

No. 24-6609

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

MIMI WEISS,  
Appellant-Plaintiff,

v.

THE PERMANENTE MEDICAL GROUP, INC.,  
Appellee-Defendant.

On Appeal from the United States District Court  
for the Northern District of California  
No. 3:23-cv-03490-RS  
Hon. Richard Seeborg, Chief U.S. District Court Judge

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**SUPPLEMENTAL EXCERPTS OF RECORD**

Volume 1 of 1

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**SUPPLEMENTAL EXCERPTS OF RECORD****INDEX**

<b>Document</b>	<b>Date Filed</b>	<b>District Court Docket No.</b>	<b>SER Pages</b>
First Amended Complaint for Damages and Injunctive Relief	09/14/2023	15	005 – 028
Order Granting Motion to Dismiss	12/04/2023	23	029 – 036
Order re: Extension of Time to File Second Amended Complaint and Stay of Proceedings	12/20/2023	29	037
Defendant The Permanente Medical Group, Inc.’s Answer to the First Amended Complaint	03/29/2024	41	038 – 058
Declaration of Sean T. Strauss in Support of Defendant The Permanente Medical Group, Inc.’s Motion for Judgment on the Pleadings	04/17/2024	43-1	059 – 063
Exhibit D of the Strauss Declaration in Support of Motion for Judgment on the Pleadings – October 21, 2021 Email Requesting Additional Information from Appellant Mimi Weiss	04/17/2024	43-5	064 – 068
Exhibit F of the Strauss Declaration in Support of Motion for Judgment on the Pleadings – November 30, 2021 email denying Appellant Mimi Weiss’s request for a religious exemption	04/17/2024	43-7	069 – 072

Exhibit G of the Strauss Declaration in Support of Motion for Judgment on the Pleadings – United States Department of Homeland Security Request for an Exception to the COVID-19 Vaccination Requirement Form	04/17/2024	43-8	073 – 076
Exhibit H of the Strauss Declaration in Support of Motion for Judgment on the Pleadings – United States Department of Agriculture Request for a Religious Exception to the COVID-19 Vaccination Requirement Form	04/17/2024	43-9	077 – 080
Exhibit I of the Strauss Declaration in Support of Motion for Judgment on the Pleadings – United States Department of Commerce Request for a Religious Exception to the COVID-19 Vaccination Requirement Form	04/17/2024	43-10	081 – 083
Exhibit J of the Strauss Declaration in Support of Motion for Judgment on the Pleadings – United States Equal Employment Opportunity Commission Religious Accommodation Request Form	04/17/2024	43-11	084 – 087
Defendant The Permanente Medical Group, Inc.’s Notice of Motion and Motion to Dismiss Plaintiff’s Second Amended Complaint; Memorandum of Points and Authorities	08/02/2024	58	088 – 120

Request for Judicial Notice in Support of Defendant The Permanente Medical Group, Inc.'s Motion to Dismiss Plaintiff's Second Amended Complaint	08/02/2024	59	121 – 123
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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

MIMI WEISS, an individual,

Plaintiff,

v.

THE PERMANENTE MEDICAL GROUP,

Defendants.

Case No. 3:23-cv-03490-RS

**PLAINTIFF'S FIRST AMENDED  
COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF**

1. Religious Discrimination in Violation of Title VII of the Civil Rights Act of 1964
2. Failure to Provide Religious Accommodation in Violation of Title VII of the Civil Rights Act of 1964
3. Retaliation in Violation of Title VII of the Civil Rights Act of 1964
4. Religious Coercion - Harassment in Violation of Title VII of the Civil Rights Act of 1964
5. Religious Discrimination-Disparate Treatment, in violation of Cal. Gov. Code § 12940(a)
6. Religious Discrimination-Failure to Accommodate, in violation of Cal. Gov. Code § 12940(l)
7. Retaliation, in violation of Cal. Gov. Code § 12940(h)
8. Failure to Prevent Discrimination and Harassment, in violation of Cal. Gov. Code § 12940(k)

**JURY TRIAL DEMAND**

## **INTRODUCTION**

Mimi Weiss was a management professional working in health education with a twenty-year career when defendant, The Permanente Medical Group, Inc. (“TPMG”), established a digital system for evaluating religious accommodation requests to refrain from receiving the Covid-19 vaccine. Defendant denied Weiss a religious accommodation, and terminated her based exclusively on impersonal, digital interaction, denying Weiss the opportunity to explain her request, personally, to a human being. Defendant’s system was arbitrary and capricious, and entirely incapable of determining the sincerity of applicant’s religious beliefs.

Moreover, because Weiss duties were fully remote, Defendant’s requirement for Weiss to be vaccinated was completely unrelated to any health or safety concern, and thus, Defendant lacked any rationale for requiring Weiss to be vaccinated in the first place. Defendant’s vaccine mandate made no distinction for those whose work was entirely remote, thus, being entirely arbitrary and unreasonable as applied to Weiss. Moreover, by its own admission, Defendant granted literally thousands of religious accommodation requests to those who worked closely with patients, demonstrating its belief that it could satisfy health and safety concerns of patients and staff while providing religious accommodations to those with sincerely held religious beliefs.

Just as standardized tests have been criticized for testing only one’s ability as a test taker, Defendant’s reliance on written answers to arbitrary questions did not actually test the sincerity of one’s beliefs, but only one’s ability to “read the tea leaves” and figure out what answers would pass muster with the screeners.<sup>1</sup>

Despite purporting to act to protect the health and safety of its employees and patients, at a time when the health care system was overloaded due to the pandemic, Defendant undermined the effective provision of health care services by firing thousands of employees at a time when it

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<sup>1</sup> <https://lasvegassun.com/news/2021/jun/07/standardized-tests-measure-test-taking-ability-not/> (last accessed September 11, 2023).

needed more, not fewer health care workers serving during the pandemic. Plaintiff Weiss was a victim of this misguided policy.

### **PARTIES**

1. Plaintiff Mimi Weiss is an individual who, during all relevant times, resided in Campbell, California. She is and was protected by Title VII of the Civil Rights Act of 1964 and the California Fair Employment and Housing Act. She is a member of a protected class on account of her religion, Christian Jew.

2. Defendant TPMG is a California corporation duly registered to conduct business in the State of California, whose principal address is in Oakland, California. TPMG is an employer as defined by Title VII in that it employs more than fifteen (15) employees and represented to the EEOC that it was Weiss' employer.

### **JURISDICTION AND VENUE**

3. This action arises under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000 et seq, and the California Fair Employment and Housing Act. Plaintiff seeks damages for unlawful discrimination arising from her termination due to her religion – Christian Jew.

4. Jurisdiction of this Court is based on a claim of deprivation of Federal Civil Rights and invoked pursuant to the following statutes:

a. 28 U.S.C. § 1331, giving district courts original jurisdiction over civil actions arising under the Constitution, laws, or treaties of the United States; and

b. 28 U.S.C. § 1343, giving district courts original jurisdiction over actions to secure civil rights extended by the United States governments.

5. In accordance with 28 U.S.C. §1367, supplemental jurisdiction is proper with respect to Plaintiff's state law claims because these claims arise from the same case and controversy as Plaintiff's Title VII claims.

6. Plaintiff timely filed a charge with the California Civil Rights Department ("CCRD") on or about April 4, 2022, alleging discrimination and retaliation based on religion,

charge number 202112-15586508. This charge was dual-filed with the Equal Employment Opportunity Commission (“EEOC”), charge number 37A-2022-01045.

7. On April 19, 2023, Plaintiff received a Notice of Right to Sue from the EEOC. Plaintiff has therefore exhausted her administrative remedies, and this Complaint was timely filed within 90 days of Plaintiff’s receipt of the Notice of Right to Sue.

8. This First Amended Complaint is timely filed within 21 days of service of Defendant’s Motion to Dismiss, dated August 29, 2023.

9. Venue is proper in the Northern District of California because of the events or omissions giving rise to the claims alleged herein occurred in this District, pursuant to 28 U.S.C. §1391. At the time this action commenced, Defendant TPMG is subject to personal jurisdiction in the Northern District because TPMG has sufficient contacts with the forum to subject it to personal jurisdiction in this District.

#### **JURY TRIAL DEMAND**

10. Weiss demands a jury trial.

#### **STATEMENT OF FACTS**

11. Weiss initially worked for TPMG for fifteen years, from August 2000 until 2015. From 2000 to 2005, she served as a Senior Health Educator at Santa Clara Medical Center. In 2005, she was promoted to Health Education Manager and served in that position until December 2015. At all times during her employment, her job performance was excellent and she received outstanding performance reviews.

12. In December 2015, Weiss left TPMG briefly, but was rehired in April 2017 in an on-call capacity in a Health Educator III position.

13. In early 2020, Weiss applied for and was hired for a Managerial Senior Consultant position with the Regional Department, Health Engagement Consulting Services. Her job duties in this position were to manage a portfolio for a variety of health engagement consulting projects for TPMG, Nor Cal region. She was involved in several major initiatives, including leading a regional task force to set regional standards for lifestyle education. She



received a very positive performance review during that time period and earned the respect of her peers for her job performance.

14. Throughout the relevant period, Weiss' position was fully remote. She had no in-person contact with patients, other employees or any other people while conducting her job duties. Thus, there was no risk that she would spread COVID-19 to patients or employees. To this day, the department never returned to the office, but remains fully remote!

15. In August 2021, Defendant mandated all employees to be vaccinated for COVID-19 without regard for whether one's status was remote.

16. Employees were required to provide proof of fully vaccinated status or have an approved exemption by September 30, 2021, otherwise they would be placed on unpaid leave for 60 days to come into compliance. If compliance was not achieved during that 60-day period, Defendant advised they would be terminated.

17. Weiss is a Christian Jew

18. Weiss has sincerely held religious beliefs which prevent her from receiving the COVID-19 vaccine. Weiss grew up in a conservative Jewish household that believed that God made man's body in His (God's) image, and to harm the body is sin. She believes that needle wounds defile the body, God's temple, and would violate the command in Leviticus 19:28, which states: "And you do not put a cutting for the soul in your flesh; and a writing, a cross-mark, you do not put on yourself; I [am] YHWH." From her understanding, the only religious exception to allowing needle wounds is for direct curative benefit, and thus it is against her religious belief to receive a needle wound for a vaccine. Under Jewish law, a person must maintain her body and blood uncontaminated. According to Leviticus 17:11, "the life of the body is in the blood," and the blood must be kept pure.

19. In 2016, Weiss attended a nine week certification course on natural healing. One of the presentations was by a Messianic Jew about the connection between diet, health and faith. Thereafter, Weiss changed her diet, stopped eating meat, began eating a mostly raw diet, and

1 eliminating chemicals and foreign substances. She did this as an expression of her faith, as taught  
2 by the Messianic Jew.

3 20. Weiss believes the COVID-19 vaccines defile the body, blood and soul and to  
4 receive such a vaccine would be a violation of the trust Jews are required to have in the natural  
5 healing powers of the human body as designed by the Creator.

6 21. This belief is reinforced by Weiss' Christian faith, as, pursuant to 1 Corinthians  
7 6:19-20, Weiss understands that her body is the temple of God and that it is contrary to God's  
8 will to introduce foreign substances into the body temple unless necessary for curative purposes.  
9 Throughout Kaiser's religious accommodation process, Weiss prayed to God and asked His  
10 guidance regarding His will for her with respect to the Covid-19 vaccine.

11 22. Weiss sincerely believes God answered her prayers by directing her to refrain  
12 from receiving a needle wound for non-curative purposes, as well as the Covid-19 vaccine.

13 23. Weiss was terrified to lose her position because her financial situation was  
14 precarious, but she firmly believed God was instructing her to trust him with her life even if she  
15 were terminated.

16 24. In or about late August, 2021, Weiss requested a religious accommodation to  
17 Defendant's COVID-19 vaccine mandate.

18 25. On August 31, 2021, Defendant provisionally approved Weiss's religious  
19 exemption request and notified her of the approval by email.

20 26. Shortly thereafter, in an email dated September 21, 2021, Defendant expressed  
21 concern that employees were submitting religious accommodation requests which contained  
22 identical language and that Defendant believed employees were exchanging information  
23 regarding how to obtain a religious exemption even if they did not have a sincerely-held  
24 religious belief. It asked that employees restate their religious accommodation requests in their  
25 own words.  
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1           27.     On October 21, 2021, Defendant sent Weiss another email requiring Weiss to  
2 answer intrusive questions, such as whether Weiss had ever taken medications of any kind, and  
3 what other substances besides the COVID vaccine she refused to put into her body. Weiss  
4 answered many questions but refused to answer several of these questions regarding them as  
5 intrusive and a violation of privacy. Weiss provided enough information for Defendant to know  
6 that she held a sincere religious objection to the vaccine. Even assuming Defendant did not  
7 provide enough information, it had a duty to engage in the interactive process and reach out to  
8 her regarding her answers. It never did so.

9           28.     The questions Weiss did not answer appeared to be intended to trap applicants  
10 into providing answers which would appear to conflict with a sincerely-held religious belief.

11           29.     Rather than establish a screening or interactive process to adequately determine  
12 whether an individual requesting a religious accommodation to decline the COVID-19 vaccine  
13 was sincere, Defendant instead adopted a process that was arbitrary and capricious, as it did not  
14 involve any direct human contact with individual applicants, such as Weiss.

15           30.     On information and belief, it is impossible to ascertain the sincerity of one's  
16 religious beliefs by simply reviewing written expressions of faith. Indeed, much has been written  
17 about the inadequacy of electronic communications to accurately convey the message. "Emotion,  
18 intent and context are often lost in...[such communications]." <sup>2</sup>

19           31.     The written questions utilized by Defendant presume that the sincerity of one's  
20 faith can be determined by one's competence at expressing one's faith in writing. This is a  
21 flawed presumption.

22           32.     Sincerely held religious beliefs are not always easy to express in writing,  
23 especially for adherents who are not religious scholars, teachers, or leaders. Faith is a matter of  
24 very personal experience and does not readily lend itself to expression in language.  
25

26 \_\_\_\_\_  
27 <sup>2</sup> Electronic Communications are Easily Misunderstood, David Stanislaw, Nov 7, 2017;  
28 [https://stanislawconsulting.com/electronic-communication-are-easily-misunderstood/\(last](https://stanislawconsulting.com/electronic-communication-are-easily-misunderstood/(last)  
accessed September 12, 2023.)

1           33.     Indeed, the apostle Paul writes in the first letter to the Corinthians that matters of  
2 faith make no sense to those who are not themselves believers because spiritual things are  
3 spiritually discerned. 1 Cor. 2:14: “But the unspiritual man simply cannot accept the matters  
4 which the Spirit deals with—they just don’t make sense to him, for, after all, you must be  
5 spiritual to see spiritual things.” (J.B. Phillips translation).

6           34.     On information and belief, Defendant utilized individuals to screen religious  
7 accommodation requests without regard to whether they had any knowledge or experience of  
8 religious faith, and whether they were spiritually qualified to discern sincerity of religious belief.

9           35.     At best, the superficial form of screening Defendant utilized could only identify  
10 requests that required additional screening, in person, by a properly trained individual. Yet,  
11 Defendant failed to offer those whose requests were denied, like Plaintiff Weiss, an opportunity  
12 to meet with someone who could discuss their objections to the vaccine and make a more  
13 accurate determination as to whether their objection was based on their faith or something else.

14           36.     Although Weiss responded in good faith to Defendant’s request for additional  
15 information about her religious beliefs, and provided an explanation of her faith, Defendant  
16 rejected her religious accommodation request in an email dated November 30, 2021. In the  
17 denial email, Weiss was informed that she would be placed on unpaid leave on December 5,  
18 2021, pending receipt of full vaccination.

19           37.     Defendant rejected Weiss’s religious accommodation because, according to the  
20 denial letter, “it has been determined that your request does not meet the standards necessary for  
21 granting an exemption from obtaining any COVID-19 vaccine.”

22           38.     Defendant’s letter failed to explain what the standards were or in what way Weiss  
23 failed to meet them.

