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 9 INCYTE CORPORATION

10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

12
 13 DOE-1, DOE-2, and DOE-3,

14 Plaintiffs,

15 vs.

16 INCYTE CORPORATION, a
 17 Delaware corporation,

18 Defendant.

Case No.:

**NOTICE OF REMOVAL OF
 ACTION FROM STATE COURT
 PURSUANT TO DIVERSITY
 JURISDICTION UNDER 28
 U.S.C. §1441(b)**

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 SUITE 850
 SANTA MONICA, CA 90401

1 **TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL**
2 **DISTRICT OF CALIFORNIA AND TO PLAINTIFFS AND THEIR COUNSEL**
3 **OF RECORD:**

4 **PLEASE TAKE NOTICE** that, pursuant to 28 U.S.C. §§ 1332, 1441(b)
5 and 1446, Defendant Incyte Corporation (“Defendant” or “Incyte”) hereby
6 removes to this Court the State Court action described below.
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8 **I. INTRODUCTION**

9 1. This Court has original jurisdiction over this lawsuit under
10 28 U.S.C. § 1332(a) because, when Plaintiffs filed the Complaint and now,
11 complete diversity of citizenship has existed between the parties to this action
12 and the alleged amount in controversy exceeds \$75,000.

13 **II. THE STATE COURT ACTION**

14 2. On July 1, 2021, Plaintiffs DOE-1, DOE-2, and DOE-3 (collectively
15 “Plaintiffs”) filed an unverified complaint against Defendant in the Superior
16 Court of the State of California for the County of Los Angeles, entitled *DOE-*
17 *1, DOE-2, and DOE-3, Plaintiffs vs. Incyte Corporation, a Delaware*
18 *corporation, Defendant, Case No. 21STCV24339* (the “State Court Action”).
19 A true copy of the Complaint is attached hereto as Exhibit A. The Complaint
20 alleges three causes of action, including: (1) Declaration of Protected
21 Autonomy Privacy Interest: Right to Determine What is Done to One’s Own
22 Body; (2) Declaration of Protected Autonomy Private Interest: Right to
23 Exercise Informed Consent; and (3) Injunctive Relief: Unfair Business
24 Practice. See Conformed copy of Plaintiffs’ Complaint attached as **Exhibit A**.
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III. TIMELY REMOVAL OF STATE COURT COMPLAINT

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3. Service of process of Plaintiffs' complaint on Defendant was effectuated as of July 21, 2021, on which date Defendant's counsel sent a signed Notice and Acknowledgment of Receipt (POS-015, "Acknowledgment of Receipt") to Plaintiffs' counsel. A true copy of that signed Acknowledgment of Receipt (and all process, pleadings, and orders served on Defendant by attachment thereto) is attached as **Exhibit B** and incorporated by reference. Under California Code of Civil Procedure section 415.30(c), service of summons is deemed complete on the date the Acknowledgment of Receipt is executed and returned to the sender.

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4. On July 2, 2021, Plaintiffs filed an Ex Parte Application to Place Documents Under Seal, along with supporting documents. True copies of these documents are attached as **Exhibit C** and incorporated by reference.

5. On July 7, 2021, Plaintiffs filed an Ex Parte Application to Place Documents Under Seal, along with supporting documents. True copies of these documents are attached as **Exhibit D** and incorporated by reference. Defendant filed its Opposition to Plaintiff's Ex Parte Application on July 12, 2021. A true copy of Defendant's Opposition is attached as **Exhibit E** and incorporated by reference.

6. On July 12, 2021, Plaintiffs' Ex Parte Application to Place Documents Under Seal in the State Court Action was denied. A true copy of the State Court's Minute Order is attached as **Exhibit F** and incorporated by reference.

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7. On July 19, 2021, Plaintiffs filed their Ex Parte Application for Temporary Restraining Order and supporting documents. True copies of Plaintiffs' Ex Parte Application and supporting documents are attached as **Exhibit G** and incorporated by reference.

8. True copies of all other documents not listed above, which are on file with the Superior Court in the State Court Action, are attached and incorporated by reference as follows:

- a) **Exhibit H** – Plaintiffs' Civil Case Cover Sheet, filed on July 1, 2021;
- b) **Exhibit I** – Superior Court Minute Order regarding Non-Complex Determination, filed on July 2, 2021;
- c) **Exhibit J** – Superior Court Minute Order regarding Reassignment of case to an Independent Calendar Court, filed on July 7, 2021; and
- d) **Exhibit K** – Superior Court Notice of Case Management Conference, filed on July 13, 2021.

9. Exhibits A-K constitute the entirety of the Superior Court's file in the State Court Action.

10. No substantive proceedings have been had, and thirty (30) or fewer days have elapsed since this action became removable to this Court. In accordance with 28 U.S.C. § 1446(b), this Notice is timely filed with this Court.

