UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

TROPICAL CHILL CORP., et al. **Plaintiffs,** **v.** **HON. PEDRO R. PIERLUISI URRUTIA, et al.** **Defendants.**	**CIVIL NO. 21-1411 (RAM)**

MEMORANDUM IN OPPOSITON TO MOTION FOR PRELIMINARY INJUNCTION

TO THE HONORABLE COURT:

COMES NOW Pedro R. Pierluisi Urrutia, in his official capacity as Governor of the Commonwealth of Puerto Rico, and Carlos R. Mellado-López, in his official capacity as Secretary of the Department of Health, through the undersigned counsel, without waiving any right, objection or defense arising from the Title III of Puerto Rico Oversight, Management and Economic Stability Act ("PROMESA"), 48 U.S.C. §§2101 et seq., the Commonwealth's Petition under said Title or under this case, and respectfully states and prays as follows:

I. INTRODUCTION

Vaccination against COVID-19 has become one of the most critical preventive measures to eradicate the pandemic being experienced worldwide.[1] The COVID-19 vaccine is available in the United States and the Center for Diseases Control and Prevention ("CDC") recommends it for everyone 12 years of age and older. This Honorable Court can take judicial notice that, in a key

[1] Center for Disease Control and Prevention, *Science Brief: COVID-19 Vaccines and Vaccination*, July 21, 2021, https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/fully-vaccinated-people.html (retrieved on September 15, 2021).

milestone for Public Health, the Federal Drug Administration ("FDA") fully approved the Pfizer vaccine for the prevention of COVID-19 disease in individuals 16 years of age and older. The present case arises in a context where more than a year has passed since a state of emergency has been decreed in Puerto Rico caused by the COVID-19 pandemic and, fortunately, with three vaccines to stop the spread of this fatal disease, of which one—Pfizer-- has been fully approved by the FDA.

In order to safeguard the public health and public safety of the entire population, the Governor of Puerto Rico announced a series of Executive Orders 21-062 through 064 (together "Executive Orders" or "OEs") requiring that the employees of several business entities and health institutions be vaccinated against Covid-19. (*See* Dockets Nos. 1-2, 1-5 and 1-6). The Executive Orders also require that visitors and guests of those businesses above the age of 12 be properly vaccinated. As an exception, the Executive Orders allow for all persons subject to the Executive Order to be exempted from vaccination for medical and religious reasons. Those who refuse to get vaccinated or are exempted must get tested and provide a negative result for the COVID-19 test.

On August 31, 2021, Plaintiffs filed a Motion for Preliminary Injunction under Fed. R. Civ. P. 65 to enjoin Defendants from implementing the Executive Orders. (Docket No. 1). Additionally, Plaintiffs question the constitutionality of Regulation No. 138, which was amended to require proof of COVID-19 vaccination for the Issuance of Health Certificates in Puerto Rico. *Id*. Plaintiffs understand that these Executive Orders, improperly described by them as "Rolling EOs" (Plaintiffs cannot challenge past Executive Orders that are no longer in effect), and Regulation 138-A violate the Fourteenth Amendment to the United States Constitution under the belief that they encroach upon their economic liberty and property rights, their bodily integrity, medical decision making and privacy rights, the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. §2000bb-§ 3

2000bb. (Docket No. 1 at 1, 26-36). Likewise, Plaintiffs include supplemental claims under the Constitution of the Commonwealth of Puerto Rico, P.R. Const., Art. I, § 2. *Id* at 1, 36. Additionally, Plaintiffs further allege that they meet all the elements to obtain a preliminary injunction because, if not enjoined, they will suffer loss of bodily autonomy, loss of current and future earning potential, incurring in substantial expenses, and loss of medical privacy. Plaintiffs further contend that they have no adequate remedy at law for their losses; they cannot recover their lost bodily autonomy, time, or privacy; nor can they realistically recover monetary damages from the Commonwealth. And finally, Plaintiffs posit that if not enjoined their now superior interest in liberty will be lost. (Docket No. 7 at 4).

Plaintiffs' arguments on preliminary injunction miss the mark and fail at establishing the required four (4) elements for such an extraordinary remedy.[2] Importantly, it is unlikely that Plaintiffs will succeed on the merits of their Fourteenth Amendment claims , the RFRA claim, and their supplemental claims; they will not suffer any irreparable harm if the preliminary injunction is denied, failing at their burden of demonstrating a real and concrete harm and in light of reasonable (and less onerous) "opt outs"; and the balance of equities unequivocally weighing in favor of the public health interests. The aforementioned is buttressed by the growing court decisions that are validating the requirement for the COVID-19 vaccine. Specifically, the Northern District of Indiana recently denied a motion for preliminary injunction seeking to enjoin Indiana University from enforcing a COVID-19 vaccine mandate for students. *Klaassen v. Trustees of Indiana Univ.*, No. 1:21-CV-238 DRL, 2021 WL 3073926 (N.D. Ind. July 18, 2021) (affirmed by *Klaassen v. Trustees of Indiana*, No. 21-2326, 7 F.4th 592 (7th Cir. Aug. 2, 2021)); s*ee also In re*

[2] Simultaneously with the filing of the instant motion, Defendants will file a *Motion to Dismiss*, which will discuss additional grounds on why the instant case has no probabilities to succeed on the merits.

Ryan Klaassen, et al., Case No. 21A15 (Aug. 12, 2021)(whereby Supreme Court Justice Amy Coney Barrett denied the plaintiffs' Emergency Application for Writ of Injunction related to Indiana University's vaccine mandate).

Furthermore, the Executive Orders are supported by the decision in *Jacobson v. Massachusetts*, 197 U.S. 11, 27 & 29 (1905) (recognizing, under a reasonable basis review, that "a community has the right to protect itself against an epidemic of disease which threatens the safety of its members" and describing a state's police power to enforced reasonable regulations for the safety of the general public so as to combat an epidemic). This principle has been repeatedly acknowledged by the Supreme Court. *See, e.g.*, *Prince v. Massachusetts*, 321 U.S. 158, 166–67 (1944) (noting that "[t]he right to practice religion freely does not include liberty to expose the community ... to communicable disease"); *United States v. Caltex*, 344 U.S. 149, 154 (1952) (acknowledging that "in times of imminent peril—such as when fire threatened a whole community—the sovereign could, with immunity, destroy the property of a few that the property of many and the lives of many more could be saved").