24           39.     Weiss had no other objection to receiving the Covid-19 vaccine other than her  
25 religious faith, nor did Defendant determine that she had an alternative reason for rejecting the  
26 vaccine.  
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1           40.     On information and belief, Weiss' co-worker, Alicia Okoh, a Seventh-day  
2 Adventist, also requested religious accommodation to avoid the vaccination requirement.

3           41.     Unlike Weiss, Ms. Okoh used specific catch-phrases like "the mark of the beast"  
4 and "fetal cell lines," in her application. Unlike Weiss, Ms. Okoh's application was approved.

5           42.     Also on information and belief, there are married couples who submitted identical  
6 written requests, in which, one spouse was granted an exemption, while the other was denied,  
7 thus demonstrating the arbitrary nature of the procedure itself.

8           43.     After receiving the denial of her accommodation request, Weiss contacted her  
9 manager, Kim Smith, who referred her to Adena Kaplan, the Director of the Department. Weiss  
10 asked Smith and Kaplan who she could talk to about the denial. Kaplan said to her knowledge  
11 there was no appeal process. Kaplan informed Weiss that TPMG had hired a third-party  
12 company to review the exemptions and that she could not appeal.

13           44.     Contrary to EEOC guidelines, Defendant lacked an objective basis to question the  
14 sincerity of Weiss's belief.

15           45.     Defendant never provided an avenue for an appeal, or an individual with whom an  
16 applicant could discuss their sincerely held religious belief, should they believe an error had been  
17 made.

18           46.     Weiss contacted two Associate Executive Directors of her organization, Dr.  
19 Sameer Asware and Dr. Irene Chen, to explain her situation and ask for their assistance. In her  
20 email to Dr. Asware, Weiss explained her religious beliefs and her objections to the vaccine in  
21 detail.

22           47.     At no time during the exemption screening process did Defendant or any of its  
23 employees/agents ever meet with Weiss in person, by phone, or by video conference; at no time  
24 was there any direct human contact, and on information and belief, at no time did Defendant ever  
25 consult with any of Weiss's direct supervisor to learn whether she was religious, or to inquire  
26 about the sincerity of her religious objection to the COVID-19 vaccine.  
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1           48.     On or about December 5, 2022, Defendant placed Weiss on unpaid administrative  
2 leave because of her refusal to obtain the vaccine.

3           49.     On or about January 10, 2022, Defendant terminated Weiss from her position,  
4 effective immediately. Weiss has been unable to find employment since that time. Her  
5 termination has had a devastating effect on her emotionally, physically, and financially. She  
6 was forced to leave her home, friends and support system in California because she could no  
7 longer afford to live there, and uproot her life to move across the country to Florida. She lost a  
8 position and a career which she loved and found extremely fulfilling.

9           50.     The sincerity of her religious beliefs is demonstrated by her willingness to lose a  
10 job which she desperately needed in order to follow what she sincerely believes to be God's  
11 mandates and direction.

12  
13                               **FIRST CAUSE OF ACTION**  
14                               **RELIGIOUS DISCRIMINATION-DISPARATE TREATMENT**  
15                               **TITLE VII**

16           51.     Weiss realleges and incorporates herein by reference all of the above paragraphs  
17 as though fully set forth herein.

18           52.     Under Title VII, it is unlawful for an employer to discharge a person or "to  
19 discriminate against any person with respect to her [or her] compensation, terms, conditions, or  
20 privileges of employment" because of a person's "religion." 42 U.S.C. § 2000e-2. A person's  
21 religion "includes all aspects of religious observance and practice, as well as belief." Id at §  
22 2000e.

23           53.     Weiss was a member of a protected class based on her religion as broadly defined  
24 to include both religious beliefs and practices. She is Christian Jew.

25           54.     Weiss was qualified for the position as she had been performing satisfactorily in  
26 the position for the previous five years.

27           55.     Defendant subjected Weiss to an adverse employment action in that it terminated  
28 her employment.

1           56. Defendant's termination of Weiss was substantially motivated by her religion, in  
2 that it fired her because of her religious objection to receiving the Covid-19 vaccine.

3           57. Defendant also discriminated against Weiss in that it treated employees with other  
4 religious beliefs, such as Alicia Okoh, a Seventh-day Adventist more favorably, granting their  
5 exemption requests, while denying Weiss' request.

6           58. Defendant also discriminated against Weiss by interrogating her about her  
7 religious beliefs despite lacking any objective basis for questioning the sincerity of her religious  
8 beliefs.

9           59. Defendant's discriminatory actions violated Plaintiff's rights not to suffer  
10 discrimination on account of her religion pursuant to 42 U.S.C § 2000e-2.

11           60. Title VII of the Civil Rights Act prohibits employers from terminating employees  
12 due to their religion.

13           61. The actions complained of herein constitute religious discrimination.

14           62. As a direct and proximate result, Plaintiff suffered harm in the form of past and  
15 future lost wages and benefits and other pecuniary loss, including, but not limited to, costs  
16 associated with finding other employment.

17           63. As a further direct and proximate result of Defendant's discriminatory action  
18 against Plaintiff, as alleged above, Plaintiff has been harmed in that she suffered humiliation,  
19 mental anguish, and emotional physical distress, and has been injured in mind and body, in an  
20 amount according to proof.

21           64. Plaintiff also seeks reasonable attorneys' fees, pursuant to 42 U.S.C. § 2000e-  
22 5(k).

23           65. Defendant's conduct was despicable and the acts herein alleged were malicious,  
24 fraudulent and oppressive, and were committed with an improper and evil motive to injure  
25 Plaintiff, amounting to malice and in conscious disregard of plaintiff's rights. Plaintiff is thus  
26 entitled to recover punitive damages from Defendant in an amount according to proof.  
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**SECOND CAUSE OF ACTION**  
**RELIGIOUS DISCRIMINATION-FAILURE TO ACCOMMODATE**  
**TITLE VII**

66. Weiss re-alleges and incorporates herein by reference all of the above paragraphs, as though fully set forth herein.

67. At all times herein mentioned, the Civil Rights Act of 1964, 42 U.S.C. 2000e, et seq. was in full force and effect and was binding on Defendant.

68. When faced with requests for religious accommodation, employers are obligated to provide reasonable accommodation to an employee's religious observance or practice. 42 U.S.C. 2000e(j). Protected religious belief or observance includes "all aspects of religious observance and practice, as well as belief." Id.

69. Employers are also required to engage in a good faith interactive process with the employee to determine whether they can be reasonably accommodated without undue hardship.

70. By its own admission, Defendant has no undue hardship defense since it informed the EEOC that it approved fully two-thirds of some 25,000 accommodation requests submitted by 16,000 discrete employees.

71. However, the procedure established by Defendant to evaluate religious accommodation requests does not satisfy the legal standards, for all the reasons cited above: it was arbitrary and capricious; it failed to utilize proper standards; it failed to utilize individuals who were properly trained; and most importantly, it denied employees the opportunity to explain their religious beliefs to a human being.

72. Although human evaluations of accommodation requests are not immune from error, in the absence of a personal encounter with the employee requesting accommodation, it is virtually impossible to determine whether one's objection is based on sincerely held religious beliefs.

73. Moreover, Weiss demonstrated the sincerity of her religious belief by reaching out personally to management in an effort to obtain an in-person review of her request, and



1 finally, Weiss demonstrated the sincerity of her belief by suffering the loss of her job rather than  
2 compromise and get vaccinated.

3 74. Despite Weiss notifying Defendant of her need for religious accommodation to  
4 the COVID-19 vaccine, Defendant utterly failed to comply with legal obligations both to explore  
5 available reasonable alternative accommodations, and to implement a religious accommodation.

6 75. By failing and refusing to provide Weiss a religious accommodation, Defendant  
7 discriminated against her, terminating her from her position.

8 76. As a direct and proximate result, Plaintiff suffered harm in the form of past and  
9 future lost wages and benefits and other pecuniary loss, including, but not limited to, costs  
10 associated with finding other employment.

11 77. As a further direct and proximate result of Defendant's discriminatory action  
12 against Plaintiff, as alleged above, Plaintiff has been harmed in that she suffered humiliation,  
13 mental anguish, and emotional physical distress, and has been injured in mind and body, in an  
14 amount according to proof.

15 78. Plaintiff also seeks reasonable attorneys' fees, pursuant to 42 U.S.C. § 2000e-  
16 5(k).

17 79. Defendant's conduct was despicable and the acts herein alleged were malicious,  
18 fraudulent and oppressive, and were committed with an improper and evil motive to injure  
19 Plaintiff, amounting to malice and in conscious disregard of plaintiff's rights. Plaintiff is thus  
20 entitled to recover punitive damages from Defendant in an amount according to proof.

21  
22 **THIRD CAUSE OF ACTION**  
23 **RETALIATION -- TITLE VII**

24 80. Weiss realleges and incorporates herein by reference all of the above paragraphs  
25 as though fully set forth herein.

26 81. Title VII of the Civil Rights Act of 1964, 42 U.S.C § 2000e-3(a) makes it  
27 unlawful for an employer to retaliate against its employees because the person "opposes any  
28 practice made an unlawful employment practice by [Title VII] or because [the employee] has

made a charge, testified, assisted, or participate in any manner in an investigation, proceeding, or hearing under this subchapter.”

82. The Equal Employment Opportunity Commission (EEOC) takes “the position that requesting a religious accommodation is a protected activity under the provision of Title VII.” U.S. Equal Emp. Opportunity Comm’n, Section 12: Religious Discrimination, EEOC-CVG-2021-3, as reprinted in EEOC Compliance Manual on Religious Discrimination (Jan. 15, 2021), [https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#\\_ftn321](https://www.eeoc.gov/laws/guidance/section-12-religious-discrimination#_ftn321) (last visited June 5, 2023).

83. Weiss engaged in a protected activity by requesting religious accommodation not to receive the COVID-19 vaccine.

84. Weiss also engaged in protected activities by reaching out to management and seeking to have her accommodation request reviewed by a human being.

85. Although Defendant granted Weiss a preliminary / provisional religious accommodation, it then revoked and denied her religious accommodation.

86. Defendant then subjected Weiss to an adverse employment action in that it terminated her employment.

87. On information and belief, Defendant terminated Weiss’s employment in retaliation for seeking religious accommodation.

88. It was entirely unnecessary for Defendant to terminate Weiss’s employment even if it had legitimately determined she lacked a sincerely held religious belief – which it did not do. Since Weiss’ position was fully remote at all relevant times, and Weiss had no in-person contact with patients or other employees, Defendant’s safety concerns were invalid as applied to Weiss. The decision to immediately terminate Weiss, despite her working remotely, and despite the temporary nature of the pandemic, is retaliatory.

89. At a time when health care was suffering a shortage of workers, and front-line health care workers were under intense duress because of the pandemic, Defendant’s decision to

1 immediately terminate those it arbitrarily determined lacked a sincere religious objection to the  
2 vaccine served no valid purpose – and was even more retaliatory with respect to those, like  
3 Weiss, who were working remotely.

4 90. As a direct and proximate result, Plaintiff suffered harm in the form of past and  
5 future lost wages and benefits and other pecuniary loss, including, but not limited to, costs  
6 associated with finding other employment.

7 91. As a further direct and proximate result of Defendant’s discriminatory action  
8 against Plaintiff, as alleged above, Plaintiff has been harmed in that she suffered humiliation,  
9 mental anguish, and emotional physical distress, and has been injured in mind and body, in an  
10 amount according to proof.

11 92. Plaintiff also seeks reasonable attorneys’ fees, pursuant to 42 U.S.C. § 2000e-  
12 5(k).

13 93. Defendant’s conduct was despicable and the acts herein alleged were malicious,  
14 fraudulent and oppressive, and were committed with an improper and evil motive to injure  
15 Plaintiff, amounting to malice and in conscious disregard of plaintiff’s rights. Plaintiff is thus  
16 entitled to recover punitive damages from Defendant in an amount according to proof.

17  
18 **FOURTH CAUSE OF ACTION**  
19 **RELIGIOUS COERCION - HARASSMENT**  
20 **TITLE VII**

21 94. Weiss realleges and incorporates herein by reference all of the above paragraphs  
22 as though fully set forth herein.

23 95. At all times mentioned herein, Title VII of the Civil Rights Act of 1964, 42  
24 U.S.C. 2000e-2(a)(1), was in full force and effect and was binding upon Defendant.

25 96. “Title VII is violated when an employer or supervisor explicitly or implicitly  
26 coerces an employee to abandon, alter, or adopt a religious practice as a condition of receiving a  
27 job benefit or privilege or avoiding an adverse employment action.” EEOC Compliance Manual,  
28 Section 12: Religious Discrimination, supra. (under the heading “Harassment”)

1           97. Defendant conditioned Weiss's employment on her abandoning her sincerely held  
2 religious belief not to be vaccinated against COVID-19.

3           98. When Weiss failed to submit to Defendant's will, she was terminated.

4           99. As a direct and proximate result, Plaintiff suffered harm in the form of past and  
5 future lost wages and benefits and other pecuniary loss, including, but not limited to, costs  
6 associated with finding other employment.

7           100. As a further direct and proximate result of Defendant's discriminatory action  
8 against Plaintiff, as alleged above, Plaintiff has been harmed in that she suffered humiliation,  
9 mental anguish, and emotional physical distress, and has been injured in mind and body, in an  
10 amount according to proof.

11           101. Plaintiff also seeks reasonable attorneys' fees, pursuant to 42 U.S.C. § 2000e-  
12 5(k).

13           102. Defendant's conduct was despicable and the acts herein alleged were malicious,  
14 fraudulent and oppressive, and were committed with an improper and evil motive to injure  
15 Plaintiff, amounting to malice and in conscious disregard of plaintiff's rights. Plaintiff is thus  
16 entitled to recover punitive damages from Defendant in an amount according to proof.

17  
18                                   **FIFTH CAUSE OF ACTION**  
19                                   **RELIGIOUS DISCRIMINATION-DISPARATE TREATMENT,**  
20                                   **CAL. GOV. CODE § 12940(a)**

21           103. Weiss realleges and incorporates herein by reference all of the above paragraphs  
22 as though fully set forth herein.

23           104. It is unlawful for an employer to discharge a person, "or to discriminate against  
24 the person in compensation or in terms, conditions, or privileges of employment" because of a  
25 person's "religious creed." (Gov. Code § 12940, subd. (a).) A person's religious creed includes  
26 "all aspects of religious belief, observance, and practice." (Gov. Code § 12926 subd. (q).)

27           105. Weiss was a member of a protected class based on her religion as broadly defined  
28 to include both religious beliefs and practices. She identifies herself as a Jewish Christian.

1           106. Weiss was qualified for the position as she had been performing satisfactorily in  
2 the position for the previous five years.

3           107. Defendant subjected Weiss to an adverse employment action in that it terminated  
4 her employment.

5           108. Defendant's termination of Weiss was substantially motivated by her religion, in  
6 that it fired her because she requested religious accommodation not to be vaccinated.

7           109. In terminating Weiss, Defendant denied Weiss's request for religious  
8 accommodation while granting such accommodations to others who were similarly situated, in  
9 that they also requested religious accommodation not to be required to obtain the covid-19  
10 vaccine.

11           110. Defendant also discriminated against Weiss by interrogating her about her  
12 religious beliefs despite lacking any objective basis for questioning the sincerity of her religious  
13 beliefs.

14           111. Defendant's discriminatory actions are in violation of Weiss's rights pursuant to  
15 Gov. Code § 12940, subd. (a) not to suffer discrimination on account of her religion.

16           112. As a proximate result of the aforesaid acts of Defendant, Weiss has suffered  
17 actual, consequential and incidental financial losses, including without limitation, loss of salary  
18 and benefits, and the intangible loss of employment related opportunities in her field and damage  
19 to her professional reputation, all in an amount subject to proof at the time of trial. Weiss claims  
20 such amounts as damages pursuant to Civil Code § 3287 and/or § 3288 and/or any other  
21 provision of law providing for prejudgment interest.

