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 10 **UNITED STATES DISTRICT COURT**
 11 **DISTRICT OF NEVADA**

12 SERVICE EMPLOYEES INTERNATIONAL
 UNION, LOCAL 1107,

CASE NO.:

13 Plaintiff,

**PLAINTIFF'S COMPLAINT FOR
 INJUNCTIVE RELIEF PENDING
 ARBITRATION**

14 vs.

15 HEALTHCARE CORPORATION OF
 16 AMERICA d/b/a SUNRISE HOSPITAL AND
 MEDICAL CENTER & SUNRISE
 17 CHILDREN'S HOSPITAL, and SOUTHERN
 HILLS HOSPITAL & MEDICAL CENTER;
 18 and Does 1-10,

19 Defendants.

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 21 Plaintiff SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1107 ("Local
 22 1107"), alleges that:

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 24 1. This is an action under Section 301 of the Labor Management Relations
 25 Act, 29 U.S.C. §185, for injunctive relief in aid of arbitration. The agreement to arbitrate is
 26 contained in two collective bargaining agreements between an employer and a labor
 27 organization.
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I.**PARTIES, JURISDICTION AND VENUE**

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3 2. Plaintiff Local 1107 is a labor organization as defined by 29 U.S.C. § 152(5), with
4 offices located in Nevada, including Clark and Washoe Counties.

5 3. Defendant Healthcare Corporation of America d/b/a Sunrise Hospital and Medical
6 Center & Sunrise Children's Hospital ("Sunrise") is an employer as defined by 29 U.S.C.
7 §152(2), and is a private for-profit corporation doing business in Clark County, Nevada.

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9 4. Healthcare Corporation of American d/b/a Southern Hills Hospital & Medical
10 Center ("Southern Hills") is an employer as defined by 29 U.S.C. § 152(2), and is a private for-
11 profit corporation doing business in Clark County, Nevada.

12 5. This Court has jurisdiction of this matter pursuant to Section 301 of the Labor
13 Management Relations Act, 29 U.S.C. § 185.

14 6. Venue is proper in this Court because the matters giving rise to this Complaint
15 occurred within the division of the judicial district.

II.**FACTUAL ALLEGATIONS****[The Collective Bargaining Agreements]**

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20 7. Local 1107 is the sole and exclusive bargaining representative for certain
21 registered nurses ("RNs") and certain service employees, including technical employees,
22 business office clerical employees, and various other non-professional employees employed by
23 Sunrise and Southern Hills.
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26 8. Local 1107 is a party to collective bargaining agreements with both Sunrise and
27 Southern Hills covering the terms and conditions of employment for represented employees.
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1 Those agreements were in effect at all relevant times and are effective through March 31, 2010.
2 Article 10 of each collective bargaining agreement provides for the submission to final and
3 binding arbitration of all grievances relating to a dispute involving the interpretation, application
4 or compliance with the agreements.
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6 **[The Unilateral Implementation of a Mandatory Flu Vaccine/Masking Policy and**

7 **Responding Grievances]**

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9 9. Sunrise and Southern Hills announced to their employees on or about August 19,
10 2009, that they intended to implement a new term and condition of employment, namely, that
11 employees who could infect a patient or who could be infected are required to receive a
12 vaccination for both seasonal flu and H1N1 flu, and that anyone who declines such vaccinations
13 is required to wear a surgical mask for the duration of their shift. On or about September 16,
14 2009, Sunrise announced that seasonal flu vaccines would be available the following day and
15 that it would "like to have everyone vaccinated or evaluated beginning on October 1, 2009."
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19 10. On or about September 25, 2009, Sunrise and Southern Hills announced that
20 because of delays in the delivery and manufacture of flu vaccines, they would delay the
21 implementation of the flu vaccine policy until October 15, 2009. The announcement further
22 stated that by the same date, 100% of employees who could infect a patient or become infected
23 must be vaccinated or wear a surgical mask in patient care areas.
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1 11. Local 1107 filed a grievance against Sunrise on or about September 27, 2009, and
2 filed a grievance against Southern Hills on or about October 23, 2009, pursuant to its collective
3 bargaining agreements (collectively, the "Grievances"). The Grievances alleged that the
4 anticipated implementation of the flu vaccine policy violated the parties' collective bargaining
5 agreements, including, but not limited to, Article 1 of the agreements which provides that the
6 hospitals recognize Local 1107 as the sole and exclusive bargaining representative of certain of
7 its employees, including RN's and other technical and clerical employees. Article 1 of the
8 agreements impliedly requires that the Employer bargain with Local 1107 prior to implementing
9 any changes in mandatory subjects of bargaining. Additionally, while Article 2 of the
10 agreements provides that the Employer has the exclusive right to manage the operations of its
11 hospital, it further provides that the Employer has a duty to bargain with Local 1107 over actions
12 of the hospital that directly affect the job security of bargaining unit members and will do so
13 upon request of the union within thirty (30) days from the date the union was notified of the
14 proposed action or became aware of the proposed action.