While individual rights secured by the Constitution do not disappear during a public health crisis, during the present health emergency, Plaintiffs' constitutional challenges to the Executive Orders are not only meritless but unsupported by applicable caselaw. Under the aegis of the Supreme Court in *Jacobson*, *supra*, as well as recent court decisions validating the requirement for the COVID-19 vaccine, the discussion further on will show that the Executive Orders: (i) do not violate the Fourteenth Amendment substantive due process right being that they pass either a reasonable (or strict) scrutiny since they have a "real or substantial relation" to public health and safety interests, are not "arbitrary and oppressive", and, through their exceptions or "opt outs "—like religious and medical exceptions, negative COVID-19 test results and venues that operate at

50% capacity when no vaccination is required[3]—, they use less onerous means to advance their compelling public health interests in safeguarding the lives and health of Puerto Rico's citizens; (ii) do not violate Plaintiffs' freedom to exercise their religious rights under RFRA; (iii) absent a cognizable federal claim, this Court should abstain from exercising its supplemental jurisdiction as to the Commonwealth constitutional claims; and (iv) nonetheless, the pendant claims fall flat given that Plaintiffs lack standing to bring a separation of power claim, the authority bestowed upon the Governor to issue the challenged EOs was duly delegated and was not excessive pursuant to Article 5.10 of Act No. 20-2017, and the criminal sanctions for failure to comply with the EOs are contemplated in both Act No. 20-2017 and Act 81-1912, as amended.

Therefore, Plaintiffs' request to enjoin the Government from constitutionally exercising its broad police powers, with the reasonable and compelling interest of safeguarding the health and lives of its employees and citizens, during a pandemic, must be dismissed with prejudice. *See S. Bay United Pentecostal Church v. Newsom*, 140 S. Ct. 1613, 1613 (2020) (Roberts, C.J., concurring in denial of application for injunctive relief to allow full operation of churches during the COVID-19 pandemic).

II. THE SCOPE OF THE EXECUTIVE ORDERS

Defendants incorporate by reference their discussion of the contents of the Executive Orders and Regulation at pages 4-8 of their Motion to Dismiss.

3 The Department of Health of Puerto Rico has determined that 50% capacity occupancy is the only way to ensure that social distancing measures can be implemented in closed enclosures when there is no screening of vaccination or negative tests.

III. A PRELIMINARY INJUNCTION IS UNWARRANTED IN THE PRESENT CASE.

A preliminary injunction is an "extraordinary and drastic remedy," never awarded as of right. *Munaf v. Green,* 553 U.S. 674, 690 (2008). Courts in the First Circuit evaluate four factors in determining whether to issue a preliminary injunction, to wit: (1) the movant's probability of success on the merits; (2) the likelihood of irreparable harm absent preliminary injunctive relief; (3) a comparison between the harm to the movant if no injunction issues and the harm to the objectors if one does issue; and (4) how the granting or denial of an injunction will interact with the public interest. *See New Comm Wireless Services v. SprintCom, Inc.,* 287 F.3d 1, 8-9 (1st Cir. 2002); *see also Ross–Simons of Warwick, Inc. v. Baccarat, Inc.,* 102 F.3d 12, 15 (1st Cir. 1996). Whether to issue a preliminary injunction depends on balancing equities where the requisite showing for each of the four factors turns, in part, on the strength of the others. *Concrete Machinery Co., Inc. v. Classic Lawn Ornaments, Inc.,* 843 F.2d 600, 611–13 (1st Cir.1988). Although a hearing is often held prior to entry of a preliminary injunction, a hearing is not an indispensable requirement. *Aoude v. Mobil Oil Corp.*, 862 F.2d 890, 893 (1st Cir. 1988). As it will be discussed below, Plaintiff failed to meet all the four prongs that are required to be satisfied for the issuing of a preliminary injunction, therefore Plaintiffs' request for a Preliminary Injunction must be DENIED.

A. Plaintiffs is Unlikely to Succeed on The Merits.

Being that the matters to be discussed in the instant Response are also the subject of Defendants' Motion to Dismiss pursuant to Fed.R.Civ.P. 12(b)(6) filed today, the Defendants hereby incorporate by reference the arguments raised in said Motion as if fully set forth herein.

1. The challenged legal precepts do not violate Plaintiffs' substantive due process rights.

Plaintiffs' substantive due process allegations are mostly based on their personal interpretation of data to promote, through this Court, their own COVID-19 public health policy for the Commonwealth. Plaintiffs have not been electorally entrusted with designing the Commonwealth's public health policy, as that matter falls within the sole responsibility and discretion of elected officers and a team of public health experts. *See* S. *Bay United Pentecostal Church*, 140 S. Ct. at 1613 (stating that the Constitution principally entrusts the safety and the health of the people to the politically accountable officials of the States and that they should not be subject to second-guessing by an "unelected federal judiciary," that "lacks the background, competence, and expertise to assess public health and is not accountable to the people."). Thus, Defendants will only address legal issues regarding substantive and procedural due process raised in the Complaint.

Plaintiffs allege that the vaccination requirements and mandates of the challenged Executive Orders are unconstitutional restrictions on individual liberties, and ineffective tools to deal with the crisis (Docket 1, at 3, ¶¶6 and 7). Specifically, they claim the existing mandates infringe on their right to earn a living and use their property as they see fit, without sufficient justification for such infringement, in violation of their economic liberty and property rights under the Fourteenth Amendment of the United States Constitution. (*See* Docket 1, at 28, 29, 31, 32, ¶¶124, 128, 134 and 140; Docket No. 7 at 4). Regarding the Department of Health's Regulation 138-A, the Secretary of Health, in the valid exercise of his authority, determines when and under what circumstances and exception to issue health certificates. *See Great A. & Pac. Tea Co., Inc. v. Cottrell*, 424 U.S. 366, 371 (1976) (holding that the states retain "broad power" to legislate protection for their citizens in matters of local concern such as public health)