22           113. As a proximate result of the wrongful acts of Defendant, Weiss has suffered and  
23 continues to suffer emotional distress, humiliation, mental anguish and embarrassment, as well  
24 as the manifestation of physical symptoms. Weiss is informed and believes, and thereupon  
25 alleges, that she will continue to experience said physical and emotional suffering for a period in  
26 the future not presently ascertainable, all in an amount subject to proof at the time of trial.  
27  
28

114. As a proximate result of the wrongful acts of Defendant, Weiss has been forced to hire attorneys to prosecute her claims herein and has incurred and is expected to continue to incur attorneys' fees and costs in connection therewith. Weiss is entitled to recover attorneys' fees and costs under Government Code § 12965, subdivision (b).

115. Defendant had in place policies and procedures that specifically prohibited and required Defendant's managers, officers, and agents to prevent discrimination, retaliation, and harassment against and upon employees of Defendant. Defendant's manager, officer, and/or agent were aware of Defendant's policies and procedures requiring Defendant's managers, officers, and agents to prevent, and investigate discrimination, retaliation, and harassment/hostile work environment against and upon employees of Defendant. Furthermore, Defendant's manager, officer, and/or agent maintained broad discretionary powers regarding staffing, managing, hiring, firing, contracting, supervising, assessing and establishing of corporate policy and practice in the defendant's facilities. However, Defendant's manager, officer, and/or agent chose to consciously and willfully ignore said policies and procedures and therefore, their outrageous conduct was fraudulent, malicious, oppressive, and was done in wanton disregard for the rights of Weiss and the rights and duties owed by each Defendant to Weiss. Each Defendant aided, abetted, participated in, authorized, ratified, and/or conspired to engage in the wrongful conduct alleged above. Weiss should, therefore, be awarded exemplary and punitive damages against each Defendant in an amount to be established that is appropriate to punish each Defendant and deter others from engaging in such conduct.

**SIXTH CAUSE OF ACTION**  
**RELIGIOUS DISCRIMINATION-FAILURE TO ACCOMMODATE**  
**GOVERNMENT CODE § 12940(I)(1),**

116. Weiss re-alleges and incorporates herein by reference all of the above paragraphs, as though fully set forth herein.

117. At all times herein mentioned, Government Code § 12940 et seq. was in full force and effect and was binding on Defendant.

1           118. When faced with requests for religious accommodation, employers are obligated  
2 to explore “any available reasonable alternative means of accommodating the religious belief or  
3 observance” (Gov. Code § 12940, subd. (l)(1)).

4           119. Protected religious belief or observance includes “all aspects of religious belief,  
5 observance, and practice” (Gov. Code § 12926, subd. (q)).

6           120. Despite Weiss notifying Defendant of her need for religious accommodation to  
7 the COVID-19 vaccine, Defendant utterly failed to comply with legal obligations both to explore  
8 available reasonable alternative accommodations, and to implement a religious accommodation.

9           121. As alleged herein, Defendant could not satisfy its obligation to determine whether  
10 Weiss deserved religious accommodation without having an in person discussion with her, which  
11 it failed and refused to do, despite her pleas to management officials.

12           122. By failing and refusing to provide Weiss a religious accommodation, Defendant  
13 discriminated against her, terminating her from her position.

14           123. As a proximate result of the aforesaid acts of Defendant, Weiss has suffered  
15 actual, consequential and incidental financial losses, including without limitation, loss of salary  
16 and benefits, and the intangible loss of employment related opportunities in her field and damage  
17 to her professional reputation, all in an amount subject to proof at the time of trial. Weiss claims  
18 such amounts as damages pursuant to Civil Code § 3287 and/or § 3288 and/or any other  
19 provision of law providing for prejudgment interest.

20           124. As a proximate result of the wrongful acts of Defendant, Weiss has suffered and  
21 continues to suffer emotional distress, humiliation, mental anguish and embarrassment, as well  
22 as the manifestation of physical symptoms. Weiss is informed and believes, and thereupon  
23 alleges, that she will continue to experience said physical and emotional suffering for a period in  
24 the future not presently ascertainable, all in an amount subject to proof at the time of trial.

25           125. As a proximate result of the wrongful acts of Defendant, Weiss has been forced to  
26 hire attorneys to prosecute her claims herein and has incurred and is expected to continue to  
27  
28

1 incur attorneys' fees and costs in connection therewith. Weiss is entitled to recover attorneys'  
2 fees and costs under Government Code § 12965, subdivision (b).  
3 Defendant had in place policies and procedures that specifically prohibited and required  
4 Defendant's managers, officers, and agents to prevent discrimination, retaliation, and harassment  
5 against and upon employees of Defendant. Defendant's manager, officer, and/or agent was  
6 aware of Defendant's policies and procedures requiring Defendant's managers, officers, and  
7 agents to prevent, and investigate discrimination, retaliation, and harassment/hostile work  
8 environment against and upon employees of Defendant. Furthermore, Defendant's manager,  
9 officer, and/or agent maintained broad discretionary powers regarding staffing, managing, hiring,  
10 firing, contracting, supervising, assessing and establishing of corporate policy and practice in the  
11 defendant's facilities. However, Defendant's manager, officer, and/or agent chose to  
12 consciously and willfully ignore said policies and procedures and therefore, their outrageous  
13 conduct was fraudulent, malicious, oppressive, and was done in wanton disregard for the rights  
14 of Weiss and the rights and duties owed by each Defendant to Weiss. Each Defendant aided,  
15 abetted, participated in, authorized, ratified, and/or conspired to engage in the wrongful conduct  
16 alleged above. Weiss should, therefore, be awarded exemplary and punitive damages against  
17 each Defendant in an amount to be established that is appropriate to punish each Defendant and  
18 deter others from engaging in such conduct.  
19

20 **SEVENTH CAUSE OF ACTION**  
21 **RETALIATION**  
22 **CAL. GOV. CODE § 12940(h) and (l)(4)**

23 126. Weiss realleges and incorporates herein by reference all of the above paragraphs  
24 as though fully set forth herein.

25 127. Government Code § 12940 (h) makes it unlawful for an employer to retaliate  
26 against "any person because the person has opposed any practices forbidden under this part ...."

27 128. Government Code § 12940(l)(4) modifies § 12940(h) to specify that a request for  
28 religious accommodation is an activity protected against retaliation.



1           129. Weiss engaged in a protected activity by requesting religious accommodation not  
2 to receive the COVID-19 vaccine, and, as alleged herein, by renewing her request in writing with  
3 management officials.

4           130. Although Defendant granted Weiss a preliminary / provisional religious  
5 accommodation, it revoked and denied her religious accommodation.

6           131. Defendant then subjected Weiss to an adverse employment action in that it  
7 terminated her employment.

8           132. Defendant terminated Weiss's employment in retaliation for seeking religious  
9 accommodation.

10           133. On information and belief, it was entirely unnecessary for Defendant to terminate  
11 Weiss's employment even if it had legitimately determined she lacked a sincerely held religious  
12 belief – which it did not do. Defendant had other options, such as placing Weiss on a leave of  
13 absence. The decision to immediately terminate, without any recourse, those like Weiss whose  
14 religious exemption requests were rejected is retaliatory.

15           134. As a proximate result of the aforesaid acts of Defendant, Weiss has suffered  
16 actual, consequential and incidental financial losses, including without limitation, loss of salary  
17 and benefits, and the intangible loss of employment related opportunities in her field and damage  
18 to her professional reputation, all in an amount subject to proof at the time of trial. Weiss claims  
19 such amounts as damages pursuant to Civil Code § 3287 and/or § 3288 and/or any other  
20 provision of law providing for prejudgment interest.

21           135. As a proximate result of the wrongful acts of Defendant, Weiss has suffered and  
22 continues to suffer emotional distress, humiliation, mental anguish and embarrassment, as well  
23 as the manifestation of physical symptoms. Weiss is informed and believes, and thereupon  
24 alleges, that she will continue to experience said physical and emotional suffering for a period in  
25 the future not presently ascertainable, all in an amount subject to proof at the time of trial.  
26  
27  
28

1           136. As a proximate result of the wrongful acts of Defendant, Weiss has been forced to  
2 hire attorneys to prosecute her claims herein and has incurred and is expected to continue to  
3 incur attorneys' fees and costs in connection therewith. Weiss is entitled to recover attorneys'  
4 fees and costs under Government Code § 12965, subdivision (b).

5  
6                           **EIGHTH CAUSE OF ACTION**  
7                           **FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT**  
8                           **CAL. GOV. CODE § 12940(k)**

9           137. Weiss realleges and incorporates herein by reference all of the above paragraphs  
10 as though fully set forth herein.

11           138. At all times mentioned herein, Government Code § 12940, et seq., including but  
12 not limited to § 12940, subdivisions (a), (j) and (k), was in full force and effect and was binding  
13 upon Defendants and each of them. These sections impose on an employer a duty to take  
14 immediate and appropriate corrective action to end discrimination and harassment and take all  
15 reasonable steps necessary to prevent discrimination and harassment from occurring, among  
16 other things.

17           139. Defendants failed to take immediate and appropriate corrective action to end the  
18 discrimination and harassment. Defendants also failed to take all reasonable steps necessary to  
19 prevent the harassment and discrimination from occurring.

20           140. In failing and/or refusing to take immediate and appropriate corrective action to  
21 end the discrimination and harassment and in failing and/or refusing to take all reasonable steps  
22 necessary to prevent harassment and discrimination from occurring, Defendants violated  
23 Government Code § 12940, subdivisions (a), (j) and (k), causing Weiss to suffer damages.

24           141. As a proximate result of the aforesaid acts of Defendants, Weiss has suffered  
25 actual, consequential and incidental financial losses, including without limitation, loss of salary  
26 and benefits, and the intangible loss of employment related opportunities in her field and damage  
27 to her professional reputation, all in an amount subject to proof at the time of trial. Weiss claims  
28

1 such amounts as damages pursuant to Civil Code § 3287 and/or § 3288 and/or any other  
2 provision of law providing for prejudgment interest.

3 142. As a proximate result of the wrongful acts of Defendants, Weiss has suffered and  
4 continues to suffer emotional distress, humiliation, mental anguish and embarrassment, as well  
5 as the manifestation of physical symptoms. Weiss is informed and believes, and thereupon  
6 alleges, that she will continue to experience said physical and emotional suffering for a period in  
7 the future not presently ascertainable, all in an amount subject to proof at the time of trial.

8 143. As a proximate result of the wrongful acts of Defendant, Weiss has been forced to  
9 hire attorneys to prosecute her claims herein and has incurred and is expected to continue to  
10 incur attorneys' fees and costs in connection therewith. Weiss is entitled to recover attorneys'  
11 fees and costs under Government Code § 12965, subdivision (b).  
12

13 **PRAYER FOR RELIEF**

14 **WHEREFORE**, Weiss prays judgment against Defendant as follows:

- 15 1. Declaratory Relief, declaring that Defendant violated Plaintiff's rights to be  
16 free of discrimination in the workplace;
- 17 2. All available injunctive relief, compelling Defendants to refrain from  
18 discrimination in the workplace; including requiring Defendant both to adopt  
19 adequate policies with respect to religious discrimination, accommodation,  
20 retaliation and harassment, and to provide training on these policies to  
21 managers and human resources professionals;
- 22 3. Compensatory economic damages;
- 23 4. Compensatory non-economic damages, including, but not limited to, pain,  
24 suffering and emotional distress, in an amount according to proof at trial.
- 25 5. Order Defendant to pay prejudgment interest;
- 26 6. Order Defendants to pay punitive damages sufficient to make an example of  
27 and to punish Defendants.  
28

- 1                   7. Order Defendant to pay Plaintiff's reasonable attorney's fees and costs.
- 2                   8. Grant such further relief as this Court deems just and proper.
- 3

4 Dated: September 12, 2023  
Westlake Village, California.

s/ Alan J Reinach  
ALAN J. REINACH  
JONATHON S. CHERNE  
Attorneys for Plaintiff, MIMI WEISS

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MIMI WEISS,  
Plaintiff,

v.

THE PERMANENTE MEDICAL GROUP,  
INC.,  
Defendant.

Case No. [23-cv-03490-RS](#)

**ORDER GRANTING MOTION TO  
DISMISS**

**I. INTRODUCTION**

This is a religious accommodation and wrongful termination suit brought under Title VII of the Civil Rights Act of 1964 (“Title VII”) and California Fair Employment and Housing Act, California Government Code 12940 (“FEHA”). Plaintiff Mimi Weiss (“Weiss”) avers that Defendant, The Permanente Medical Group (“TPMG”), violated her rights when it terminated her for refusing to take the COVID-19 vaccine on religious grounds. In the First Amended Complaint (“FAC”), Weiss brings eight claims for relief: (1) religious discrimination – disparate treatment, in violation of Title VII, (2) failure to provide religious accommodation, in violation of Title VII, (3) retaliation, in violation of Title VII, (4) religious coercion – harassment, in violation of Title VII, (5) religious discrimination – disparate treatment, in violation of FEHA, (6) religious discrimination – failure to accommodate, in violation of FEHA, (7) retaliation, in violation of FEHA, and (8) failure to prevent discrimination and harassment, in violation of FEHA. TPMG now moves to dismiss the first, third, fifth, and seventh claims brought by Weiss. For the reasons discussed below, this motion is granted. This motion is suitable for disposition without oral

1 argument pursuant to Civil Local Rule 7-1(b), and the hearing scheduled for December 14, 2023 is  
2 vacated.

## 3 **II. BACKGROUND**

4 Weiss worked for TPMG from 2000 to January 10, 2022, except for a brief period between  
5 December 2015 and April 2017. When TPMG terminated her employment, Weiss's job title was  
6 Managerial Senior Consultant with the Regional Department, Health Engagement Consulting  
7 Services. In August 2021, TPMG required all employees to be vaccinated for COVID-19. The  
8 Kaiser Permanente Vaccination Policy ("the Policy") mandated TPMG employees to provide  
9 proof of full vaccination or have an approved exemption by September 30, 2021, or else they  
10 would be placed on an unpaid leave of 60 days to come into compliance. If an employee failed to  
11 achieve compliance by the end of the 60 days, their employment would be terminated. On January  
12 10, 2022, Weiss was terminated for failing to comply with the Policy.

13 Weiss, who identifies as a "Christian Jew," asserts that her religious beliefs prevent her  
14 from taking the COVID-19 vaccine as she is not allowed to accept foreign materials into her body.  
15 Weiss submitted an exemption request to TPMG in or around late August 2021 that stated as such,  
16 and requested she be exempted from taking the COVID-19 vaccine in violation of her religious  
17 beliefs. Her request was provisionally granted by TPMG on August 30, 2021. A few weeks later,  
18 on September 21, 2021, TPMG informed Weiss that it was conducting further review of the  
19 exemption request because it seemed that many employees submitted similar or identical requests  
20 with language taken verbatim from free and paid templates available on the internet. TPMG also  
21 claimed to observe discussion between Kaiser Permanente employees in internet chat rooms  
22 exchanging strategies to avoid the vaccine mandate, including by sending language to use in the  
23 exemption requests that would create the appearance of a legitimate religious exemption.

24 On October 21, 2021, TPMG informed Weiss that additional information was needed  
25 from her to evaluate her exemption request. Weiss refused to answer several questions, regarding  
26 them as intrusive and a violation of privacy. Her exemption request was denied on November 30,  
27 2021. Weiss attempted to reach out to TPMG employees to discuss this denial, but was unable to  
28

1 meet with anyone in person, via phone, or by video conference. She was placed on unpaid leave  
2 from employment starting on December 5, 2021. Weiss was terminated on January 10, 2022 for  
3 failing to meet the terms of the Policy.

### 4 III. LEGAL STANDARD

5 A complaint must be “a short and plain statement of the claim showing that the pleader is  
6 entitled to relief.” Fed. R. Civ. P. 8(a)(2). While “detailed factual allegations” are not required, a  
7 complaint must have sufficient factual allegations to state a claim that is “plausible on its face.”  
8 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555,  
9 570 (2007)). A claim is facially plausible “when the plaintiff pleads factual content that allows the  
10 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*  
11 (citing *Twombly*, 550 U.S. at 556). This standard asks for “more than a sheer possibility that a  
12 defendant has acted unlawfully.” *Id.* The determination is a context-specific task requiring the  
13 court “to draw on its judicial experience and common sense.” *Id.* at 679.