IV. JOINDER

11. Defendant is not aware of any other defendant being named in this action and is likewise not aware of any other defendant being served.

V. DIVERSITY JURISDICTION

12. The State Court action is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1332 based on diversity jurisdiction. The State Court Action is properly removable to this Court in that it is a civil action between citizens of different states in which the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs, as explained below.

A. The Parties' Citizenship

13. There is complete diversity of citizenship because the operative parties, Plaintiffs and Defendant, are citizens of different states.

14. Defendant is informed and believes, and thereon alleges, that as of July 1, 2021, when the Complaint was first filed and now, Plaintiffs were citizens and residents of the State of California. Plaintiffs' Complaint alleges that "[p]laintiffs are all residents of [California], currently employed by Incyte as field sales employees in [California]." (See Complaint, attached as Exhibit A, ¶ 8.) Residence is *prima facie* evidence of domicile. *State Farm Mut. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994). For diversity purposes, a person is a "citizen" of the state in which he is domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983).

15. At the time the Complaint was filed and continuing to the present,

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1 and at all times relevant to the lawsuit, Defendant was and is a Delaware
 2 corporation with its principal place of business and “nerve center” in Delaware.
 3 (Declaration of Paula Swain (“Swain Decl.”) ¶ 3.) The citizenship of a
 4 corporation for purposes of diversity jurisdiction is its state of incorporation
 5 and the state where it has its principal place of business. 28 U.S.C. § 1332;
 6 *Davis v. HSBC Bank Nevada, N.A.*, 557 F.3d 1026, 1028 (9th Cir. 2009) (citing
 7 28 U.S.C. § 1332(c)(1)). A corporation’s principal place of business refers to
 8 the place where the corporation’s high level officers direct, control, and
 9 coordinate the corporation’s activities, which is typically considered to be the
 10 corporation’s “nerve center.” See *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93
 11 (2010) (“principal place of business” for determining corporate citizenship is
 12 its “nerve center” which will typically be found at a corporation’s
 13 headquarters). Here, Defendant is headquartered in Wilmington, Delaware,
 14 which is where its principal executive offices are located. (Swain Decl. ¶ 3.)
 15 Additionally, certain members of Defendant’s executive team, including its
 16 Chief Executive Officer, Secretary, and Chief Financial Officer, are located in
 17 Wilmington, Delaware, from where they direct and control the Company’s
 18 corporate operations. (*Id.*) Accordingly, Defendant is a citizen of Delaware.

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 22 16. As of July 1, 2021, when the Complaint was filed against
 23 Defendant, and continuing to the present, Defendant was not, and is not, a
 24 citizen or resident of California and complete diversity exists.

25 **B. The Amount in Controversy Exceeds \$75,000**

26 17. Although Defendant denies any liability to Plaintiffs, the amount in
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1 controversy between the parties exceeds the minimum sum of \$75,000 set
2 forth in 28 U.S.C. § 1332(a), exclusive of interest and costs. In this lawsuit,
3 Plaintiffs (1) seek a declaration that Defendant's mandatory COVID-19
4 vaccination requirement, without offering reasonable accommodations for
5 non-vaccinated employees, violates Plaintiffs' allegedly legally protected
6 rights to determine what is done to their own bodies and their right to exercise
7 informed consent; (2) injunctive relief prohibiting Defendant from enforcing its
8 mandate that Plaintiffs must receive COVID-19 vaccination as a condition of
9 continued employment and mandating that Defendant provide reasonable
10 accommodations to allow Plaintiffs' continued employment; and (3) attorneys'
11 fees and costs. (See Complaint ¶¶ 6-7, 49-52, 63-66, 73-75, Prayer ¶¶ a-f,
12 attached hereto as Exhibit A.)

15 18. When the amount in controversy is not definite from the face of
16 the Complaint, in order to prevent removal of an action based on diversity
17 jurisdiction, a plaintiff must file a binding stipulation or affidavit with his or her
18 Complaint stating that the amount in controversy does not exceed \$75,000.
19 *DeAguilar v. Boeing*, 47 F.3d 1404, 1412 (5th Cir. 1992) (per curium).
20 Plaintiffs did not file any such stipulation or affidavit with their Complaint. In
21 any event, it is apparent from the allegations in the Complaint and the relief
22 sought by Plaintiffs that the amount in controversy exceeds \$75,000.