Plaintiffs have failed to direct this Court to a single precedent from any federal court in support of the proposition that a vaccine requirement or a weekly negative qualified COVID-19 test violates the substantive due process right to bodily integrity or autonomy. Contrarywise, the Supreme Court and other federal courts, as well as state courts, have long validated vaccines mandates, even when not including a single exception to inoculation. *See Jacobson*, 197 U.S. at 27 (upholding a Massachusetts law that required compulsory vaccinations for adults); *Zucht*, 260 U.S. 174 (holding that a city can impose compulsory vaccination, even if there is no immediate threat of an epidemic like there was in *Jacobson*); *Klaassen*, 7 F.4th 592 (holding that State university's requirement that students either be vaccinated against COVID-19 or, if they claimed religious or medical exemption, wear masks and be tested twice a week did not violate Due Process Clause); *Workman v. Mingo County Board of Education*, 419 Fed.Appx. 348 (4th Cir. 2011) (holding that a West Virginia law requiring all school children to be vaccinated, with no exemption for religious reasons, is constitutional); *McCarthy v. Boozman*, 212 F. Supp. 2d 945, 948 (W.D. Ark. 2002) (upholding the Arkansas compulsory vaccination law); *Wright v. DeWitt School District*, 385 S.W.2d 644, 646 (Ark. 1965) (holding that it is within the state's police power "to require that school children be vaccinated and that such requirement does not violate the constitutional rights of anyone, on religious grounds or otherwise."); *Amadeo et al. v. Pierluisi-Urritia et al.*, Civil No. SJ2021CV04779 (P.R. Court of First Inst. 2021) (upholding a vaccine mandate for students and school employees in Puerto Rico). *See* Docket No. 18-1. Since federal and state case law have consistently refused to strike down vaccine mandates throughout the United States, Plaintiffs cannot prevail in their challenge to the Executive Order on substantive due process grounds. Current doctrine as espoused by applicable precedents referred to in this motion is just not on their side.

As explained in our Motion to Dismiss, the Executive Orders provide individuals (employees and guests) covered and subject to its requisite's alternatives to "opt out" of the mandatory vaccination requirement. Therefore, the challenged orders requiring mandatory vaccination or a weekly negative COVID-19 qualified tests to employees and guests of the facilities within their scope are a valid constitutional exercise of the Commonwealth's police powers. *See* Chemerinsky & Goodwin, 110 Nw. U.L. Rev. at 595 (stating that "the government's interest in protecting [citizens] and preventing the spread of communicable disease justifies mandatory vaccinations for all [citizens] in the United States.").

As to the allegation that PR's vaccine mandate also violates the economic liberty protected by the Fourteenth Amendment, Plaintiffs do not provide a specific definition nor legal standard associated with that elusive concept, nor any reference to legal authorities in support thereof. The Supreme Court of the United States has never acknowledged economic liberty as a substantial component of the individual liberties afforded protection against governmental intrusion under the Fourteenth Amendment to the United States Constitution. The liberties protected by substantive due process do not include economic liberties. *Savage v. Mills*, 478 F.Supp.3d 16 (D. Me. 2020).

Having failed to identify a federally protected right breached by the Executive Orders at issue and having failed to even plea or develop in some meaningful way that Defendant's conduct is in some way "shocking to the conscience", as required by the substantive due process standard, Plaintiffs' 1983 claims must be dismissed with prejudice at this stage of the proceedings

2. The Executive Orders and the Regulation Do Not Breach Any Substantive Due Process Interest under the Fourteenth Amendment under any standard of review.

Rational basis review is the test that courts *normally* apply to Fourteenth Amendment challenges, so long as they do not involve suspect classifications based on race or some other ground, or a claim of fundamental right. *Roman Catholic Diocese of Brooklyn*, 141 S. Ct. 63, 70 (Gorsuch, J.,

concurring). It is less stringent than strict scrutiny. Under rational basis review, the challenged Executive Orders and the Health Department Regulation do not violate any of Plaintiffs' substantive due process rights. Moreover, Plaintiffs did not refer in their pleadings to any binding or persuasive case law declining to follow *Jacobson's* rationale basis scrutiny to a vaccine mandate in favor of a strict scrutiny. Plaintiffs cited case law does not support their argument that *Jacobson's* rational basis standard of review should not be applied in the present case.

For starters, *Riggins v. Nevada*, 504 U.S. 127, 135 (1992), and *Sell v. United States,* 539 U.S. 166, 181 (2003), dealt with detained individuals who were **forced** to take antipsychotic drugs during the course of trial. As has been explained, the Executive Orders give the option for unvaccinated workers to provide a weekly negative COVID-19 test. Hence, since the Executive Orders do not force to involuntarily vaccinate, *Riggins* and *Sell* are clearly distinguishable from the instant case. Thus, the Court must apply the *Jacobson* rational basis standard, until the Supreme Court squarely overrules the same. *See U.S. v. Moore-Bush*, 963 F.3d. 29, 31 (1st Cir. 2020) ("Under the doctrine of stare decisis, all lower federal courts must follow the commands of the Supreme Court, and only the Supreme Court may reverse its prior precedent"); *see also In re Rutledge*, 956 F.3d 1018, 1028 (8th Cir. 2020) (stating that "district court's failure to apply the *Jacobson* framework produced a patently erroneous result.").

As a general matter, the Executive Orders' vaccine mandate is rationally related to the Commonwealth's legitimate governmental interest. *See Jacobson*, 196 U.S. at 36 (holding that vaccine mandate was a valid exercise of the State's police power). It would be difficult to contend with a straight face that a vaccine mandate or a weekly test requirement does not bear a rational relation to protecting people's health and preventing the spread of COVID-19. The Plaintiffs do not point to a single court holding otherwise. *See* Chemerinsky & Goodwin, 110 Nw. U.L. Rev. at

610 (concluding that vaccine mandates generally pass the rational basis test). Some may disagree with the Governor's Executive Orders, but federal courts do not sit in a policy-checking capacity to second guess the wisdom of state governments' acts. *F.C.C. v. Beach Commun., Inc*., 508 U.S. 307, 313 (1993) (clarifying that federal courts do not have "a license […] to judge the wisdom, fairness, or logic of legislative choices."). So, the Executive Orders itself bares a rational relation to the County's interest.

Same goes for Regulation 138-A only two of the Plaintiffs have alleged its requirements constitute infringements on their Substantive Due Process rights, claiming to have a property interest in their health certificates for which no legal authority is invoked. One of them has already obtained a certificate, for which no expiration date was proffered. Assuming the existence of a property interest, a legal proposition for which no authority has been cited by Plaintiffs, the requirements established in Regulation 138-A for the issuance of health certificates—among them, evidence of vaccination against COVID-19, unless health or religious exceptions apply—on its face is substantially less intrusive and onerous than the ones contained in the Executive Orders, which comply with applicable scrutiny standards, as we have already discussed. Therefore, since the Executive Orders and Regulation 138-A swiftly passes a rational basis scrutiny under current constitutional standards, the instant case must be dismissed with prejudice.