14 A Rule 12(b)(6) motion to dismiss tests the sufficiency of the claims alleged in the  
15 complaint. Dismissal under Rule 12(b)(6) may be based on either the “lack of a cognizable legal  
16 theory” or on “the absence of sufficient facts alleged under a cognizable legal theory.” *See*  
17 *Conservation Force v. Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011) (internal quotation marks and  
18 citation omitted). When evaluating such a motion, the court must accept all material allegations in  
19 the complaint as true and construe them in the light most favorable to the non-moving party. *In re*  
20 *Quality Sys., Inc. Sec. Litig.*, 865 F.3d 1130, 1140 (9th Cir. 2017). It must also “draw all  
21 reasonable inferences in favor of the nonmoving party.” *Usher v. City of Los Angeles*, 828 F.2d  
22 556, 561 (9th Cir. 1987).

### 23 IV. DISCUSSION

#### 24 i. First and Fifth Claims: Disparate Treatment under Title VII and FEHA

25 TPMG argues that Weiss’s first and fifth claims for relief must be dismissed because  
26 Weiss fails plausibly to allege that Weiss was treated disparately from her colleagues at TPMG.  
27 Title VII and FEHA prohibit an employer from discriminating against an employee on the basis of  
28

his or her religion. 42 U.S.C. § 2000e-2(a)(1); Cal. Gov. Code. § 12940(a). The same test applies to claims alleging disparate treatment under either statute. *See Guz v. Bechtel Nat. Inc.*, 24 Cal.4<sup>th</sup> 317, 354 (2000). “Disparate treatment occurs ‘where an employer has treated a particular person less favorably than others because of a protected trait.’” *Wood v. City of San Diego*, 678 F.3d 1075, 1081 (9th Cir. 2012). Additionally, when an employee challenges an employee practice that is facially neutral, she must show that the employer had discriminatory intent. *Wood*, 678 F.3d 1075 at 1081.

To establish a prima facie face of disparate treatment, a plaintiff must provide evidence giving rise to an inference of unlawful discrimination. *Lyons v. England*, 307 F.3d 1092, 1112 (9th Cir. 2002) (internal citation omitted). A plaintiff may provide direct or circumstantial evidence to establish a prima facie case for unlawful discrimination, but if direct evidence is not available, a plaintiff may rely on the burden-shifting test established by the United States Supreme Court in *McDonnell Douglas Corp v. Green*, 411 U.S. 792 (1973) (“*McDonnell Douglas*”). *See Borja-Valdes v. City and Cty. Of San Francisco*, No. 3:14-cv-04168-CRB, 2015 WL 5522287 at \*3 (N.D. Cal. Sept. 18, 2015). To establish a prima facie case of discrimination per *McDonnell Douglas*, a plaintiff must show that “(1) he belongs to a protected class; (2) he was qualified for the position; (3) he was subject to an adverse employment action; and (4) similarly situated individuals outside his protected class were treated more favorably.” *Chuang v. Univ. of Cal. Davis, Bd. of Trs.*, 225 F.3d 1115, 1123 (9th Cir. 2000). This shifts the burden of production on the employer to “articulate some legitimate, nondiscriminatory reason for the challenged action.” *Id.* at 1123-24. Plaintiff’s prima facie case is “an evidentiary standard, not a pleading requirement” and failure to plead the *McDonnell Douglas* factors do not warrant dismissal at the outset. *Edwards v. Marin Park, Inc.* 356 F.3d 1058, 1062 (9th Cir. 2004) (internal quotes omitted). A complaint need only contain a “short and plain statement of the claim showing the pleader is entitled to relief.” *Id.* at 1061 (quoting Fed. R. Civ. Pro. 8(a)(2)).

Weiss argues that she was subject to treatment disparate to those similarly situated because she was terminated from her position on the basis of her religion. Conversely, TPMG argues that Weiss failed to provide facts establishing that she was either treated differently than similarly



1 situated persons outside her protected class, or that TPMG acted with discriminatory intent.

2 A. “Similarly situated”

3 TPMG first argues that Weiss fails to establish that an individual similarly situated to her  
4 and outside of her protected class was treated more favorably. In her complaint, Weiss pointed to  
5 her colleague, Alicia Okoh, a Seventh Day Adventist who had her exemption request approved, as  
6 evidence of disparate treatment. TPMG contends that Weiss failed to establish Okoh was similarly  
7 situated in all material aspects, i.e. that they have “similar jobs and display similar conduct.”  
8 *Vasquez v. County of Los Angeles*, 349 F.3d 634, 641 (9th Cir. 2003). Therefore, per TPMG,  
9 Weiss’s allegation of disparate treatment must fail.

10 TPMG is correct that Weiss does not, in her complaint, provide sufficient facts to show  
11 that Okoh and Weiss shared job responsibilities or engaged in similar conduct in the employment  
12 context. While the Policy—its purpose and its procedures—applied to all employees at TPMG  
13 uniformly, and in that respect, Weiss and Okoh were similarly situated, that is insufficient to show  
14 disparate treatment. By Weiss’ own admission, Okoh’s exemption request constituted different  
15 language from Weiss’s, and she has failed to show that Okoh’s was granted and Weiss’s was  
16 denied due to their differing religious beliefs. Other than the fact that Okoh and Weiss are  
17 coworkers, Weiss has further failed to provide sufficient facts showing they are similarly situated.  
18 *See McDaniels v. Grp. Health Co-op.*, 57 F. Supp. 3d 1300, 1311 (W.D. Wash.) (“the Ninth  
19 Circuit looks to factors such as whether the proposed comparator and the plaintiff were subject to  
20 the same policies, worked at the same jobs, committed similar violations, and had similar  
21 disciplinary records”). Weiss contends that two thirds of approximately 25,000 exemption requests  
22 filed by 16,000 discrete employees were approved, however, this general figure also fails to  
23 provide insight as to whether those employees were similarly situated to her.

24 Weiss argues that even if Okoh is not similarly situated to her, she has averred sufficient  
25 “other circumstances surrounding the adverse employment action [that] give rise to an inference of  
26 discrimination.” *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 603 (9th Cir. 2004). To support  
27 her argument, she points to the fact that she reached out to different TPMG employees regarding  
28

her request denial and an appeals process, and their refusal to respond to her constituted “other circumstances” that give rise to an inference of discrimination. However, Weiss is incorrect that the employees’ refusal to respond is a qualifying circumstance giving rise to such an inference. Moreover, TPMG did seemingly give Weiss a supplementary process to provide more information about her request by following up with her and seeking additional answers, so they were under no obligation to continue the conversation with her after she had been given and declined an opportunity to do so.

**B. Discriminatory intent**

TPMG further argues that Weiss’s disparate treatment claims should be dismissed as she has failed to show that TPMG acted with discriminatory intent in applying the Policy. “A discriminatory motive may be established by the employer’s informal decisionmaking or ‘a formal, facially discriminatory policy,’ but ‘liability depends on whether the protected trait . . . actually motivated the employer’s decision.’” *Wood*, 678 F.3d at 1081 (9th Cir. 2012) (citing *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 610 (1993)). The Policy was facially neutral in that all employees were mandated to take the COVID-19 vaccine by a certain date, regardless of their religious identity, unless an exemption request was granted. Weiss argues that TPMG acted with discriminatory motive when it denied her exemption request because they did so on the basis of her religion. She insists that while the Policy itself was facially neutral, its application was not, and TPMG’s decision to “grant[] religious accommodations to many, deny[] them to others” was evidence of discriminatory intent. Opp. at 8. However, she pleads no facts that reflect the policy was implemented to discriminate against “Christian Jews.” Nor has Weiss demonstrated her termination from employment was other than the application of a uniform vaccination policy. Her argument that Okoh and two thirds of the religious applicants were treated better than she was similarly does not reflect that TPMG acted with a discriminatory motive in terminating her employment.

**ii. Third and Seventh Claims: Retaliation under Title VII and FEHA**

TPMG next argues that Weiss’s third and seventh claims for relief must be dismissed because she has failed to aver facts establishing a relationship between Weiss’s exemption request

1 and her termination. Title VII and FEHA prohibit an employer from retaliating against an  
2 employee who engages in a protected activity, which here is Weiss's exemption request from the  
3 Policy on the basis of her religious beliefs. To state a prima facie case of retaliation per Title VII  
4 and FEHA, a plaintiff must show that, "(1) [s]he engaged in a protected activity; (2) [her]  
5 employer subjected [her] to an adverse employment action; and (3) a causal link exists between  
6 the protected activity and the adverse action." *Ray v. Henderson*, 217 F.3d 1234, 1240 (9th Cir.  
7 2000); *see also Nealy v. City of Santa Monica*, 234 Cal. App. 4<sup>th</sup> 359, 380 (2015). Weiss avers that  
8 TPMG retaliated against her by terminating her employment because she "requested a religious  
9 accommodation not to receive the COVID-19 vaccine." FAC ¶ 83.

10 The parties agree that Weiss engaged in a protected activity when she sought an exemption  
11 to the Policy on the basis of her religious identity. They also agree that she faced an adverse action  
12 by TPMG when she was terminated from employment. However, TPMG correctly points out that  
13 the final factor, the causal link between the protected activity and adverse action, is lacking in  
14 Weiss's FAC. In particular, Weiss fails to provide sufficient facts establishing that she was  
15 terminated as a result of her exemption request and not because she failed to comply with the  
16 Policy, which clearly mandated all employees be vaccinated unless an exemption is granted,  
17 otherwise they would be terminated from employment. Indeed, the facts Weiss provides in the  
18 FAC suggest that she was terminated after her exemption request was denied, followed by no  
19 efforts on her part to come into compliance. This is insufficient for a retaliation claim, and  
20 therefore these claims must be dismissed.

## 21 V. CONCLUSION

22 For the reasons above, TPMG's motion to dismiss is granted. The first, third, fifth, and  
23 seventh claims for relief in Weiss's FAC are hereby dismissed with leave to amend.

24 **IT IS SO ORDERED.**

25  
26 Dated: December 4, 2023

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28 ORDER GRANTING MOTION TO DISMISS  
CASE NO. [23-cv-03490-RS](#)

RICHARD SEEBORG  
Chief United States District Judge

United States District Court  
Northern District of California

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ORDER GRANTING MOTION TO DISMISS  
CASE NO. [23-cv-03490-RS](#)

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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

MIMI WEISS, an individual,

Plaintiff,

v.

THE PERMANENTE MEDICAL GROUP,

Defendants.

Case No. 3:23-cv-03490-RS


**ORDER RE: EXTENSION OF  
TIME TO FILE SECOND  
AMENDED COMPLAINT AND  
STAY OF PROCEEDINGS**

Pursuant to the parties' stipulation,

1. Plaintiff's Second Amended Complaint shall be timely filed, if filed by January 18, 2024;
2. Aside from Plaintiff's filing of a Second Amended Complaint on or before January 18, 2024, this matter shall be stayed until the Further Case Management Conference set for March 7, 2024 at 10:00 a.m.

SO ORDERED:

Dated: December 20, 2023

By:   
Hon. Richard Seeborg  
United States District Judge

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Attorneys for Defendant  
THE PERMANENTE MEDICAL GROUP, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MIMI WEISS,

Plaintiff,

v.

THE PERMANENTE MEDICAL GROUP, INC.,

Defendant.

Case No. 3:23-cv-03490-RS

**DEFENDANT THE PERMANENTE  
MEDICAL GROUP, INC.'S ANSWER TO  
THE FIRST AMENDED COMPLAINT**

1 Defendant THE PERMANENTE MEDICAL GROUP, INC. (“TPMG”) hereby answers the First  
2 Amended Complaint for Damages and Injunctive Relief (the “FAC”) filed by plaintiff MIMI WEISS  
3 (“Plaintiff”) in the above-captioned matter on September 14, 2023. The following sections and  
4 numbered paragraphs correspond to the sections and numbered paragraphs in the FAC. To the extent  
5 allegations within the FAC are not expressly admitted, they are hereby denied.

### 6 **INTRODUCTION**

7 The unnumbered four paragraphs under the heading of “Introduction” in the FAC contains legal  
8 conclusions to which no response is required. To the extent a response is required, TPMG admits that  
9 (1) it employed Plaintiff; (2) it adopted a policy requiring all employees, including Plaintiff, to either  
10 provide proof of vaccination for the SARS-CoV-2 virus ("COVID-19") or obtain an approved medical  
11 or religious exemption by a specified deadline (the “COVID Vaccination Policy”); (3) Plaintiff  
12 submitted a request for a religious exemption from the COVID Vaccination Policy; (4) Plaintiff’s  
13 request for a religious exemption from the COVID Vaccination Policy was denied; and (5) Plaintiff’s  
14 employment with TPMG was terminated for non-compliance with the COVID Vaccination Policy.  
15 TPMG denies any remaining allegations in the unnumbered four paragraphs under the heading of  
16 “Introduction” in the FAC not expressly admitted.

### 17 **PARTIES**

18 1. Paragraph 1 contains legal conclusions to which no response is required. To the extent a  
19 response is required, TPMG is without knowledge or information sufficient to form a belief as to the  
20 truth of the allegations in Paragraph 1 and on that basis denies those allegations.

21 2. Paragraph 2 contains legal conclusions to which no response is required. To the extent a  
22 response is required, TPMG admits that it is a California corporation registered to conduct business in  
23 the State of California and that its principal place of business is in Oakland, California. TPMG also  
24 admits that it employed Plaintiff. TPMG denies any remaining allegations in Paragraph 2 not expressly  
25 admitted.

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28 ///

**JURISDICTION AND VENUE**

3. Paragraph 3 contains legal conclusions to which no response is required. To the extent a response is required, TPMG admits that Plaintiff has filed this lawsuit and seeks damages against TPMG. TPMG denies any remaining allegations in Paragraph 3 not expressly admitted.

4. Paragraph 4 contains legal conclusions to which no response is required.

a. Paragraph 4(a) contains legal conclusions to which no response is required.

b. Paragraph 4(b) contains legal conclusions to which no response is required.

5. Paragraph 5 contains legal conclusions to which no response is required.

6. TPMG is without knowledge or information sufficient to form a belief as to the truth of allegations in Paragraph 6 and on that basis denies those allegations.

7. Paragraph 7 contains legal conclusions to which no response is required. To the extent a response is required, TPMG is without knowledge or information sufficient to form a belief as to the truth of allegations in Paragraph 7 and on that basis denies those allegations.

8. Paragraph 8 contains legal conclusions to which no response is required.

9. Paragraph 9 contains legal conclusions to which no response is required.

**JURY TRIAL DEMAND**

10. Paragraph 10 contains legal conclusions to which no response is required.

**STATEMENT OF FACTS**

11. TPMG admits that it hired Plaintiff in August 2000, that she worked at various positions in the Santa Clara Medical Center, and that she left employment with TPMG in 2015. TPMG denies the remaining allegations in Paragraph 11 not expressly admitted.

12. TPMG admits that it rehired Plaintiff effective May 1, 2017. TPMG denies the remaining allegations in Paragraph 12 not expressly admitted.

13. TPMG admits that it employed Plaintiff in a Managerial Senior Consultant position. TPMG denies the remaining allegations in Paragraph 13 not expressly admitted.

14. TPMG admits that Plaintiff performed some work on a remote basis for a period of time. TPMG denies the remaining allegations in Paragraph 14 not expressly admitted.



1           15.     TPMG admits that, in or around August 2021, it adopted a policy requiring all  
2 employees, including Plaintiff, to either provide proof of vaccination for COVID-19 or obtain an  
3 approved medical or religious exemption. TPMG denies the remaining allegations in Paragraph 15 not  
4 expressly admitted.