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21 12. On October 6, 2009, Sunrise announced that it would not receive additional
22 seasonal flu vaccines for the foreseeable future, and that Healthcare Corporation of America
23 ("HCA"), Sunrise's and Southern Hills' parent corporation, had entered into arrangements with
24 various local pharmacies to provide free vaccines for all HCA-affiliated employees, including
25 employees of both Sunrise and Southern Hills. HCA further stated that it needed to identify
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1 which employees have received the seasonal flu vaccine and that, beginning on October 15,
2 2009, it would require employees to wear identification indicating whether or not they had
3
4 received the seasonal flu vaccine. Additionally, Sunrise stated that for those employees not
5 receiving vaccinations, masks will be required in all areas other than the cafeteria, break rooms,
6
7 smoking areas, and private offices.

8 13. A form entitled "Declination Form For Seasonal Influenza Vaccination"
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10 circulated by HCA and, upon information and belief, also circulated to employees by Sunrise and
11 Southern Hills, requires employees to sign an acknowledgement that "[f]ailure to wear a surgical
12 mask during duty will result in disciplinary action, up to and including termination." The form
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14 further requires an employee to acknowledge that he or she "understand[s] that if [he or she]
15 decline[s] the vaccine AND [he or she] refuse[s] to wear a mask when required for duty, [he or
16 she] is voluntarily resigning [his or her] position."
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18 14. On October 9, 2009, Sunrise denied Local 1107's grievance concerning the
19
20 implementation of the flu vaccine policy. Southern Hills has not yet responded to Local 1107's
21 grievance. Although the grievance-arbitration procedures will eventually culminate in a final
22
23 and binding arbitration decision, it may take from six months to a year to obtain a hearing before
24 an arbitrator and a final decision.

25 15. On October 13, 2009, a nurse manager at Sunrise alerted a Local 1107 union
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27 steward that employees not receiving a flu vaccine would be required to wear a mask in all areas
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1 of the hospital except staff lounges and the cafeteria, including when entering and leaving the
2 hospital. Additionally, the notification stated that colored dots would be placed on employee
3 badges indicating whether or not an employee has received a flu vaccine. Finally, the
4 notification states that “[t]his process is not optional” and that employees without flu vaccines
5 found not wearing masks “will be subject to progressive discipline.”
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8 **[Demand for Arbitration/Request to Expedite]**

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10 16. Since on and about October 23, 2009, Local 1107 has requested that Sunrise and
11 Southern Hills expedite the Grievances to arbitration in order to avoid the delays associated with
12 that forum. Neither hospital has agreed to the request.
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14 17. As the exclusive bargaining representative of employees affected by the
15 mandatory vaccine policy, Local 1107 is entitled, as a matter of law and its collective bargaining
16 agreements, to bargain, be consulted and be heard before Sunrise and Southern Hills implement a
17 new condition of employment such as mandatory flu vaccines and/or requiring employees to
18 wear surgical masks and identification revealing their vaccination status. The unilateral
19 implementation of forced medical treatment or mandatory masking, and vaccination status
20 identification badges, without bargaining with Local 1107 is inconsistent with the parties’
21 collective bargaining agreements.
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1 **[Irreparable Harm; Frustration of Arbitration]**

2 18. By the time an arbitration decision can be rendered, affected employees will
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4 already have been forced to submit to vaccinations, or to wear masks and color-coded
5 identification badges revealing the vaccination status of the masked employees. An employee
6 choosing to comply with neither alternative faces termination.
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8 19. A cease and desist order by an arbitrator would be a futile act, thereby frustrating
9 and interfering with the arbitral process. By the time a decision issues, affected employees will
10 have suffered irreparable harm by having been forced to choose between forced medical
11 treatment, revealing personal and private medical decisions with patients, co-workers, and the
12 public, and termination.
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15 **III.**

16 **CLAIM FOR RELIEF**

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18 20. The refusal of Sunrise and Southern Hills to halt implementation of the mandatory
19 vaccination/continuous masking policy violates Section 301 of the Labor Management Relations
20 Act, 29 U.S.C. § 185, and the obligation to refrain from making unilateral changes in subjects of
21 bargaining under the parties' collective bargaining agreements. Local 1107 has properly
22 challenged the actions of Sunrise and Southern Hills by filing grievances and demanding
23 arbitration under the collective bargaining agreements. As a result, this dispute must properly be
24 resolved in arbitration.
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1 21. The foregoing actions by Sunrise and Southern Hills, unless properly enjoined,
 2 will cause Local 1107 and the employees it represents irreparable harm and frustrate the arbitral
 3 process. Immediate injunctive relief is appropriate and necessary to maintain the status quo to
 4 permit the arbitrator to consider and act upon the dispute.
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6 22. An injunction maintaining the status quo will not cause measurable harm to
 7 Sunrise or Southern Hills as it will not disturb any voluntary vaccination programs.
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9 23. Local 1107 has complied with all conditions precedent required of it pursuant to
 10 its agreements with Sunrise and Southern Hills, as required by the Section 301 of the Labor
 11 Management Relations Act, 29 U.S.C. §185.
 12

13 **WHEREFORE, Local 1107 prays for:**
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15 1. A temporary restraining order and a preliminary and permanent injunction
 16 preserving the status quo pending resolution of the parties' dispute under their collective
 17 bargaining agreements through final and binding arbitration;
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19 2. An order directing the parties to submit this dispute to expedited
 20 arbitration;
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22 3. Costs of suit and an award of reasonable attorneys' fees; and
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24 4. Such other and further relief as the Court deems proper.
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26 DATED: October 29, 2009.

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28 Attorneys for Defendant SEIU Local 1107