Should the Court understand that the Executive Orders should be examined under a strict scrutiny—which Defendant vehemently denies—they would easily pass said test since they are narrowly tailored to serve a compelling state interest: the health and lives of all public employees and citizens who visit and sponsor public facilities of all kinds during this crisis period.

The Executive Orders do not violate Plaintiffs' Fourteenth Amendment's economic liberty rights, because no unequivocal recognition has come from the Supreme Court as to the existence

of such rights. *See Mass. Food Association v. Mass. Alcoholic Beverages Control Commission*, 197 F.3d. 560 (1st Cir. 1999) ("The Sherman Act is a charter of economic liberty, but only against private restraints"); *910 E Main LLC v. Edwards*, 481 F. Supp. 3d 607, 620 (W.D. La. 2020) (holding that economic rights are not fundamental and are subject to rational basis scrutiny and upholding economic restrictions established by the government in light of the COVID-19 pandemic). While Plaintiffs may put their economic interests before the health of all citizens, the Government's duty to protect the lives of its citizens cannot give during a deadly pandemic. *See Am. Cruise Ferries, Inc.*, 2020 WL 7786939, at *17 ("Although everybody is profoundly concerned with the negative effects that the determinations taken by state and local governments nationwide have had, and will continue to have, in the economy, the weighting of the factors in the context of the pandemic lead the Court to find [economic restrictions] must be upheld as a valid constitutional exercise of the Commonwealth's police power.")

3. The Executive Orders Do Not Substantially Burden Plaintiffs' Exercise of Religion and It Infringes Upon No Right.

Plaintiffs claim that the Executive Order infringes on their fundamental right to freely exercise their religion under RFRA. Plaintiffs invite the Court to apply the strict scrutiny to the alleged violation of their free exercise of religion under RFRA. Even under the applicable strict scrutiny, Defendants argue that the Executive Orders do not violate Plaintiffs' freedom to exercise their religion of choice.

Plaintiffs claim that the vaccine mandate in EO 062 "burdens Plaintiff Vega's religious beliefs—by compelling her to become the government's vaccination or COVID-19 test verifier—as it obligates her to participate in and condone forced vaccination, which go against her religious belief", by means of alternatives that are neither the least restrictive nor the narrowly tailored to achieve the Government's interest. (Docket No. 7 at 20).

As this Court can attest, the challenged Executive Orders provide a medical and religious exemption, that may not even be constitutionally required, in which case Plaintiff Vega has the option to require a COVID-19 negative test result to respect to the individual's free exercise of religion and provide an alternative to those whose religious dogmas prohibit vaccination. In that sense, the Executive Orders not only safeguard free exercise of religion but provides more rights than those constitutionally or statutorily required. This Court must conclude that, far from infringing RFRA or free exercise of religion, the Executive Orders protect religious beliefs by creating a religious exception to the vaccine mandate. The alternative provided to Plaintiff Vega of requiring a negative COVID-19 test result to all guests is the less restrictive means that the Government can provide to safeguard the public health. Therefore, once again, Plaintiff's arguments fall flat because, even though neither the Constitution or RFRA require a religious exception to vaccine mandates, but the Executive Orders still created an alternative to short-term rental business persons like Plaintiff Vega—requiring a negative COVID-19 test result in lieu of a Vaccination Record Card—that constitute a less restrictive mean and that is narrowly tailored to advance the compelling government interest of containing the COVID-19 deadly virus from spreading; hence, the RFRA claim must be dismissed with prejudice.

Nevertheless, even if, *arguendo*, the Court finds that the Executive Orders substantially burdens Plaintiffs' religious practice, which is vehemently denied, it would still pass a strict scrutiny examination because it has compelling interest to do so. At the outset, the Supreme Court has already recognized that "stemming the spread of COVID-19 is unquestionably a compelling interest." *Roman Catholic Diocese of Brooklyn*, 141 S.Ct. at 67. Clearly, stopping the spread of a deadly communicable disease is obviously a compelling interest and vaccinations are the best way to reach that goal. No one, in practicing his or her religion, has a constitutional right to endanger others. Thus, there is no question that the Executive Orders were issued with a compelling interest to protect the lives and health of all employees by avoiding a spread of COVID-19 in covered workplaces.

The next step of the RFRA compelling interest test is to determine if the Government implemented the least restrictive means to achieve its compelling interest. In that sense, to establish that a government employed the least restrictive means in advancing a compelling government interest, the government is required to establish that no alternative, less restrictive, means exists. *Sherbet*, 374 U.S. at 407. *See Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 728 (2014) (requiring government to show "that it lacks other means of achieving its desired goal without imposing a substantial burden on the exercise of religion on the objecting parties"). Recognizing the tests within difficulty of proving a negative, courts that have addressed this issue have held that "the government should not be required 'to refute every conceivable option in order to satisfy the least restrictive means prong of RFRA.' " *Armstrong v. Jewell*, 151 F.Supp.3d 242, 249 (citing *United States v. Wilgus*, 638 F.3d 1274, 1289 (10th Cir.2011) (listing concurring cases from other jurisdictions); *United States v. Lafley*, 656 F.3d 936, 942 (9th Cir. 2011) (rejecting alternative restrictive means that would be "as impractical as they are insufficient"); *Olsen v. Drug Enforcement Agency*, 878 F.2d 1458 (D.C.C.1989) (rejecting proposal for restrictive use of marijuana during religious services, which required "burdensome and constant official supervision and management").

In the instant case, the Government has complied with the "least restrictive means" requirement of RFRA, being that the Executive Order provides alternatives for Airbnb owners compliance with its dispositions by conforming with Sections 5 and 6. Specifically, Section 5 of EO 2021-62 allows for an exception to be inoculated for religious beliefs, for owners, employees, and guests. To apply for the exception based on religion, they must obtain a sworn statement along with their religious leader stating that inoculation goes against their religious beliefs. If they do not have a religious leader to sign the sworn statement, then they must furnish a sworn statement where they sustain their specific and sincere religious convictions. Furthermore, Section 5(3) allows for guests to provide a negative COVID-19 test result of at least 72 hours to be able to check in the Airbnb if they do not get inoculated based on

religious beliefs. On the other hand, Section 6 of EO 2021-62, allows for Airbnb guests to stay by providing a negative result of the COVID-19 test taken within 72 hours of their arrival, should they refuse to be inoculated. These opt-outs are the least restrictive means by which the Defendants can achieve the purposes of the Executive Orders: contain the spread of a deadly virus.