5           16.     TPMG admits that, in or around August 2021, it adopted a policy requiring all  
6 employees, including Plaintiff, to either provide proof of vaccination for COVID-19 or obtain an  
7 approved medical or religious exemption by the specified date. TPMG admits that it advised all  
8 employees, including Plaintiff, that non-compliance with the COVID Vaccination Policy could result in  
9 an employee being placed on unpaid administrative leave and/or termination of employment. TPMG  
10 denies the remaining allegations in Paragraph 16 not expressly admitted.

11           17.     TPMG is without knowledge or information sufficient to form a belief as to the truth of  
12 allegations in Paragraph 17 and on that basis denies those allegations.

13           18.     TPMG is without knowledge or information sufficient to form a belief as to the truth of  
14 allegations in Paragraph 18 and on that basis denies those allegations.

15           19.     TPMG is without knowledge or information sufficient to form a belief as to the truth of  
16 allegations in Paragraph 19 and on that basis denies those allegations.

17           20.     TPMG is without knowledge or information sufficient to form a belief as to the truth of  
18 allegations in Paragraph 20 and on that basis denies those allegations.

19           21.     TPMG is without knowledge or information sufficient to form a belief as to the truth of  
20 allegations in Paragraph 21 and on that basis denies those allegations.

21           22.     TPMG is without knowledge or information sufficient to form a belief as to the truth of  
22 allegations in Paragraph 22 and on that basis denies those allegations.

23           23.     TPMG is without knowledge or information sufficient to form a belief as to the truth of  
24 allegations in Paragraph 23 and on that basis denies those allegations.

25           24.     TPMG admits that, on or around August 26, 2021, Plaintiff submitted a request for a  
26 religious exemption from the COVID Vaccination Policy. TPMG denies the remaining allegations in  
27 Paragraph 24 not expressly admitted.  
28

25. TPMG admits that, on or around August 30, 2021, an email message was sent to Plaintiff informing her that, *inter alia*, “We received your request for a Religion-based exemption in connection with the COVID-19 Vaccination Requirement. CASE NUMBER: 41036891. Based on the information you provided, your Request for Exemption has been APPROVED. This approval is provisional -- the decision to approve, and actions taken to accommodate the exemption, are subject to change based on frequently changing conditions, such as COVID-19 infection levels, and changes in public health guidance, legal requirements, and KP policies and practices.” TPMG denies the remaining allegations in Paragraph 25 not expressly admitted.

26. TPMG admits that, on or around September 21, 2021, an email message was sent to Plaintiff which stated, *inter alia*, “In the course of our review of exemptions, as part of our ongoing compliance with state mandates and KP policy, it has come to our attention that many employees have submitted similar or nearly identical exemption requests containing language that was taken verbatim from various free and paid template forms available on the internet. Even more concerning are the discussions we have seen occurring in internet chat groups in which Kaiser Permanente employees have been exchanging strategies for avoiding the vaccine mandate and distributing language and phrases that seem to be designed to create the appearance of a legitimate religious exemption instead of actually being based on a sincerely held religious belief. Unfortunately, these findings will require us to perform additional review of all accommodation requests to ensure our continual compliance with our responsibilities under state mandates and KP policy.” TPMG admits that this email message further stated that, “Requests for exemption must be in your own words. If you exemption request used language copied from a template or form letter, you will be asked to resubmit your request for exemption using your own words. You will receive an email asking for more information if more detail is required.” TPMG denies the remaining allegations in Paragraph 26 not expressly admitted.

27. Paragraph 27 contains legal conclusions to which no response is required. TPMG admits that, on or around October 21, 2021, Plaintiff was sent an email requesting that she provide “additional information . . . [to] further evaluate whether you have a sincerely held religious belief, practice, or observance that prevents you from receiving any COVID-19 vaccine.” TPMG admits that, on or around October 26, 2027, Plaintiff sent an email in response to that October 21, 2021 message which

(1) provided perfunctory and non-substantive responses to two of the six questions posed, (2) explicitly refused to provide a substantive response to three of the six questions posed, and (3) left blank the response to one of the six questions posed. TPMG denies the remaining allegations in Paragraph 27 not expressly admitted.

28. TPMG denies the allegations in Paragraph 28.

29. Paragraph 29 contains legal conclusions to which no response is required. To the extent a response is required, TPMG denies the allegations in Paragraph 29.

30. TPMG denies the allegations in Paragraph 30.

31. TPMG denies the allegations in Paragraph 31.

32. TPMG denies the allegations in Paragraph 32.

33. TPMG admits that Paragraph 33 accurately quotes, in part, 1 Corinthians 2:14-16 of The New Testament in Modern English by J.B Phillips, copyright © 1960, 1972. TPMG denies the remaining allegations in Paragraph 33 not expressly admitted.

34. TPMG denies the allegations in Paragraph 34.

35. TPMG admits that, following Plaintiff's explicit refusal to provide adequate responses to the supplemental questions posed via email on or around October 21, 2021, and after Plaintiff's request for a religious exemption from the COVID-19 Vaccination Policy was therefore denied, Plaintiff had no further opportunity to supplement her request for a religious exemption from the COVID-19 Vaccination Policy. TPMG denies the remaining allegations in Paragraph 35 not expressly admitted.

36. TPMG admits that, on or around November 30, 2021, Plaintiff was informed via email that, *inter alia*, "After thoroughly evaluating your request for a religion-based exemption from the COVID-19 vaccination requirement of the Kaiser Permanente COVID-19 Vaccination Policy, it has been determined that your request does not meet the standards necessary for granting an exemption from obtaining any COVID-19 vaccine. Therefore, your request has been DENIED." TPMG denies the remaining allegations in Paragraph 36 not expressly admitted.

37. TPMG admits that, on or around November 30, 2021, Plaintiff was informed via email that, *inter alia*, "After thoroughly evaluating your request for a religion-based exemption from the COVID-19 vaccination requirement of the Kaiser Permanente COVID-19 Vaccination Policy, it has

1 been determined that your request does not meet the standards necessary for granting an exemption from  
2 obtaining any COVID-19 vaccine. Therefore, your request has been DENIED.” TPMG denies the  
3 remaining allegations in Paragraph 37 not expressly admitted.

4 38. TPMG admits that, on or around November 30, 2021, Plaintiff was informed via email  
5 that, *inter alia*, “After thoroughly evaluating your request for a religion-based exemption from the  
6 COVID-19 vaccination requirement of the Kaiser Permanente COVID-19 Vaccination Policy, it has  
7 been determined that your request does not meet the standards necessary for granting an exemption from  
8 obtaining any COVID-19 vaccine. Therefore, your request has been DENIED.” TPMG denies the  
9 remaining allegations in Paragraph 38 not expressly admitted.

10 39. TPMG admits that Plaintiff’s August 26, 2021 request for a religious exemption from the  
11 COVID-19 Vaccination Policy was the reason Plaintiff advanced for objecting to receipt of a COVID-19  
12 vaccine. TPMG is without knowledge or information sufficient to form a belief as to the truth of the  
13 remaining allegations in Paragraph 39 and on that basis denies those allegations.

14 40. TPMG admits that employees of TPMG other than Plaintiff requested a religious  
15 exemption from the COVID-19 Vaccination Policy. TPMG denies the remaining allegations in  
16 Paragraph 40 not expressly admitted.

17 41. TPMG admits that some requests for a religious exemption from the COVID-19  
18 Vaccination Policy submitted by employees other than Plaintiff were approved for reasons unique to  
19 each request. TPMG denies the remaining allegations in Paragraph 41 not expressly admitted.

20 42. TPMG admits that some requests for a religious exemption from the COVID-19  
21 Vaccination Policy submitted by employees other than Plaintiff were approved and other requests for a  
22 religious exemption from the COVID-19 Vaccination Policy submitted by employees other than  
23 Plaintiff were denied, for reasons unique to each request. TPMG denies the remaining allegations in  
24 Paragraph 42 not expressly admitted.

25 43. TPMG is presently without knowledge or information sufficient to form a belief as to the  
26 truth of allegations in Paragraph 43 and on that basis denies those allegations.

27 44. Paragraph 44 contains legal conclusions to which no response is required. To the extent a  
28 response is required, TPMG denies the allegations in Paragraph 44.

45. TPMG admits that, following Plaintiff's explicit refusal to provide adequate responses to the supplemental questions posed via email on or around October 21, 2021, and after Plaintiff's request for a religious exemption from the COVID-19 Vaccination Policy was therefore denied, Plaintiff had no further opportunity to supplement her request for a religious exemption from the COVID-19 Vaccination Policy. TPMG denies the remaining allegations in Paragraph 45 not expressly admitted.

46. TPMG is presently without knowledge or information sufficient to form a belief as to the truth of allegations in Paragraph 46 and on that basis denies those allegations.

47. TPMG admits that the process for requesting an exemption from the COVID-19 Vaccination Policy was conducted in writing. TPMG denies the remaining allegations in Paragraph 47 not expressly admitted.

48. TPMG admits that, on or around December 5, 2021, Plaintiff was placed on unpaid administrative leave as she had not complied with the COVID-19 Vaccination Policy. TPMG denies the remaining allegations in Paragraph 48 not expressly admitted.

49. TPMG admits that, on or around January 10, 2022, Plaintiff was terminated from her employment with TPMG because of her non-compliance with the COVID-19 Vaccination Policy. TPMG is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 49 and on that basis denies those allegations. TPMG denies the remaining allegations in Paragraph 49 not expressly admitted.

50. Paragraph 50 contains legal conclusions to which no response is required. To the extent a response is required, TPMG denies the allegations in Paragraph 50.

**FIRST CAUSE OF ACTION**  
**RELIGIOUS DISCRIMINATION – DISPARATE TREATMENT**  
**TITLE VII**

51. A response Paragraph 51 is not required as the FAC's First Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

52. A response Paragraph 52 is not required as the FAC's First Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

53. A response Paragraph 53 is not required as the FAC's First Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

54. A response Paragraph 54 is not required as the FAC's First Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

55. A response Paragraph 55 is not required as the FAC's First Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

56. A response Paragraph 56 is not required as the FAC's First Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

57. A response Paragraph 57 is not required as the FAC's First Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

58. A response Paragraph 58 is not required as the FAC's First Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

59. A response Paragraph 59 is not required as the FAC's First Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

60. A response Paragraph 60 is not required as the FAC's First Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

61. A response Paragraph 61 is not required as the FAC's First Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

62. A response Paragraph 62 is not required as the FAC's First Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

63. A response Paragraph 63 is not required as the FAC's First Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

64. A response Paragraph 64 is not required as the FAC's First Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

65. A response Paragraph 65 is not required as the FAC's First Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

**SECOND CAUSE OF ACTION**  
**RELIGIOUS DISCRIMINATION – FAILURE TO ACCOMMODATE**  
**TITLE VII**

66. TPMG restates its answers to Paragraphs 1-65 of the FAC as if fully stated herein.

67. Paragraph 67 contains legal conclusions to which no response is required.

68. Paragraph 68 contains legal conclusions to which no response is required.

69. Paragraph 69 contains legal conclusions to which no response is required.

70. Paragraph 70 contains legal conclusions to which no response is required. To the extent a response is required, TPMG admits that some requests for a religious exemption from the COVID-19 Vaccination Policy submitted by employees other than Plaintiff were approved. TPMG denies the remaining allegations in Paragraph 70 not expressly admitted.

71. Paragraph 71 contains legal conclusions to which no response is required. To the extent a response is required, TPMG denies the allegations in Paragraph 71.

72. Paragraph 72 contains legal conclusions to which no response is required. To the extent a response is required, TPMG denies the allegations in Paragraph 72.

73. Paragraph 73 contains legal conclusions to which no response is required. To the extent a response is required, TPMG denies the allegations in Paragraph 73.

74. Paragraph 74 contains legal conclusions to which no response is required. To the extent a response is required, TPMG denies the allegations in Paragraph 74.

75. Paragraph 75 contains legal conclusions to which no response is required. To the extent a response is required, TPMG admits that, on or around January 10, 2022, Plaintiff was terminated from her employment with TPMG because of her non-compliance with the COVID-19 Vaccination Policy. TPMG denies any remaining allegations in Paragraph 75 not expressly admitted.

76. Paragraph 76 contains legal conclusions to which no response is required. To the extent a response is required, TPMG denies the allegations in Paragraph 76.

77. Paragraph 77 contains legal conclusions to which no response is required. To the extent a response is required, TPMG denies the allegations in Paragraph 77.

78. Paragraph 78 contains legal conclusions to which no response is required.

79. Paragraph 79 contains legal conclusions to which no response is required. To the extent a response is required, TPMG denies the allegations in Paragraph 79.

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**THIRD CAUSE OF ACTION**  
**RETALIATION – TITLE VII**

80. A response Paragraph 80 is not required as the FAC's Third Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

81. A response Paragraph 81 is not required as the FAC's Third Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

82. A response Paragraph 82 is not required as the FAC's Third Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

83. A response Paragraph 83 is not required as the FAC's Third Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

84. A response Paragraph 84 is not required as the FAC's Third Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

85. A response Paragraph 85 is not required as the FAC's Third Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

86. A response Paragraph 86 is not required as the FAC's Third Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

87. A response Paragraph 87 is not required as the FAC's Third Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

88. A response Paragraph 88 is not required as the FAC's Third Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

89. A response Paragraph 89 is not required as the FAC's Third Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

90. A response Paragraph 90 is not required as the FAC's Third Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

91. A response Paragraph 91 is not required as the FAC's Third Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

92. A response Paragraph 92 is not required as the FAC's Third Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.



93. A response Paragraph 93 is not required as the FAC's Third Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

**FOURTH CAUSE OF ACTION**  
**RELIGIOUS COERCION – HARASSMENT**  
**TITLE VII**

94. TPMG restates its answers to Paragraphs 1-93 of the FAC as if fully stated herein.

95. Paragraph 95 contains legal conclusions to which no response is required.

96. Paragraph 96 contains legal conclusions to which no response is required.

97. Paragraph 97 contains legal conclusions to which no response is required. To the extent a response is required, TPMG denies the allegations in Paragraph 97.

98. Paragraph 98 contains legal conclusions to which no response is required. To the extent a response is required, TPMG admits that, on or around January 10, 2022, Plaintiff was terminated from her employment with TPMG because of her non-compliance with the COVID-19 Vaccination Policy. TPMG denies any remaining allegations in Paragraph 98 not expressly admitted.

99. Paragraph 99 contains legal conclusions to which no response is required. To the extent a response is required, TPMG denies the allegations in Paragraph 99.

100. Paragraph 100 contains legal conclusions to which no response is required. To the extent a response is required, TPMG denies the allegations in Paragraph 100.

101. Paragraph 101 contains legal conclusions to which no response is required.

102. Paragraph 102 contains legal conclusions to which no response is required. To the extent a response is required, TPMG denies the allegations in Paragraph 102.

**FIFTH CAUSE OF ACTION**  
**RELIGIOUS DISCRIMINATION – DISPARATE TREATMENT**  
**CAL GOV. CODE § 12940(a)**

103. A response Paragraph 103 is not required as the FAC's Fifth Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

104. A response Paragraph 104 is not required as the FAC's Fifth Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

105. A response Paragraph 105 is not required as the FAC's Fifth Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

106. A response Paragraph 106 is not required as the FAC's Fifth Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

107. A response Paragraph 107 is not required as the FAC's Fifth Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

108. A response Paragraph 108 is not required as the FAC's Fifth Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

109. A response Paragraph 109 is not required as the FAC's Fifth Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

110. A response Paragraph 110 is not required as the FAC's Fifth Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

111. A response Paragraph 111 is not required as the FAC's Fifth Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

112. A response Paragraph 112 is not required as the FAC's Fifth Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

113. A response Paragraph 113 is not required as the FAC's Fifth Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

114. A response Paragraph 114 is not required as the FAC's Fifth Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

115. A response Paragraph 115 is not required as the FAC's Fifth Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

**SIXTH CAUSE OF ACTION**  
**RELIGIOUS DISCRIMINATION – FAILURE TO ACCOMMODATE**  
**GOVERNMENT CODE § 12940(i)(1)**

116. TPMG restates its answers to Paragraphs 1-115 of the FAC as if fully stated herein.

117. Paragraph 117 contains legal conclusions to which no response is required.

118. Paragraph 118 contains legal conclusions to which no response is required.

119. Paragraph 119 contains legal conclusions to which no response is required.

120. Paragraph 120 contains legal conclusions to which no response is required. To the extent a response is required, TPMG denies the allegations in Paragraph 120.