24 19. While Plaintiffs have not specifically alleged a total amount in
25 controversy in their Complaint, they seek a temporary restraining order,
26 preliminary, and permanent injunction against enforcement of Defendant's
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1 COVID-19 vaccine requirement as a condition of continued employment.
 2 (See Complaint, ¶¶ 50-51, 64-65, 73-74, Prayer ¶¶ c-d, attached hereto as
 3 Exhibit A.) In cases seeking equitable relief, “the ‘amount in controversy’
 4 requirement is satisfied where either plaintiff can gain or defendant can lose
 5 the jurisdictional amount.” (Phillips & Stevenson, Rutter Group Prac. Guide:
 6 Fed. Civ. Proc. Before Trial (The Rutter Group 2021), ¶ 2:1851 [citing cases];
 7 see *Corral v. Select Portfolio Servicing, Inc.* (9th Cir. 2017) 878 F.3d 770,
 8 775.) As of the date Plaintiffs filed the State Court Action on July 1, 2021,
 9 each field sales employee employed by Defendant in California is
 10 compensated in an amount equal to or greater than \$75,000 per year. (Swain
 11 Decl. ¶ 4.) Plaintiffs’ Complaint alleges that Defendant intends to enforce its
 12 COVID-19 vaccine requirement as a condition of continued employment, such
 13 that if Plaintiffs do not comply with its requirement, their employment with
 14 Defendant will terminate. (See, e.g., Complaint at ¶ 50). Accordingly, such a
 15 terminations could potentially cause each Plaintiff to lose annual
 16 compensation in the amount of \$75,000 or more. (See Swain Decl. ¶ 4.)

20 20. Plaintiffs also seek recovery of attorneys’ fees pursuant to
 21 California Code of Civil Procedure (“CCP”) section 1021.5, which states in
 22 pertinent part:

23 Upon motion, a court may award attorneys’ fees to a
 24 successful party against one or more opposing
 25 parties in any action which has resulted in the
 26 enforcement of an important right affecting the public

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interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement . . . are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.”

Attorneys’ fees awarded under CCP section 1021.5 in cases implicating constitutional rights or involving matters which affect the public interest have exceeded a pro rata share of \$75,000 per Plaintiff. See *Pierce v. County of Orange*, 905 F. Supp. 2d 1017, 1049 (C.D. Cal. Mar. 2, 2012)(awarding \$508,179.85 in favor of plaintiffs for work done on constitutional claims); *Sacramento Regional Coalition to End Homelessness v. City of Sacramento*, 2020 WL 2836762 at *5 (E.D. Cal. Jun. 1, 2020)(awarding \$318,005.07 in favor of Plaintiffs following consent judgment entered after preliminary injunction was granted); and *Cisneros v. Vangilder*, 2021 WL 366917 at *10 (N.D. Cal. Feb. 3, 2021), *appeal docketed*, No. 21-15405 (9th Cir. Mar. 8, 2021)(awarding \$259,237.50 in favor of Plaintiff after trial). Courts should include in their amount in controversy calculation damages and attorneys’ fees that, although not yet accrued, are reasonable to anticipate. See Rosen, et al., Rutter Group Prac. Guide: Federal Employment Litigation (The Rutter Group 2021) ¶ 12:242.2 (citing *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 414-15 (9th Cir. 2018); *Fritsch v. Swift Transp. Co. of Ariz., LLC*, 899

1 F.3d 785, 788 (9th Cir. 2018).

2 21. In summary, the amount in controversy exceeds the minimum
3 sum of \$75,000.00 set forth in 28 U.S.C. § 1332(a), exclusive of interest and
4 costs, as to each of the Plaintiffs.

5 **VI. VENUE**

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7 22. Venue is proper where a Removal is “to the district court of the
8 United States for the district and division embracing the place where such
9 action is pending.” 28 U.S.C. § 1441(a). Plaintiff initially filed this action in
10 the Superior Court in Los Angeles County, which sits in the Central judicial
11 district in California, Western Division. 28 U.S.C. § 84(c)(2) (“The Central
12 District comprises 3 divisions” with the “Western Division compris[ing] the
13 count[y] of . . . Los Angeles . . .”). Accordingly, this action is properly removed
14 to this Court. See 28 U.S.C. § 84(c)(2).
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16 **VII. NOTICE TO PLAINTIFF AND SUPERIOR COURT**

17 23. Written Notice of the Removal of this action to the United States
18 District Court for the Central District of California will be filed with the Clerk of
19 the Superior Court for the County of Los Angeles, and sent via Electronic Mail
20 and First Class U.S. Mail to Plaintiffs through their attorney of record.

21 **WHEREFORE**, Defendant gives notice that the above action, which was
22 pending in the Superior Court of the State of California, County of Los
23 Angeles, is hereby removed to this Court.
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Dated: July 22, 2021

COZEN O'CONNOR

By: /s/ Michele Ballard Miller
Michele Ballard Miller
Attorneys for Defendant
INCYTE CORPORATION

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