Simply put, the Executive Orders do not violate RFRA since it does not impose any undue or substantial burden on covered individuals 'religious practices, as they can exercise their free will and choose between any of the exceptions or "opt out" alternatives in order to comply with the mandate. *See* CHEMERINSKY & GOODWIN, 110 Nw. U.L. Rev. at 610 (concluding that RFRA does not provide a "basis for challenging compulsory vaccination laws.").

B. Plaintiffs have not suffered an irreparable harm that warrants the issuance of a preliminary injunction.

Irreparable harm is a necessary threshold for awarding preliminary injunctive relief. Preliminary injunctions are strong medicine, and they should not be issued merely to calm the imaginings of the movant. *Matos ex rel. Matos v. Clinton Sch. Dist.*, 367 F.3d 68, 73 (1st Cir. 2004). A preliminary injunction should not issue except to prevent a real threat of harm. *Ross–Simons,* 102 F.3d at 19; 11A Charles Alan Wright, Arthur R. Miller, & Mary Kay Kane, Federal Practice & Procedure § 2948.1, at 153–54 (2d ed.1995). A threat that is either unlikely to materialize or purely theoretical will not do. *Ross–Simons,* 102 F.3d at 19; *Pub. Serv. Co. v. Town of W. Newbury,* 835 F.2d 380, 382 (1st Cir.1987). If a case can be adjudicated on the merits before the harm complained of will occur, there is no sufficient justification for preliminary injunctive relief. 11A Wright, Miller, & Kane, *supra* § 2948.1, at 149. The irreparable harm must be "neither remote nor speculative, but actual and imminent". *In re Bora Bora, Inc.*, 424 B.R. 17, 26 (Bankr. D.P.R. 2010).

The Supreme Court has frequently reiterated that the standard requires plaintiffs seeking preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an injunction. *Los Angeles v. Lyons,* 461 U.S. 95, 103 (1983). Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief. *Mazurek v. Armstrong,* 520 U.S. 968 (1997) (*per curiam*). In each case, courts "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Amoco Production Co.,* 480 U.S., at 542.

In most cases, irreparable harm constitutes a necessary threshold showing for an award of preliminary injunctive relief. Irreparable harm is "an essential prerequisite" for receiving such redress. The burden of demonstrating that a denial of interim relief is likely to cause irreparable harm rests squarely upon the movant. *Charlesbank Equity Fund II v. Blinds to Go, Inc.*, 370 F.3d 151, 162 (1st Cir. 2004) (Internal citation omitted). A finding of irreparable harm must be grounded on something more than conjecture, surmise, or a party's unsubstantiated fears of what the future may have in store. *Regan v. Vinick & Young* (*In re Rare Coin Galleries of Am., Inc.*), 862 F.2d 896, 902 (1st Cir.1988). An injunction should issue only where the intervention of a court of equity "is essential in order effectually to protect property rights against injuries otherwise irremediable." *Cavanaugh v. Looney*, 248 U.S. 453, 456 (1919).

In the case at hand, Plaintiffs utterly failed to specify the necessary factual allegations of irreparable harm needed to clear the threshold for an award of preliminary injunctive relief. Instead, Plaintiffs aver that they made a strong showing of irreparable harm because they will allegedly suffer (1) loss of bodily autonomy; (2) loss of money for doctor's referrals for COVID tests, and loss of income and future earning potential; and (3) medical privacy. (Docket No. 7 at

31). This is an incorrect presumption on the part of Plaintiffs. Defendants have already demonstrated Plaintiffs' unlikelihood of success based on those meritless allegations. Predominantly, Plaintiffs have the choice to submit a negative COVID-19 test results, instead of being vaccinated, or for business owners they can operate at 50% capacity. This is buttressed by the Supreme Court holding in *Jacobson* which upheld a vaccine mandate that did not have a religious or any other opt outs, except for a penalty.

Here, however, unlike *Jacobson*, the Executive Orders provide exceptions , to wit medical and religious and a generic opt out, subject to preventative measures such as COVID-19 testing and mask-wearing. Additionally, businesses and venues who choose not to accept the screening requirements can operate at 50% capacity. If Plaintiffs understand that they will suffer a loss of bodily autonomy and medical privacy by being vaccinated, they have the alternative to submit a weekly negative COVID-19 test result. The District Court in *Klaassen* applied *Jacobson* and found that there is no "fundamental constitutional right to not be tested for a virus before entering a place of public accommodation". *Klaassen*, No. 1:21-CV-238 DRL, 2021 WL 3073926, at *38.

Notwithstanding the above, Plaintiffs alleged that they would suffer irreparable harm if the so-called "Rolling EOs" are not enjoined. (Docket No. 7 at 32). Specifically, Plaintiffs aver that they have been forced against their will to submit to weekly COVID-19 tests in order to keep their jobs and that they have been denied entrance to dentist's office because the negative test was too old. *Id* at 31. In addressing claims similar to Plaintiffs, the District Court in *Klaassen* stated:

> These [substantive due process rights] aren't rights so "deeply rooted in this Nation's history and tradition" and so "implicit in the concept of ordered liberty" such that "neither liberty nor justice would exist if they were sacrificed." *Washington v. Glucksberg*, 521 U.S. 702, 721, 117 S.Ct. 2258, 138 L.Ed.2d 772 (1997)[…]. These aren't issues of fundamental constitution import, but often transient and trivial inconveniences.

No. 1:21-CV-238 DRL, 2021 WL 3073926, at *39.

Plaintiffs' unwarranted and fickle challenge to the Executive Orders cannot trump over the safety of the citizens of Puerto Rico. It is important to point out that Plaintiffs admit to the effectiveness of the vaccine in preventing the spread of COVID-19, but at the same time disregard the importance of providing negative COVID-19 tests. (Docket No. 7 at 17). Social distancing and testing together with vaccination are the most potent tools against the spread of COVID-19, the latter being the most effective. "A robust and responsive testing infrastructure is essential to our success in stopping the spread of SARS-CoV-2, the virus that causes COVID-19."[4] Testing in Puerto Rico has increased since the month of June in light of the Delta variant.[5] The Governor of Puerto Rico has a legitimate and compelling interest in safeguarding the lives and health of its citizens. Providing a negative test result is not only a reasonable measure, but a less restrictive means of advancing its public health goal, hence, showing no irreparable harm warranting the issuance of a preliminary injunction.