1           121. Paragraph 121 contains legal conclusions to which no response is required. To the extent  
2 a response is required, TPMG denies the allegations in Paragraph 121.

3           122. Paragraph 120 contains legal conclusions to which no response is required. To the extent  
4 a response is required, TPMG admits that, on or around January 10, 2022, Plaintiff was terminated from  
5 her employment with TPMG because of her non-compliance with the COVID-19 Vaccination Policy.  
6 TPMG denies any remaining allegations in Paragraph 122 not expressly admitted.

7           123. Paragraph 123 contains legal conclusions to which no response is required. To the extent  
8 a response is required, TPMG denies the allegations in Paragraph 123.

9           124. Paragraph 124 contains legal conclusions to which no response is required. To the extent  
10 a response is required, TPMG denies the allegations in Paragraph 124.

11           125. Paragraph 125 contains legal conclusions to which no response is required. To the extent  
12 a response is required, TPMG denies the allegations in Paragraph 125.

13                           **SEVENTH CAUSE OF ACTION**  
14                           **RETALIATION**  
15                           **CAL GOV. CODE §§ 12940(h) and (l)(4)**

16           126. A response Paragraph 126 is not required as the FAC's Seventh Cause of Action was  
17 dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

18           127. A response Paragraph 127 is not required as the FAC's Seventh Cause of Action was  
19 dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

20           128. A response Paragraph 128 is not required as the FAC's Seventh Cause of Action was  
21 dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

22           129. A response Paragraph 129 is not required as the FAC's Seventh Cause of Action was  
23 dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

24           130. A response Paragraph 130 is not required as the FAC's Seventh Cause of Action was  
25 dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

26           131. A response Paragraph 131 is not required as the FAC's Seventh Cause of Action was  
27 dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

28           132. A response Paragraph 132 is not required as the FAC's Seventh Cause of Action was  
dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

133. A response Paragraph 133 is not required as the FAC's Seventh Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

134. A response Paragraph 134 is not required as the FAC's Seventh Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

135. A response Paragraph 135 is not required as the FAC's Seventh Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

136. A response Paragraph 136 is not required as the FAC's Seventh Cause of Action was dismissed by the Court via order dated December 4, 2023 and is no longer at issue in this case.

**EIGHTH CAUSE OF ACTION**  
**FAILURE TO PREVENT DISCRIMINATION AND HARASSMENT**  
**CAL GOV CODE § 12940(k)**

137. TPMG restates its answers to Paragraphs 1-136 of the FAC as if fully stated herein.

138. Paragraph 138 contains legal conclusions to which no response is required.

139. Paragraph 139 contains legal conclusions to which no response is required. To the extent a response is required, TPMG denies any remaining allegations in Paragraph 139.

140. Paragraph 140 contains legal conclusions to which no response is required. To the extent a response is required, TPMG denies the allegations in Paragraph 140.

141. Paragraph 141 contains legal conclusions to which no response is required. To the extent a response is required, TPMG denies the allegations in Paragraph 141.

142. Paragraph 142 contains legal conclusions to which no response is required. To the extent a response is required, TPMG denies the allegations in Paragraph 142.

143. Paragraph 142 contains legal conclusions to which no response is required. To the extent a response is required, TPMG denies the allegations in Paragraph 143.

**PRAYER FOR RELIEF**

Plaintiff's Prayer for Relief, and each sub-part therein, consists of legal conclusions and statements regarding the relief sought by Plaintiff to which no response is required. To the extent a response is deemed necessary, Defendant denies the allegations in the Prayer for Relief and each sub-part therein.

**DEFENDANT'S ADDITIONAL DEFENSES**

In further answer to Plaintiff's Complaint, Defendant alleges the following additional defenses. In asserting these defenses, Defendant does not assume the burden of proof as to matters that, pursuant to law, are Plaintiff's burden to prove.

**FIRST AFFIRMATIVE DEFENSE**

**(Failure to State a Claim for Relief)**

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

**(LMRA Preemption)**

Plaintiff's claims are preempted in whole or in part by Section 301 of the Labor Management Relations Act (29 U.S.C. section 185(a)) to the extent that the resolution of such claims depends on interpretation of provisions of any and all collective bargaining agreements, side letters, or national agreements between Plaintiff's employer and any labor organization.

**THIRD AFFIRMATIVE DEFENSE**

**(NLRA Preemption)**

The Complaint, and each purported cause of action alleged therein, is preempted by sections 7 and 8 of the National Labor Relations Act (29 U.S.C. section 151 et seq.) to the extent that the resolution of such claims depends on interpretation of provisions of any and all collective bargaining agreements, side letters, or national agreements between Plaintiff's employer and any labor organization.

**FOURTH AFFIRMATIVE DEFENSE**

**(Preemption by Federal Law)**

Defendant is not liable for any causes of action based on California law because California law is preempted by federal law as applied to Defendant pursuant to regulations promulgated by the Centers for Medicare and Medicaid.

**FIFTH AFFIRMATIVE DEFENSE**

**(Waiver)**

Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver. Plaintiff, by her own conduct and actions, has waived the right, if any, to assert the claims alleged in the Complaint.

**SIXTH AFFIRMATIVE DEFENSE**

**(Consent/Authorization)**

Plaintiff's Complaint, and each purported cause of action alleged therein, is barred, in whole or in part, because the alleged conduct of Defendant was approved, consented to, and/or authorized by Plaintiff through her actions, omissions, and course of conduct.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Estoppel)**

Because of Plaintiff's own acts or omissions, Plaintiff is barred by the equitable doctrine of estoppel from maintaining this action or pursuing any cause of action alleged in the Complaint.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Failure to Mitigate Damages)**

Defendant alleges, based on information and belief, that Plaintiff had the ability and opportunity to mitigate the purported damages alleged in the Complaint and failed to act reasonably to mitigate such damages. To the extent that Plaintiff suffered any damages as a result of the facts alleged in her Complaint, which Defendant denies Plaintiff is entitled to recover the amount of damages alleged or any damages due to her failure to make reasonable efforts to mitigate or minimize the damages incurred. By reason of the foregoing, Plaintiff is barred in whole or in part from recovery of damages from Defendant.

**NINTH AFFIRMATIVE DEFENSE**

**(Plaintiff's Comparative Fault)**

Plaintiff was at fault in how she conducted her affairs relative to the allegations advanced in the Complaint and such fault caused or contributed to the damages complained of in this case.

**TENTH AFFIRMATIVE DEFENSE**

**(Failure to Take Advantage of Preventative/  
Corrective Opportunities/Avoidable Consequences)**

Plaintiff unreasonably failed to take advantage of any preventive or corrective opportunities provided by Defendant or to otherwise avoid harm. To the extent Plaintiff suffered any alleged harm,

1 Plaintiff's reasonable use of such procedures would have prevented all, or part, of the harm allegedly  
2 suffered by Plaintiff. Accordingly, Plaintiff's claims are barred or, alternatively, her relief is limited.

3 **ELEVENTH AFFIRMATIVE DEFENSE**

4 **(Unclean Hands)**

5 The Complaint, and each purported cause of action alleged therein, is barred by the doctrine of  
6 unclean hands.

7 **TWELFTH AFFIRMATIVE DEFENSE**

8 **(Collateral Estoppel and Res Judicata)**

9 Plaintiff's Complaint, and each and every cause of action alleged therein, is barred by the  
10 doctrines of collateral estoppel and res judicata.

11 **THIRTEENTH AFFIRMATIVE DEFENSE**

12 **(Failure to Plead With Particularity)**

13 Any claim for emotional and mental distress should be stricken because Plaintiff has failed to  
14 plead with particularity any facts supporting such claims.

15 **FOURTEENTH AFFIRMATIVE DEFENSE**

16 **(Comparative Fault of Third Parties)**

17 People or entities other than Defendant caused or contributed to the damages Plaintiff claims to  
18 have suffered. Therefore any award made in favor of Plaintiff in this case must be reduced by an amount  
19 equal to the percentage of the fault of others in causing or contributing to the damages as alleged in the  
20 complaint.

21 **FIFTEENTH AFFIRMATIVE DEFENSE**

22 **(Lack of Causation for Emotional Distress)**

23 Plaintiff's claims, in whole or in part, are barred to the extent that Plaintiff has not alleged any  
24 tangible or medical evidence of emotional distress as a result of any conduct alleged in the Complaint.  
25 Alternatively, to the extent that any alleged emotional distress is alleged by Plaintiff, it was caused by a  
26 collateral source other than Defendant.

**SIXTEENTH AFFIRMATIVE DEFENSE**

**(Legitimate Non-Discriminatory/Non-Retaliatory Factors)**

Plaintiff may not obtain the relief requested in her Complaint because any adverse employment actions taken against her were based on legitimate, non-discriminatory and/or non-retaliatory factors and not any protected characteristic.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

**(Proper Exercise of Management Discretion)**

Any and all conduct of which Plaintiff complains or which is attributed to Defendant was a just and proper exercise of management discretion, at all times privileged and justified, and undertaken for fair and honest reasons or belief, in good faith and without malice.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

**(After-Acquired Evidence)**

Plaintiff's claims are barred, or she is precluded from recovering damages, to the extent that Defendant learn through after-acquired evidence that she engaged in any fraud or other misconduct that, if known, would have caused Plaintiff to be terminated.

**NINETEENTH AFFIRMATIVE DEFENSE**

**(Undue Hardship)**

Plaintiff's Complaint is barred because Plaintiff's alleged religious belief could not be accommodated without undue hardship to Defendant.

**TWENTIETH AFFIRMATIVE DEFENSE**

**(Same Decision)**

To the extent that Plaintiff demonstrates her protected status was a substantial motivating factor for any challenged employment action, Defendant would have taken the same action absent the substantial motivating factor. As a result, the court may not award Plaintiff damages, back pay, or order reinstatement.

///

///

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**TWENTY-FIRST AFFIRMATIVE DEFENSE**

**(Compliance with Applicable Law)**

Plaintiff's claims are barred, in whole or in part, because Defendant acted in compliance with all laws, governing regulations, and industry standards in effect at all relevant times.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

**(Failure to Exhaust Administrative Remedies)**

Plaintiff's causes of action are barred to the extent she has failed to exhaust her administrative remedies and/or procedural remedies as required by California law.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

**(Failure to Exhaust Contractual Remedies)**

Plaintiff's claims are barred in whole or in part to the extent Plaintiff failed to exhaust the remedies provided by any collective bargaining agreement, side letter, national agreement, or similar document between Defendant and any labor organization.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

**(Offset)**

To the extent Plaintiff has received other benefits and/or awards attributable to an injury for which she seeks compensation in this case, such benefits and/or awards should offset, in whole or in part, by any award she receives here for the same injury.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

**(Punitive Damages - Due Process)**

Plaintiff's claims, to the extent they seek exemplary or punitive damages, violate Defendant's constitutional rights, pursuant to Article I, Section 10, Article IV, Section 2, and the First, Fifth, Sixth, Fifth, and Fourteenth Amendments to the Constitution of the United States, and Article I, Sections 7, 9, 15 and 17, and Article IV, Section 16, of the California Constitution.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

**(Punitive Damages - Lack of Malice/Kolstad Defense)**

Assuming, arguendo, any conduct alleged by Plaintiff occurred, such conduct was not the result of purposeful, bad faith, knowing, willful, intentional, oppressive, fraudulent, malicious, despicable, or

1 callous motive by Defendant. Plaintiff may not recover punitive damages against Defendant for the  
2 employment decisions of its agent(s) to the extent those decisions were contrary to policies instituted  
3 against wrongful conduct including policies and good faith enforcement of rules prohibiting harassment,  
4 retaliation, and discrimination.

5 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

6 **(Interactive Process - Lack of Good Faith)**

7 Plaintiff's claims are barred in whole or part to the extent Plaintiff failed to make a good faith  
8 effort to engage in the interactive process.

9 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

10 **(Plaintiff's Failure/Refusal to Engage in Interactive Process)**

11 Any alleged failure or breakdown in the interactive process was the result of Plaintiff's failure to  
12 cooperate and/or participate in the process in good faith and not the fault of Defendant.

13 **RESERVATION OF RIGHTS**

14 TPMG presently has insufficient knowledge or information upon which to form a belief whether  
15 there may be additional, as yet unstated, defenses. TPMG reserves the right to assert additional defenses  
16 in the event that discovery or investigation indicates that such defenses would be appropriate.

17 **PRAYER**

18 WHEREFORE, TPMG prays for judgment as follows:

- 19 1. That Plaintiff's FAC be dismissed;
- 20 2. That TPMG be awarded its costs in this matter, including, but not limited to, reasonable  
21 attorneys' fees as permitted by law; and
- 22 3. That TPMG be granted such other and further relief to which it may be entitled.

23 DATED: March 29, 2024

Respectfully submitted,

24 SEYFARTH SHAW LLP

25 By: Sean T. Strauss

Christian J. Rowley

Sean T. Strauss

26 Galen P. Sallomi

27 Attorneys for Defendant

28 THE PERMANENTE MEDICAL GROUP, INC.

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Facsimile: (415) 397-8549

Attorneys for Defendant  
THE PERMANENTE MEDICAL GROUP, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MIMI WEISS,

Plaintiff,

v.

THE PERMANENTE MEDICAL GROUP, INC.,

Defendant.

Case No. 3:23-cv-03490-RS

**DECLARATION OF SEAN T. STRAUSS  
IN SUPPORT OF DEFENDANT THE  
PERMANENTE MEDICAL GROUP,  
INC.'S MOTION FOR JUDGMENT ON  
THE PLEADINGS**

Date: Thursday, May 30, 2024  
Time: 1:30 p.m.  
Judge: Hon. Richard Seeborg  
Location: San Francisco Courthouse  
Courtroom 3 – 17th Floor  
450 Golden Gate Avenue  
San Francisco, CA 94102

**DECLARATION OF SEAN T. STRAUSS**

I, Sean T. Strauss, declare and state as follows:

1. I am an attorney at law duly licensed to practice in the Northern District of California and am a Senior Counsel with the law firm of Seyfarth Shaw LLP, attorneys of record for defendant The Permanente Medical Group, Inc. (“TPMG”). I am admitted to practice law in the State of California and before this Court and, because I am an attorney for TPMG in this matter, I am familiar with the following facts.

2. I make this declaration in support of TPMG’s Motion for Judgment on the Pleadings (the “Motion”) as to Plaintiff Mimi Weiss’s (“Plaintiff”) First Amended Complaint for Damages and Injunctive Relief (the “FAC”). I have personal knowledge of the facts contained in this declaration, and if called as a witness, could and would testify as to their accuracy. As to matters stated on information and belief, I believe them to be true.

3. Attached hereto as **Exhibit A** is a true and correct copy a Request for a Religious Exemption from the Kaiser Permanente COVID-19 Vaccination Policy submitted by Plaintiff on or around August 26, 2021. It is appropriate to consider this document in connection with the Motion because it is incorporated by reference in Paragraph 24 of the FAC and is central to Plaintiff’s claims. *See Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006); *Russell v. Maman*, No. 18-CV-06691-RS, 2020 WL 10964919, at \*2 (N.D. Cal. Apr. 10, 2020) (Seeborg, J.); *Bush v. Mondelez Int’l, Inc.*, No. 16-CV-02460-RS, 2016 WL 5886886, at \*1 fn. 1 (N.D. Cal. Oct. 7, 2016) (Seeborg, J.).

4. Attached hereto as **Exhibit B** is a true and correct copy of an August 30, 2021 message sent to Plaintiff regarding her request for a religious exemption from the Kaiser Permanente COVID-19 Vaccination Policy. It is appropriate to consider this document in connection with the Motion because it is incorporated by reference in Paragraph 25 of the FAC and is central to Plaintiff’s claims. *See Marder*, 450 F.3d at p. 448; *Russell*, 2020 WL 10964919, at \*2; *Bush*, 2016 WL 5886886, at \*1 fn. 1.

