted to another that grants religious exemptions more fairly.

71) Based upon the foregoing, Defendants City and Attorney General has violated Plaintiffs' Free Exercise Rights pursuant to the First and Fourteenth Amendments of the United States Constitution, and Article I, Section 3 of the New York State Constitution.

#### **FOURTH CAUSE OF ACTION**

(Violation of the Ninth and Fourteenth Amendment Rights of the United States Constitution by  
All Plaintiffs against All Defendants)

72) Plaintiffs reiterate and restate the allegations in the Verified Complaint's previous paragraphs and incorporates them therein.

73) The Ninth Amendment guarantees individual rights and personal liberties, such as actions taken with an individual's body, extending not only for religious but also for any other reasons that an individual might object to otherwise mandatory medical action.

74) Defendant City has arbitrarily, capriciously, unreasonably and unconstitutionally denied Plaintiffs' rights to send their children to school pursuant to a religious exemption from vaccines, therefore forcing Plaintiffs to choose between keeping their children from attending school during exclusion periods or vaccinating them against their wishes.

75) Vaccines' contents can kill children, especially those who have contraindications to vaccines such as Plaintiff Check's daughter.



76) Children currently are injected with more vaccines many of them not sufficiently tested than in previous generations.

77) Nonetheless, Defendants enforce a statute that requires Plaintiffs to inject their children with these dangerous diseases and chemicals, violating their substantive due process rights or risk exclusion from school.

78) Based upon the foregoing, Defendants are is liable within this cause of action for violation of federal constitutional rights pursuant the United States Constitution's Ninth and Fourteenth Amendments.

#### **FIFTH CAUSE OF ACTION**

(Violation of United States Constitution's Fourteenth Amendment's Substantive Due Process Clause by All Plaintiffs against All Defendants)

79) Plaintiffs reiterate and restate the allegations in the Amended Complaint's previous paragraphs and incorporates them therein.

80) The Fourteenth Amendment to the United States Constitution also guarantees unenumerated rights through substantive Due Process, and equal application of the laws toward individuals through the Equal Protection Clause.

81) In applying New York State's vaccine exemption statute, Defendant City has acted under color of state law, depriving Plaintiffs and their children of a fundamental right to refuse medical intervention involving the children's bodies.

82) Defendant Attorney General has enforced the unconstitutional Public Health Law Section 2164, violating Plaintiffs' substantive due process rights.

83) Based upon the foregoing, Defendants are liable to Plaintiffs within this cause of action for violation of federal constitutional rights pursuant to the Substantive Due Process Clause of the United States Constitution's Fourteenth Amendment.

### **SIXTH CAUSE OF ACTION**

(Violation of United States Constitution's Fourteenth Amendment's Equal Protection Clause by  
All Plaintiffs against All Defendants)

84) Plaintiffs reiterate and restate the allegations in the Verified Complaint's previous paragraphs and incorporates them therein.

85) Defendant City has treated Plaintiffs' children differently from all other students enrolled at Defendants' school, who are similarly situated by virtue of going to the same school as Plaintiffs' children.

86) The purported protections of childhood vaccinations are available to families who seek this for their children, and the so-called "herd immunity" theory that supports a need for all children to be vaccinated for complete immunity to be achieved is unproven and junk science designed to promote mass vaccination and profits to those manufacturing and administering the vaccines.

87) To the contrary, "shedding" of vaccines is a proposed health risk since many children in the same school go to the same pediatrician, receive the same doses of diseases from the same vials during the same six week window between the beginning of school and October 15<sup>th</sup> each school year which in turn the children shed in bodily fluids, hair and droplets exposing others to the potentially harmful substances within the vaccines.

88) Therefore, pursuant to the Defendant's "herd immunity" even under periods of so-called "outbreaks," Plaintiffs' children will not pose a danger to communicating supposedly vaccine-preventable illnesses to their vaccinated classmates.

89) It is respectfully submitted that there is no rational basis or reason for excluding the children for these supposed reasons of public health.

90) Based upon the foregoing, Defendants are liable within this cause of action for violation of federal constitutional rights pursuant to the Equal Protection Clause of the United States Constitution's Fourteenth Amendment.

#### **SEVENTH CAUSE OF ACTION**

(Violation of New York City Human Rights Law, Chapter 1, Section 8-107 (4) by All Plaintiffs  
against All Defendants)

91) Plaintiffs reiterate and restate the allegations in the Verified Complaint's previous paragraphs and incorporates them therein.

92) Defendant City declined to honor the religious exemption from vaccination as a prerequisite to attending school for the Plaintiffs.

93) Such actions by Defendant City results in an impermissible classification or discrimination based on Plaintiffs' religions.

94) Plaintiff Check's daughter is excluded indefinitely as she misses out on fundamental educational benefits.

95) Plaintiffs Phillips and Mendoza-Vaca's children were denied a public education and will continue to be denied a public education during exclusion periods.

96) As discussed above, it is respectfully submitted that Plaintiffs' children pose no threat to vaccinated children, especially to others who rely on the purported benefits of vaccines for immunity.

97) Therefore, there is no rational basis to classify and exclude Plaintiffs' children on the basis of not being vaccinated, resulting in an impermissible classification.

98) Thus, Defendant City is liable to Plaintiffs for violation of New York City Human Rights Law, Chapter 1, Section 8-107 (4).

WHEREFORE, Plaintiffs respectfully request the following relief to be awarded by this Court:

- (a) An invalidation of New York City Chancellor's Regulation A-701(III)(A)(4)(c) and 10 NYCRR 66-1.10 based upon statutory preemption grounds, federal constitutional grounds, or both, or in the alternative, that the Regulation was improperly applied;
- (b) An invalidation of New York State Public Health Law Section 2164 based upon federal or state constitutional grounds, or both, or in the alternative, that the statute was improperly applied;
- (c) Costs, disbursements, and attorney's fees to the extent allowable by law; and
- (d) Such other, different, and further relief this Court may deem just and proper.

Dated: Piermont, New York  
November 1, 2013

/s/ Patricia Finn, Esq.

Patricia Finn, Esq.  
Attorney for Plaintiffs  
Patricia Finn Attorney, P.C.  
450 Piermont Avenue  
Piermont, New York 10968  
Tel.: (845) 398-0521  
Fax: (888) 874-5703  
patriciafinnattorney@gmail.com

To:  
Chlarens Orsland, Esq.  
Law Department  
City of New York  
100 Church Street  
New York, NY 10007-2601  
Tel.: (212) 788-0904  
Fax: (212) 356-1148  
corsland@law.nyc.gov

Hon. Eric T. Schneiderman, Attorney General  
New York State Office of the Attorney General  
120 Broadway, 24<sup>th</sup> Floor  
New York, NY 10271

Nirav R. Shah, M.D., M.P.H.  
Commissioner  
New York State Department of Health  
Corning Tower  
Empire State Plaza  
Albany, NY 12237

### **Certificate of Service**

Patricia Finn, Esq., certifies that on the below date, the annexed document was served upon the following opposing counsel by filing same via the ECF system.

Chlarens Orsland, Esq.  
Law Department, City of New York  
100 Church Street  
New York, NY 10007-2601

Dated: Piermont, New York  
November 1, 2013

/s/ Patricia Finn, Esq.  
Patricia Finn, Esq.  
Attorney for Plaintiff  
Patricia Finn Attorney, P.C.

450 Piermont Avenue  
Piermont, New York 10968  
Tel.: (845) 398-0521  
Fax: (888) 874-5703  
patriciafinnattorney@gmail.com