Also, Plaintiffs alleged that they are limiting their activities to places which do not require proof of vaccination and refuse to endorse venues which have chosen to require proof of vaccination or negative test results. Instead attends only those venues that operate at 50% capacity. (Docket No. 7 at 32). However, these measures to prevent the spread of COVID-19 are more than justified and are as well the less restrictive means available of advancing its public health goal. The Department of Health of Puerto Rico has determined that 50% capacity occupancy is the only way to ensure that social distancing measures can be implemented when there is no screening of vaccination or negative tests in closed enclosures. Moreover, Plaintiffs' decision to avoid venues that are following the Executive Orders are self-inflicted.

[4] https://www.cdc.gov/coronavirus/2019-ncov/hcp/testing-overview.html
[5] https://www.salud.gov.pr/estadisticas_v2#pruebas

Likewise, Plaintiffs alleged irreparable harm in that they have to choose between risking incarceration or paying a fine and violating their religious beliefs by becoming the Government's enforcer. (Docket No. 7 at 32). This allegation is nonsensical because following the rules and regulations establish in our society does not make a person an enforcer of the Government. Employees who work in businesses that sell alcohol and tobacco are required to ask for an identification to avoid selling it to minors. These employees are not government enforcers, they are just following the rules and regulations necessary for the establishment to have a license to sell alcohol and tobacco. Even if Plaintiffs understand that their religious beliefs are being violated by becoming the government enforcers -which is denied vehemently - no religion or belief is being targeted by the Executive Orders. Laws that are neutral and of general applicability need not be justified by compelling government interest even if laws have incidental effects of burdening particular religious practice. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993).

Regarding the alleged economic injury for doctor referrals, COVID-19 tests, and loss of potential and current earnings, it is important to highlight that "mere injuries, however substantial, in terms of money, time and energy necessarily expended ... are not enough [to establish irreparable harm]. Specifically, Plaintiffs allege that they are already operating at 50% capacity because they refuse to follow the Executive Orders. (Docket No. 7 at 32). However, the First Circuit has concluded that the right to "make a living" is not a "fundamental right," for either equal protection or substantive due process purposes. *Medeiros v. Vincent*, 431 F.3d 25, 32 (1st Cir. 2005) (abrogated in part on other grounds by *Bond v. United States*, 564 U.S. 211 (2011). The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm." *Sampson v.*

Murray, 415 U.S. 61, 90 (1974) (alteration in original). Courts have long held that traditional economic damages are remedied by compensatory awards, and thus do not rise to the level of being irreparable that is required to issue a preliminary injunction. *Puerto Rico Hosp. Supply, Inc. v. Boston Scientific Corp*., 426 F.3d 503, 507 (1st Cir. 2005).

A preliminary injunction will not be issued simply to prevent the possibility of some remote future injury. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (*per curiam*). The Southern District of Florida Court has expressed similar views under the COVID-19 vaccine context, stating:

> It is also unlikely that Plaintiffs would be able to meet their burden of establishing irreparable harm. If Plaintiffs are terminated for failing to get vaccinated and United's actions are later deemed to have violated Plaintiffs' rights, then Plaintiffs can be made whole with monetary damages—just like in any other employment dispute.

Ron Hencey, et al., v. United Airlines, Inc., et al., No. 21-61702-CIV, 2021 WL 3634630, at n.3 (S.D. Fla. Aug. 17, 2021).

Moreover, Plaintiffs misguidedly allege, as economic damages, that they would have to obtain medical referrals, at their own expense, for each COVID-19 test. This is far from the truth, as El Nuevo Día has published a list of venues, throughout the entire island, where free COVID-19 tests are available.[6] These venues are available to Plaintiffs, as well as all other persons who require testing. Therefore, Plaintiffs lack an irreparable harm due to the Vaccine Requirement in the Executive Orders.

This is mere speculation and refers to a future possible harm, which fails to comply with the irreparable harm requirement for preliminary injunction. Furthermore, as stated previously, there are multiple venues where the Plaintiffs can have COVID-19 tests free of charge, and even at their convenience. *See League of Independent Fitness Facilities and Trainers, Inc. v. Whitmer,*

6 https://www.elnuevodia.com/noticias/locales/notas/pruebas-de-covid-19-mira-los-lugares-donde-te-las-puedes-realizar-gratis-en-puerto-rico/

814 Fed. Appx. 125, 129 (6th Cir. 2020)*(citing Maryland v. King*, 567 U.S. 1301, 1301, 133 S.Ct. 1, 183 L.Ed.2d 667 (2012)(Enjoining the actions of elected state officials, especially in a situation where an infectious disease can and has spread rapidly, causes irreparable harm.).

Plaintiffs have not shown that, without an injunction, they would suffer an irreparable harm, not economic in nature. Plaintiffs' showing must possess some substance; a preliminary injunction is not warranted by a tenuous or overly speculative forecast of anticipated harm. *Public Serv. Co. v. Town of W. Newbury*, 835 F.2d 380, 383 (1st Cir.1987). Simply alleging that they have been forced to operate at 50% capacity does not suffice for an irreparable harm. An attempt to show irreparable harm cannot be evaluated in a vacuum; the predicted harm and the likelihood of success on the merits must be juxtaposed and weighed in tandem. *Ross-Simons of Warwick, Inc. v. Baccarat, Inc.*, 102 F.3d 12, 19 (1st Cir. 1996).

Therefore, this Court must **DENY** the preliminary injunctive relief because Plaintiffs have not shown the potential for irreparable harm if the relief is denied.

C. The balance of equities and the effect of the Court's ruling on the public interest undisputedly tip the balance in favor of denying a preliminary injunctive relief.