5. Attached hereto as **Exhibit C** is a true and correct copy of a September 21, 2021 message sent to Plaintiff addressing “Reexamination of Provisionally Approved Requests” for religious exemption from the Kaiser Permanente COVID-19 Vaccination Policy. It is appropriate to consider this document in connection with the Motion because it is incorporated by reference in Paragraph 26 of the

FAC and is central to Plaintiff's claim. *See Marder*, 450 F.3d at p. 448; *Russell*, 2020 WL 10964919, at \*2; *Bush*, 2016 WL 5886886, at \*1 fn. 1.

6. Attached hereto as **Exhibit D** is a true and correct copy of an October 21, 2021 message sent to Plaintiff seeking additional information regarding her request for a religious exemption from the Kaiser Permanente COVID-19 Vaccination Policy. It is appropriate to consider this document in connection with the Motion because it is incorporated by reference in Paragraph 27 of the Complaint and is central to Plaintiff's claims. *See Marder*, 450 F.3d at p. 448; *Russell*, 2020 WL 10964919, at \*2; *Bush*, 2016 WL 5886886, at \*1 fn. 1.

7. Attached hereto as **Exhibit E** is a true and correct copy of an October 26, 2021 message Plaintiff sent in response to the request for additional information regarding her request for a religious exemption from the Kaiser Permanente COVID-19 Vaccination Policy. It is appropriate to consider this document in connection with the Motion because it is incorporated by reference in Paragraphs 27, 28, and 36 of the FAC and is central to Plaintiff's claims. *See Marder*, 450 F.3d at p. 448; *Russell*, 2020 WL 10964919, at \*2; *Bush*, 2016 WL 5886886, at \*1 fn. 1.

8. Attached hereto as **Exhibit F** is a true and correct copy of a November 30, 2021 message sent to Plaintiff regarding denial of her request for a religious exemption from the Kaiser Permanente COVID-19 Vaccination Policy. It is appropriate to consider this document in connection with the Motion because it is incorporated by reference in Paragraphs 36 and 37 of the FAC and is central to Plaintiff's claims. *See Marder*, 450 F.3d at p. 448; *Russell*, 2020 WL 10964919, at \*2; *Bush*, 2016 WL 5886886, at \*1 fn. 1.

9. Attached hereto as **Exhibit G** is a true and correct copy of the United States Department of Homeland Security Request for an Exception to the COVID-19 Vaccination Requirement Form, available at <https://www.dhs.gov/sites/default/files/publications/dhs-religious-exemption-form-final.pdf> (last visited April 1, 2024). It is appropriate to consider this document in connection with the Motion because it is a document the accuracy of which can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. *See Fed. R. Evid. 201(b)*; Request for Judicial Notice in Support of the Motion, filed herewith.

1           10. Attached hereto as **Exhibit H** is a true and correct copy of the United States Department  
2 of Agriculture Request for a Religious Exception to the COVID-19 Vaccination Requirement Form,  
3 available at <https://www.usda.gov/sites/default/files/documents/usda-religious-covid-request-form.pdf>  
4 (last visited April 1, 2024). It is appropriate to consider this document in connection with the Motion  
5 because it is a document the accuracy of which can be accurately and readily determined from sources  
6 whose accuracy cannot reasonably be questioned. *See* Fed. R. Evid. 201(b); Request for Judicial Notice  
7 in Support of the Motion, filed herewith.

8           11. Attached hereto as **Exhibit I** is true and correct copy of the United States Department of  
9 Commerce Request for a Religious Exception to the COVID-19 Vaccination Requirement Form,  
10 available at [https://www.commerce.gov/sites/default/files/2021-10/DOC\\_Religious\\_Exception\\_Request](https://www.commerce.gov/sites/default/files/2021-10/DOC_Religious_Exception_Request_Form_Fillable-100621.pdf)  
11 [Form\\_Fillable-100621.pdf](https://www.commerce.gov/sites/default/files/2021-10/DOC_Religious_Exception_Request_Form_Fillable-100621.pdf) (last visited April 1, 2024). It is appropriate to consider this document in  
12 connection with the Motion because it is a document the accuracy of which can be accurately and  
13 readily determined from sources whose accuracy cannot reasonably be questioned. *See* Fed. R. Evid.  
14 201(b); Request for Judicial Notice in Support of the Motion, filed herewith.

15           12. Attached hereto as **Exhibit J** is a true and correct copy of the United States Equal  
16 Employment Opportunity Commission Religious Accommodation Request Form, available at  
17 [https://www.eeoc.gov/sites/default/files/2021-10/EEOC%20Religious%20Accommodation%20Request](https://www.eeoc.gov/sites/default/files/2021-10/EEOC%20Religious%20Accommodation%20Request%20Form%20-%20for%20web.pdf)  
18 [%20Form%20-%20for%20web.pdf](https://www.eeoc.gov/sites/default/files/2021-10/EEOC%20Religious%20Accommodation%20Request%20Form%20-%20for%20web.pdf) (last visited April 1, 2024). It is appropriate to consider this  
19 document in connection with the Motion because it is a document the accuracy of which can be  
20 accurately and readily determined from sources whose accuracy cannot reasonably be questioned. *See*  
21 Fed. R. Evid. 201(b); Request for Judicial Notice in Support of the Motion, filed herewith.

22           13. Attached here to as **Exhibit K** is a true and correct copy of the First Amended Complaint  
23 for Economic, Compensatory and Punitive Damages, and Injunctive Relief, from *Felipe S. Quinones v.*  
24 *Patrick R. Donahoe, Postmaster General, United States Postal Service*, United States District Court for  
25 the Eastern District of California, Case No. 1:13-cv-01533-LJO-GSA, filed on February 26, 2014. It is  
26 appropriate to consider this document in connection with the Motion because it is a document the  
27 accuracy of which can be accurately and readily determined from sources whose accuracy cannot  
28

1 reasonably be questioned. *See* Fed. R. Evid. 201(b); Request for Judicial Notice in Support of the  
2 Motion, filed herewith.

3  
4 I declare under penalty of perjury under the laws of the United States of America and the State of  
5 California that the forgoing is true and correct.

6 Executed on April 17, 2024 in Oakland, California.

7 /s/ Sean T. Strauss

8 Sean T. Strauss  
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# EXHIBIT D





Q Mimi weiss

Home	Mimi weiss	Mimi April-Cyd W...	+
Details	Mimi April-Cyd W...	41036891	Outbound Email ... +

## Email Message Detail

Reply Reply To All Forward Delete

### Information

Parent Case	<a href="#">41036891</a>
Message Date	10/21/2021 6:52 PM
Created By	

### Address Information

From Address	<a href="mailto:hrconnect-cases@hr.kp.org">hrconnect-cases@hr.kp.org</a>
From Name	hrconnect-cases@hr.kp.org
To Address	<a href="mailto:mimi.a.belser@kp.org">mimi.a.belser@kp.org</a>
CC Address	<a href="mailto:mimibelser@yahoo.com">mimibelser@yahoo.com</a>
BCC Address	
Headers	
Related To	<a href="#">41036891</a>
Is Incoming	<input type="checkbox"/>

### Message Content

Subject	Request for Addl Info Exemption-COVID-19 Vaccination Req.-Religion ref: _00D412j5UY_
HTML Body	<a href="#">Click here to view HTML version</a>
Text Body	<p>Dear Mimi April-Cyd Weiss:</p> <p>After careful review of your request for an exemption under the COVID-19 Vaccination Policy, additional information is needed from you to further evaluate whether you have a sincerely held religious belief. Additional Information Needed Within Five Calendar Days: To help us better understand your responses immediately following each question. Please make sure your responses are a quote from scripture or another resource, you must also explain in your own words what the consequences of not providing complete and timely information are. If you do not provide complete information we have obtained to date, and you may receive a Notice of Denial. Consequences of COVID-19 vaccine series: immediately to avoid being on an unpaid leave of absence; and NOTE: Employees may continue to work and will not be placed on leave of absence if the vaccination is required by law or public health order. Where full vaccination* is required, a</p>

# HRconnect

Dear Mimi April-Cyd Weiss:

After careful review of your request for an exemption under the COVID-19 Vaccination Policy, undertaken to ensure ongoing compliance with our responsibilities under public health requirements and KP policy, it has been determined that additional information is needed from you to further evaluate whether you have a sincerely held religious belief, practice, or observance that prevents you from receiving any COVID-19 vaccine. CASE NUMBER: 41036891

**Additional Information Needed Within Five Calendar Days:** To help us better understand the basis for your request for a religious exemption, please answer the questions below **within five calendar days** by replying to this email, and adding your responses immediately following each question. Please make sure your responses are in your own words and do not contain language from a template or form response you have obtained from someone else or an online source. If you quote from scripture or another resource, you must also explain in your own words what that resource means, and how you believe the resource prevents you from being vaccinated.

**Consequences of Not Providing Complete and Timely Information:** If you do not provide complete information **within five calendar days from the date of this notice:**

- a decision will be made regarding your exemption request based on the information we have obtained to date; and
- you may receive a Notice of Denial.

**Consequences of Not Receiving An Approved Exemption:** If you receive a Notice of Denial, you will be required to submit proof in HRconnect that you completed a COVID-19 vaccine series:

- **immediately** to avoid being on an **unpaid leave of absence**; and
- **on or before November 30** to avoid having your **employment terminated effective December 1**.

NOTE: Employees may continue to work and will not be placed on leave of absence if they HAVE COMPLETED their vaccine series by September 30, 2021 (i.e., one dose of J&J; second dose of either Moderna or Pfizer), **except** where full vaccination is required by law or public health order. Where full vaccination\* is required, employees without approved

exemptions must remain off work until they have completed a COVID-19 vaccine series **and** the 14-day waiting period.

Please be assured that we respect our employees who hold sincerely held religious beliefs and are committed to thoroughly and thoughtfully reviewing all requests for religious exemption from our COVID-19 Vaccination for KP Workforce Members Policy (NATL.HR.057). Throughout this evaluation process, it is critical that we continue to keep the safety of our staff, patients, and the communities that we serve at the center of all that we do. It is also critical that our employees always uphold KP's ethical standards as outlined in our Principles of Responsibility, including throughout this religious exemption process. We appreciate all that you do to demonstrate your commitment to these important ideals.

Unless required otherwise by state or local orders, until you are fully vaccinated, you must comply with the safety rules specified for those unvaccinated or not fully vaccinated individuals reporting to work at any Kaiser Permanente facility or caring for patients in person at a non-KP Facility. These rules may require masking, social distancing, additional education on COVID-19 vaccines and safety training, and routine proof of negative COVID-19 test results. Also, there will be a need to assess whether your vaccination status limits your ability to perform your job functions in a manner that is both safe and complies with legal or public health mandates and KP policies, and if so, what the appropriate next steps are to address any such limitations. See your manager for the specific safety rules that apply to you, and to discuss any limitations your vaccination status places on your ability to continue working and safely perform your job functions.

**To schedule a vaccine appointment, please visit [kp.org](https://kp.org).**

**For information on the safety and effectiveness of the COVID 19 vaccine go to [kp.org/covidvaccine](https://kp.org/covidvaccine).**

If you have any questions or concerns regarding the above, please respond to this email.

#### **ADDITIONAL QUESTIONS REGARDING YOUR REQUEST FOR RELIGIOUS EXEMPTION FROM COVID-19 VACCINATION (Maximum of Nine)**

Question: What else besides the COVID-19 vaccine do you refuse to put in your body as a result of your religious belief?

Answer:

Question: Have you put this belief into practice in any other areas of your life?

Answer:

Question: Do you currently take or have you ever taken medications of any kind (over the counter or prescription) as an adult?

Answer:

Question: Note: We are not asking you tell us what medications you take or why you take them - please do not share that information with us. If you answered yes:

Answer:

Question: "When is the last time you took such medicine? - Is the COVID-19 vaccine different from these medicines? If so, how?"

Answer:

Question: Why does your religious belief prevent you from receiving the COVID-19 vaccination but not from taking other medications?

Answer:

Question: Please resubmit your request for accommodation in your own words without using template or stock language from the internet or other sources.

Answer:

Question:

Answer:

Question:

Answer:

If you have additional information you would like to submit in support of your request for exemption, please provide it here:

\*"Fully vaccinated" means fully vaccinated against the virus that causes COVID-19 as defined by the CDC. As of the date of this form, this means receipt of the second dose in a 2-dose series (e.g., Pfizer and Moderna vaccines) OR receipt of a single-dose vaccine (e.g., Johnson & Johnson's Janssen vaccine) AND a 2 week period having passed since the administration of the last vaccine dose. (This definition may change to include the requirement for vaccine booster shots in the future.)

ref:\_00D412j5UY.\_5003j1tG2sE:ref

# EXHIBIT F



Mimi weiss

Home	Mimi weiss	Mimi April-Cyd W...	+
Details	Mimi April-Cyd W...	41036891	Outbound Email ... +



## Outbound Email Message

[Attachments](#)

### Email Message Detail

Reply

Reply To All

Forward

Delete

#### Information

Parent Case	<a href="#">41036891</a>
Message Date	11/30/2021 11:04 AM
Created By	

#### Address Information

From Address	<a href="mailto:hrconnect-cases@hr.kp.org">hrconnect-cases@hr.kp.org</a>
From Name	hrconnect-cases@hr.kp.org
To Address	mimi.a.weiss@kp.org
CC Address	mimibelser@yahoo.com; kim.z.smith@kp.org
BCC Address	
Headers	
Related To	<a href="#">41036891</a>
Is Incoming	<input type="checkbox"/>

#### Message Content

Subject	Denial of Exemption from COVID-19 Vaccination Requirement - Religion
HTML Body	<a href="#">Click here to view HTML version</a>
Text Body	<p>Dear Mimi April-Cyd Weiss:</p> <p>After thoroughly evaluating your request for a religion-based exemption from the COVID-19 standards necessary for granting an exemption from obtaining any COVID-19 vaccine. Th</p> <p>If your request for an exemption under the COVID-19 Vaccine Policy was previously appr</p> <p>to change. A further review of your exemption request occurred and resulted in this denial.</p>

SER - 070

# HRconnect

Dear Mimi April-Cyd Weiss:

After thoroughly evaluating your request for a religion-based exemption from the COVID-19 vaccination requirement of the Kaiser Permanente COVID-19 Vaccination Policy, it has been determined that your request does not meet the standards necessary for granting an exemption from obtaining any COVID-19 vaccine. Therefore, your request has been DENIED. CASE NUMBER: 41036891

*If your request for an exemption under the COVID-19 Vaccine Policy was previously approved on a provisional basis, you were notified that the decision to approve your exemption, and action taken to accommodate the exemption, are subject to change. A further review of your exemption request occurred and resulted in this denial.*

**As a result,**

- **You are required to comply with the Kaiser Permanente COVID-19 Vaccine Policy by submitting proof of completed COVID-19 vaccination** (i.e., both doses of a 2-dose vaccine such as Pfizer or Moderna OR a single-dose vaccine such as Johnson & Johnson's Janssen vaccine) **or obtaining an approved exemption.**
- **If you were previously approved for a religious exemption, your exemption will expire in five (5) calendar days. If you are currently working you may continue to do so for the next five (5) calendar days.**
  - If you submit verified proof of completed vaccination before your exemption expires you may work unless you work in a location where full vaccination (i.e., 14 days after completed vaccination) is required by law or public health order.
  - Where full vaccination is required, employees without approved exemptions will be placed on unpaid administrative leave after their exemptions expire and are not permitted to work for or at Kaiser Permanente until they submit verified proof of completed COVID-19 vaccination and complete the 14-day waiting period.
- **If you are currently off work for any reason, you will not be permitted to return to work until you meet the vaccination requirements.**

Where individuals are permitted to perform services immediately after submitting verified proof of completed vaccination, they must engage in

any testing required for workers who are not fully vaccinated during the 14-day waiting period.