The Supreme Court has stated that the final two factors—"assessing the harm to the opposing party and weighing the public interest"—typically "merge when the Government is the opposing party." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Accordingly, the Court should analyze these factors together. A preliminary injunction is a potent weapon that should be used only when necessary to safeguard a litigant's legitimate interests. *Charlesbank Equity Fund II v. Blinds to Go, Inc.,* 370 F.3d 151, 163 (1st Cir. 2004). Crafting a preliminary injunction is an exercise of discretion and judgment, often dependent as much on the equities of a given case as well as the substance of the legal issues it presents. *See Winter v. Natural Resources Defense Council, Inc.,* 555 U.S. 7, at 20 & 24 (2008). The purpose of such interim equitable relief is not to conclusively

determine the rights of the parties, but to balance the equities as the litigation moves forward. *University of Tex. v. Camenisch,* 451 U.S. 390, 395 (1981).

In each case, courts "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Amoco Production Co.,* 480 U.S. at 542. "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Weinberger,* 456 U.S. 305, 312 (1982). Thus, "[a]n injunction should issue only where the intervention of a court of equity is essential to effectually protect property rights against injuries otherwise irremediable." *Voice of the Arab World, Inc. v. MDTV Med. News Now, Inc.*, 645 F.3d 26, 32 (1st Cir. 2011). This involves weighing "the balance of relevant hardships as between the parties." *Vaquería Tres Monjitas, Inc. v. Irizarry*, 587 F.3d 464, 482 (1st Cir. 2009). The Court must balance "the hardship that will befall the nonmovant if the injunction issues ... with the hardship that will befall the movant if the injunction does not issue." *Mercado-Salinas v. Bart Enterprises Int'l, Ltd.*, 671 F.3d 12, 19 (1st Cir. 2011). A preliminary injunction is not appropriate unless there is "a fit (or lack of friction) between the injunction and the public interest." *Nieves–Marquez v. Puerto Rico,* 353 F.3d 108, 120 (1st Cir. 2003).

In the instant case, the public interest is great, where COVID-19 has infected and taken the lives of 3,044 residents in Puerto Rico (as of September 17, 2021) [7] with the potential to infect many more. Defendants take issue with Plaintiffs' rash and irresponsible allegation that the Governor's public health policy regarding COVID-19 "is the government's attempt to protect the unvaccinated population, who chose to assume the risk of not getting vaccinated, from themselves." (Docket No. 7 at 19). Plaintiffs irresponsibly overlook the fact that at the moment

7 https://covid19datos.salud.gov.pr/#resumen

children under twelve years old cannot get a vaccine to protect themselves against COVID-19. According to the CDC, hospitalization rates tripled in children age 4 and younger the week of July 17 compared to June 26.[8] In fact, tragically, the January death of a 5 year-old child has recently been determined to be caused by COVID-19.[9] Plaintiffs' egregious statement in no way means that the Government cannot take affirmative actions to control the spread and avoid further deaths, being pediatric or adult deaths due to COVID-19. The public policy of the Government of Puerto Rico is mainly directed toward preventing the spread of the virus and saving lives, including those who are unable to consent to the COVID-19 vaccines or the few who cannot be vaccinated for medical reasons.

The Governor's interest in battling COVID-19 is of utmost importance to all residents of Puerto Rico. To date, the disease has infected more than a hundred thousand, thousands also have died, and it has shown the potential of infecting many more with the advent of the Delta variant. In 19 months, 1 in 500 Americans have died of COVID-19. (*See* Johns Hopkins University data https://coronavirus.jhu.edu/). Since the instant complaint was filed on August 27, 2021, the number of COVID-19 cases have risen. On August 30, 2021, seven destinations, including our Puerto Rico, moved up from the Level 3: COVID-19 High list to Level 4. *See https://wwwnc.cdc.gov/travel/notices/covid-4/coronavirus-puerto-rico* (last accessed September 15, 2021). The CDC's evolving list of travel notices ranges from Level 1 ("low") to Level 4 ("very high"). *Id*. Thus, the Governor is more than entitled to use his powers to deal with the emergency. At the moment, along with social distancing and face masks, the best weapon available against COVID-19 is the vaccine. That the public interest weighs in favor of a denial of a preliminary

8 https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/transmission_k_12_schools.html
9 https://www.noticel.com/ahora/top-stories/20210913/icf-confirma-muerte-por-covid-19-de-nina-de-cinco-anos/

injunction is apparent for the same reason. *League of Indep. Fitness Facilities & Trainers, Inc. v. Whitmer*, 814 F. Appx 125, 129–30 (6th Cir. 2020).

Plaintiffs' self-serving empirical data does not support their allegations, as they intend to establish. For example, Plaintiffs contend that the Executive Orders make irrational and arbitrary distinctions between vaccinated and unvaccinated individuals because studies have demonstrated that with the Delta variant, the viral load is the same between unvaccinated and vaccinated. (*See* Docket No. 7 at 2-3). While it is true that preliminary studies have shown that the viral load may be the same with Delta variant, the CDC has stated that vaccinated people appear to spread the virus **for a shorter time** and, as a result, the greatest risk of transmission is among unvaccinated people who are much more likely to get infected and transmit the virus. (*See* https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html). That is one of many reasons why those who are unvaccinated, are required a negative COVID-19 tests, while the vaccinated are not. Hence, the Government's interest in avoiding the spread of this virus through vaccination is more than justified. The agenda of the Defendants is no secret, the Government of Puerto Rico is responsible for promoting the health and safety of all residents, without classification of their vaccination status. This is exactly the purpose that the Executive Orders attempt to achieve by requiring the vaccination of or, in the alternative, the weekly negative COVID-19 test results and operating at 50% capacity.

Defendants understood, when issuing the Executive Orders, that some employees would not be able to get vaccinated because of medical reasons, would refuse to get vaccinated for religious reasons, or would rather not get vaccinated for personal belief. In any of those cases, the Executive Orders provide the employees with opt-outs to the COVID-19 vaccine, which are contained in the Executive Orders. Crises like the COVID-19 pandemic can call for quick, decisive

measures to save lives. Yet, the Governor's orders need not be the most effective or least restrictive measure possible to attempt to stop the spread of COVID-19. *League of Indep. Fitness Facilities & Trainers, Inc.,* 814 F. Appx at 129 *(citing Heller*, 509 U.S. at 321, 113 S.Ct. 2637 (courts are compelled under rational-basis review to accept a legislature's generalizations even when there is an imperfect fit between means and ends)). These measures can create collateral effects that often are not borne evenly. The responsibility to adopt the measures to be taken in a public health emergency rest with the political branches of government and it is them who will also respond to the citizens. *S. Bay United Pentecostal Church*, 140 S. Ct. at 1613. The First Circuit has acknowledged the importance of the public interest weighing in favor of denying a preliminary injunction. *See Water Keeper All. v. U.S. Dep't of Def.,* 271 F.3d 21, 35 (1st Cir. 2001) (determining that any injury is outweighed by the public interest).

In contrast, when the interest of the state governments is not outweighed by public interest, Courts have granted preliminary injunctions. For instance, a District Court in Florida upheld preliminary injunction because the balance of harm and public interest weighed in favor of enjoinment. *Norwegian Cruise Line Holdings, Ltd. v. Rivkees*, No. 21-22492-CIV, 2021 WL 3471585 (S.D. Fla. Aug. 8, 2021) Specifically, that the balance of harm and public interest weighed in favor of preliminary injunction barring the State of Florida from enforcing statute prohibiting businesses from requiring their patrons to present documentation certifying COVID-19 vaccination or post-infection recovery for access or services. *Id*. The Court determined that public health would be jeopardized if it required to suspend its vaccination requirement. *Id*.

Here, public health and safety during the emergency of the COVID-19 pandemic are factors that outweigh any other consideration presented by Plaintiffs. Specially, when Plaintiffs' objections to the opt-outs in the Executive Orders are mere inconveniences and general grievances.

These inconveniences and general grievances compared with the fact that COVID-19 is spreading fast among the population of Puerto Rico, where more than a hundred thousand have been infected, and over two thousand have died as a consequence of contracting COVID-19, the balance of equities undisputedly tip in favor of the public health and safety policy established by the Governor. Therefore, Plaintiffs' request for a preliminary injunction must be **DENIED**.

D. Plaintiff has not posted the required security deposit for the issuance of a preliminary injunction.

Plaintiffs insist that this Court waives any bond requirement pursuant to Rule 65(c) of Federal Rules of Civil Procedure (Docket No. 7 at 38), but that is not possible. Rule 65(c) states that "[n]o restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained." Fed.R.Civ.P. 65(c). Although "the amount of the bond is left to the discretion of the court, the posting requirement is much less discretionary." *See Frank's GMC Truck Ctr., Inc. v. Gen. Motors Corp.*,847 F.2d 100, 103 (3d Cir.1988) ("While there are exceptions, the instances in which a bond may not be required are so rare that the requirement is almost mandatory.") In other words, Rule 65(c) "mandates that a court when issuing an injunction must require the successful applicant to post adequate security." *Id*. Therefore, since the instant case is not within any exception, Defendants argues that due to the adverse impact that an issuance of a preliminary injunction of this nature could have on the public health and safety in the midst of a COVID-19 pandemic, a bond of no less than $50,000 is required to be posted.

IV. CONCLUSION

As discussed above, Puerto Rico is suffering a public health crisis, the exigency of which has not yet diminished. During pandemic times, *Jacobson* instructs that courts should only

overturn state action when it lacks a "real or substantial relation to the protection of the public health" or represents "a plain, palpable invasion of rights secured by the fundamental law." (*Jacobson*, 197 U.S. at 31, 25 S.Ct. 358). The Executive Order vaccine mandate and its exemptions have a real and substantial relation to the protection of the public health of all citizens in Puerto Rico.

Plaintiffs' allegations do not meet any of the necessary requirements that must be established for the issuance of such an extraordinary relief (the preliminary injunction). First, Plaintiffs are unlikely to succeed on the merits because of the arguments espoused in the Motion to Dismiss, adopted by reference as if fully set forth herein and discussed in this Response. Second, Plaintiffs have failed to set forth an irreparable harm and their alleged economic damages cannot be considered irreparable harm. Plaintiffs allege economic harm are easily avoidable should the Plaintiffs have their COVID-19 tests in one of the venues where they are free of charge, as published by El Nuevo Día. Lastly, the public health and safety during an emergency are factors that outweigh any other consideration presented by Plaintiffs.

The requirement of vaccination against COVID-19 is a necessary measure to achieve the pressing Government interest of guaranteeing public health and safety, mitigating the harmful effects of the pandemic, and finally achieving immunity herd in Puerto Rico. Although the power of the government is not unrestricted, even in a state of emergency such as this one, the vaccination requirement at this time is the least burdensome means and respond to a compelling interest to achieve these government objectives, thus fulfilling any standard of scrutiny. Returning to other restrictions of social isolation, such as curfews or closures in the social and economic environment ("lockdown"), including the closing of schools and return to virtual learning are more restrictive

and burdensome, but required if the present less restrictive measure do not achieve the Government's compelling interest in public health and safety.

If the remedy requested by Plaintiffs is granted, the repercussions could be catastrophic, since the residents of Puerto Rico would be exposed to an exponential growth of persons infected with COVID-19; unnecessary deaths, hundreds or thousands of people hospitalized until the collapse of our health system. The vaccines are available but not enough people have been immunized, and the triumph of science has waned as mass death and disease has regretfully continue in light of the Delta variant. Science and public safety must prevail over subtle inconveniences and general grievances of those who choose not to be vaccinated. Plaintiffs go to great lengths that the Executive Orders are not necessary because of the effectiveness of the vaccines. However, it is precisely due to the effectiveness of the vaccine that the government's interest in promoting vaccination must continue. Pursuant to Plaintiffs logic people would not need to wear seatbelts because they are effective in preventing loss of life in car accidents. This nonsensical interpretation of the effectiveness of the vaccines must be clarify and explain correctly in order to avoid misinformation that contribute to hesitance among the unvaccinated. Even one life lost to the enjoinment of the Executive Orders would be too much to bear. It is respectfully pleaded that this Court maintain the status quo and deny the request for preliminary injunction to allow the Government of Puerto Rico to prevent the spread of this deadly virus through the Executive Orders. Indeed, any other determination would undoubtedly cause irreparable harm and put lives at risk.

WHEREFORE, based on the arguments set forth in the instant motion, it is respectfully requested that the Court **DENIES** a preliminary injunctive relief.

I HEREBY CERTIFY that on this same date, I electronically filed the foregoing with the Clerk of the Court using CM/ECF system which will send notification of such filing to all attorneys of record.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on September 16, 2021.

DOMINGO EMANUELLI-HERNÁNDEZ
Secretary of Justice

SUSANA I. PEÑAGARÍCANO-BROWN
Deputy Secretary in Charge of Litigation

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