**Failure to meet the requirements of the Kaiser Permanente COVID-19 Vaccination Policy by January 7, 2022, will result in the termination of your employment on or after January 10, 2022.**

To ensure that your employment is not disrupted, do not wait to comply with the Vaccination Policy. As soon as possible, go to [HRconnect.kp.org](https://hrconnect.kp.org) to upload your proof of vaccination

To schedule a vaccine appointment, please visit [kp.org](https://kp.org).

For information on the safety and effectiveness of the COVID 19 vaccine go to [kp.org/covidvaccine](https://kp.org/covidvaccine).

**Accessing HRconnect away from Kaiser Permanente**

You will need PingID to sign-in. If you do not have PingID currently installed, use the instructions below to download the application on your device of choice.

You may be asked to reset your password due changes to KP's minimum password requirements from a minimum of 8 characters to 12 characters.

**Steps for Downloading PingID:**

1. Sign in to HRconnect at [HRconnect.kp.org](https://hrconnect.kp.org) and type in your NUID and password.
2. Click the PingID setup link to begin the registration process.
3. When the log-in screen appears, enter your NUID and password
4. When the ID verification screen appears. Follow instructions to complete your information.
5. Confirm information and submit for ID check
6. After successful verification, a PingID set up screen will open. Follow the steps to install PingID and complete the sign-in process

Also, you may come to a KP facility and use a KP computer to access HRconnect.

**For more information**

General inquiries on the COVID-19 vaccine verification and testing process may be directed to the National HR Service Center at 1-877-457-4772. Follow the prompts for the COVID-19 Vaccine Verification support queue.

If you have any questions or concerns regarding the impact this decision has on your employment, please consult your manager.



# EXHIBIT G



**Homeland  
Security**

**DHS Privacy Office**  
Privacy Act Statement

## **DHS Privacy Act Statement**

### **REQUEST FOR AN EXCEPTION TO THE COVID-19 VACCINATION REQUIREMENT PRIVACY ACT STATEMENT**

Pursuant to 5 U.S.C. § 552a(e)(3), this Privacy Act Statement serves to inform you of why DHS is requesting this information.

#### **Authority:**

DHS is authorized to collect the information requested on this form pursuant to: Sections 501, 503, 504, and 508 of the Rehabilitation Act of 1973, 29 U.S.C. § 791, as amended, and 29 CFR § 1614.203; Section 202(d) of the E-Government Act of 2002, *Accessibility to Persons with Disabilities*; Americans with Disabilities Act Amendments Act of 2008; 36 CFR part 1194, *Electronic and Information Technology Accessibility Standards*; 6 CFR part 15, *Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Department of Homeland Security*; Executive Order 13164, *Establishing Procedures To Facilitate The Provision Of Reasonable Accommodation*, 29 CFR § 1605.2, *Reasonable accommodation without undue hardship as required by section 701(j) of title VII of the Civil Rights Act of 1964*, 42 U.S.C. § 2000e; 5 U.S.C. chapters 11 and 79, and in discharging the functions directed under Executive Order 14043, *Requiring Coronavirus Disease 2019 Vaccination for Federal Employees* (Sept. 9, 2021), and 5 U.S.C. chapters 33 and 63 and Executive Order 12196, *Occupational Safety and Health Program for Federal Employees* (Feb. 26, 1980). Additional authorities associated with this collection of information can be found in the following system of records notices (SORNs): DHS/ALL-033 Reasonable Accommodations Records System of Records, 76 Fed. Reg. 41274 (July 13, 2011); and DHS/ALL-047 Records Related to DHS Personnel, Long-Term Trainees, Contractors, Mission Support Individuals, and Visitors During a Declared Public Health Emergency System of Records, 85 Fed. Reg. 80127 (December 11, 2020)).

#### **Purpose:**

DHS is requesting this information to track and report the processing of reasonable accommodation requests Department-wide to comply with applicable law and regulations, to inform and determine appropriate COVID-19 mitigation measures for particular employees, and to preserve and maintain the confidentiality of medical information while promoting the safety of federal workplaces and the federal workforce consistent with the above-referenced authorities.

#### **Routine Uses:**

Reasonable Accommodations request data is generally not shared externally. However, a complete list of the routine uses can be found in the SORNs identified above associated with this collection of information. The Department's full list of SORNs can be found on the Department's website at <http://www.dhs.gov/system-records-notices-sorn>.



**Homeland  
Security**

***DHS Privacy Office***  
Privacy Act Statement

**Disclosure:**

Providing this information to DHS is voluntary. However, failure to provide this information may result in DHS being delayed or unable to process a reasonable accommodation request. Unless granted a legally-required exception because of a disability or because of a sincerely held religious belief, practice, or observance, all covered federal employees are required to be vaccinated against COVID-19 and to provide documentation concerning their vaccination status to their employing agency. Unless you have been granted a legally-required exception, failure to provide this information may subject you to disciplinary action, including and up to removal from federal service.

Part 1 – To Be Completed by the Employee		
Employee Name		Date of Request
Component	Division	Duty Location
Position	Supervisor	Phone Number
<b>Authorization</b> I hereby authorize the Department to maintain records with information about my religious beliefs in order to consider my request for a reasonable accommodation.		
<b>Questions</b> 1. Please describe the nature of your objection to the COVID-19 vaccination requirement.  2. Would complying with the COVID-19 vaccination requirement substantially burden your religious exercise? If so, please explain how.  3. How long have you held the religious belief underlying your objection?  4. Please describe whether, as an adult, you have received any vaccines against any other diseases (such as a flu vaccine or a tetanus vaccine) and, if so, what vaccine you most recently received and when, to the best of your recollection.  5. If you do not have a religious objection to the use of all vaccines, please explain why your objection is limited to particular vaccines.  6. If there are any other medicines or products that you do not use because of the religious belief underlying your objection, please identify them.  7. Please provide any additional information that you think may be helpful in reviewing your request.  8. Do you work in a SCIF?		
I declare to the best of my knowledge and ability that the foregoing is true and correct.		
Employee Signature		
Print Name	Date	

# EXHIBIT H



## REQUEST FOR A RELIGIOUS EXCEPTION TO THE COVID-19 VACCINATION REQUIREMENT

Government-wide policy requires all Federal employees as defined in 5 U.S.C. § 2105 to be vaccinated against COVID-19, with exceptions only as required by law. In certain circumstances, Federal law may entitle a Federal employee who has a religious objection to the COVID-19 vaccination requirement to an exception from that requirement, in which case the employee would instead comply with alternative health and safety protocols. The Federal Government is committed to respecting the important legal protections for religious liberty. The purpose of this form is to determine whether you may be eligible for an exception.

To be eligible for a possible exception, you must first establish that your refusal to be vaccinated is based upon a sincere belief that is religious in nature. A refusal to be vaccinated does not qualify for an exception if it is based upon personal preference, concerns about the possible effects of the vaccine, or political opinions.

In order to request a religious exception, please fill out this form. The agency may ask for other information as needed to determine if you are legally entitled to an exception.

Signing this form constitutes a declaration that the information you provide is, to the best of your knowledge and ability, true and correct. Any intentional misrepresentation to the Federal Government may result in legal consequences, including termination or removal from Federal Service.

QUESTIONS:

1. Please describe the nature of your objection to the COVID-19 vaccination requirement.
2. Would complying with the COVID-19 vaccination requirement substantially burden your religious exercise? If so, please explain how.
3. How long have you held the religious belief underlying your objection?
4. Please describe whether, as an adult, you have received any vaccines against any other diseases (such as a flu vaccine or a tetanus vaccine) and, if so, what vaccine you most recently received and when, to the best of your recollection.
5. If you do not have a religious objection to the use of all vaccines, please explain why your objection is limited to particular vaccines.
6. If there are any other medicines or products that you do not use because of the religious belief underlying your objection, please identify them.
7. Please provide any additional information that you think may be helpful in reviewing your request.

I declare to the best of my knowledge and ability that the foregoing is true and correct.

Print name

Employee signature

Date

Agency you work for:

Supervisor name:

Agency official action on request: ☐ Approve

☐ Deny

Agency official remarks:

Agency official signature:

Date:

## Privacy Act Statement

**Authority:** We are authorized to collect the information requested on this form pursuant to Executive Order 13991, Protecting the Federal Workforce and Requiring Mask-Wearing (Jan. 20, 2021), Executive Order 12196, Occupational Safety and Health Program for Federal Employees (Feb. 26, 1980), and 5 U.S.C. chapters 11, and 79.

**Purpose:** This information is being collected and maintained to promote the safety of Federal buildings and the Federal workforce consistent with the above-referenced authorities, the COVID-19 Workplace Safety: Agency Model Safety Principles established by the Safer Federal Workforce Task Force, and guidance from Centers for Disease Control and Prevention and the Occupational Safety and Health Administration.

**Routine Uses:** While the information requested on this form is intended to be used primarily for internal purposes, in certain circumstances it may be necessary to disclose this information externally, for example to disclose information to: a Federal, State, or local agency to the extent necessary to comply with laws governing reporting of communicable disease or other laws concerning health and safety in the work environment; to adjudicative bodies (e.g., the Merit System Protection Board), arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties regarding Federal employment; to contractors, grantees, or volunteers as necessary to perform their duties for the Federal Government; to other agencies, courts, and persons as necessary and relevant in the course of litigation, and as necessary and in accordance with requirements for law enforcement; or to a person authorized to act on your behalf. A complete list of the routine uses can be found in the system of records notice associated with this collection of information, OPM/GOVT-10, Employee Medical File System of Records, [75 Fed. Reg. 35099 \(June 21, 2010\)](#), amended [80 Fed. Reg. 74815 \(Nov. 30, 2015\)](#).

**Consequence of Failure to Provide Information:** Employees must certify under penalty of perjury that the documentation they are submitting is true and correct. Providing this information is mandatory. If you fail to provide this information within the requested timeframe, you will be subject to administrative action, up to and including removal from Federal Service.



# EXHIBIT I



## UNITED STATES DEPARTMENT OF COMMERCE

### REQUEST FOR A RELIGIOUS EXCEPTION TO THE COVID-19 VACCINATION REQUIREMENT

Government-wide policy requires all Federal employees as defined in 5 U.S.C. § 2105 to be vaccinated against COVID-19, with exceptions only as required by law. In certain circumstances, Federal law may entitle a Federal employee who has a religious objection to the COVID-19 vaccination requirement to an exception from that requirement, in which case the employee would instead comply with alternative health and safety protocols. The Federal Government is committed to respecting the important legal protections for religious liberty. The purpose of this form is to determine whether you may be eligible for an exception.

To be eligible for a possible exception, you must first establish that your refusal to be vaccinated is based upon a sincere belief that is religious in nature. A refusal to be vaccinated does not qualify for an exception if it is based upon personal preference, concerns about the possible effects of the vaccine, or political opinions.

In order to request a religious exception, please fill out this form. The Department of Commerce may ask for other information as needed to determine if you are legally entitled to an exception.

Signing this form constitutes a declaration that the information you provide is, to the best of your knowledge and ability, true and correct. Any intentional misrepresentation to the Federal Government may result in legal consequences, including termination or removal from Federal Service. If completed via email, then the completed form must be submitted through encrypted email.

#### QUESTIONS:

1. Please describe the nature of your objection to the COVID-19 vaccination requirement.
2. Would complying with the COVID-19 vaccination requirement substantially burden your religious exercise? If so, please explain how.
3. How long have you held the religious belief underlying your objection?
4. Please describe whether, as an adult, you have received any vaccines against any other diseases (such as a flu vaccine or a tetanus vaccine) and, if so, what vaccine you most recently received and when, to the best of your recollection.
5. If you do not have a religious objection to the use of all vaccines, please explain why your objection is limited to particular vaccines.
6. If there are any other medicines or products that you do not use because of the religious belief underlying your objection, please identify them.
7. Please provide any additional information that you think may be helpful in reviewing your request.

I declare to the best of my knowledge and ability that the foregoing is true and correct.

Print Name

Signature

Date

SER - 082



## UNITED STATES DEPARTMENT OF COMMERCE

### Privacy Act Statement

**Authority:** The Privacy Act of 1974, as amended (5 U.S.C. 552a), requires that you be given certain information about this form. The authority for this Request for a Religious Exception to the COVID-19 Vaccination Requirement is derived from Executive Order 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees (Sept. 9, 2021), which requires the U.S. Department of Commerce (the Department) to implement, to the extent consistent with applicable law and subject to the availability of appropriations, a program to require COVID-19 vaccination for all of its Federal employees, with exceptions only as required by law. In particular, the Department may be required to provide a reasonable accommodation to employees who communicate to the Department that they are not vaccinated against COVID-19 because of a sincerely held religious belief, practice, or observance. The authority for this form is also derived from Title VII of the Civil Rights Act, 42 U.S.C. § 2000e(j); 29 C.F.R. Part 1605.

**Purposes/Routine Uses:** The information on this form may be used by the Department to help determine whether the employee is entitled to an accommodation. The supervisor will maintain a record of all accommodation requests, including this form, which will be utilized to determine the efficacy and consistency of the reasonable accommodation process and be compiled for reports to the Equal Employment Opportunity Commission (EEOC); these records are subject to periodic review by the EEOC, or the Director, Office of Civil Rights, at their request, to ensure compliance. In addition, the information collected on this form may be used for Routine Uses set forth in System of Records Notice COMMERCE/DEPT-18, Employees Personnel Files Not Covered by Notices of Other Agencies, except as prohibited by law.

**Disclosure:** Completion of this form is voluntary; however, accommodation may not be given to a qualified individual without this written information.

# EXHIBIT J

## RELIGIOUS ACCOMMODATION REQUEST FORM

Applicant's or Employee's Name:

Date of Request:

Email Address:

Telephone Number:

Employee's Position:

Duty Location:

- 1) Please identify the EEOC requirement, policy, or practice that conflicts with your sincerely held religious observance, practice, or belief (hereinafter "religious beliefs").
  
- 2) Please describe the nature of your sincerely held religious beliefs or religious practice or observance that conflict with the EEOC requirement, policy, or practice identified above.
  
- 3) What is the accommodation or modification that you are requesting?
  
- 4) List any alternative accommodations that also would eliminate the conflict between the EEOC requirement, policy, or practice and your sincerely held religious beliefs.

Requester Signature:

Date:

### Accommodation Decision

- Accommodations:
- ☐ approved as requested
  - ☐ approved but different from the original request
  - ☐ denied

Identify the accommodation provided.

If the approved accommodation is different from the one originally requested, explain the basis for denying the original request.

If an alternative accommodation was offered, indicate whether it was:

- ☐ accepted  
☐ rejected

If it was rejected, state the basis for rejection.

If the accommodation is denied and no alternative accommodation was proposed, explain the basis for denying the request without an alternative accommodation.

An individual who disagrees with the resolution of the request may ask the Chief Human Capital Officer to reconsider that decision within 10 business days of receiving this completed form with the Deciding Official's decision. Note that requesting reconsideration does not extend the time limits for initiating administrative, statutory, or collective bargaining claims.

If an individual is dissatisfied with the resolution and wishes to pursue administrative, statutory, or collective bargaining rights, they must take the following steps:

- For an EEO complaint pursuant to 29 C.F.R. part 1614, contact an EEO counselor in the Office of Equal Opportunity within 45 days from the date of receipt of this form or a verbal response, whichever comes first.
- For a collective bargaining claim, file a written grievance in accordance with the provisions of the collective bargaining agreement.

- For adverse actions over which the Merit Systems Protection Board has jurisdiction, initiate an appeal to the MSPB within 30 days of an appealable adverse action as defined in 5 C.F.R. § 1201.3

Religious Accommodation Case Number:

Deciding Official Name:

Deciding Official Signature:

Date:

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Attorneys for Defendant  
THE PERMANENTE MEDICAL GROUP, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MIMI WEISS,

Plaintiff,

v.

THE PERMANENTE MEDICAL GROUP, INC.,

Defendant.

Case No. 3:23-cv-03490-RS

**DEFENDANT THE PERMANENTE  
MEDICAL GROUP, INC.'S NOTICE OF  
MOTION AND MOTION TO DISMISS  
PLAINTIFF'S SECOND AMENDED  
COMPLAINT; MEMORANDUM OF  
POINTS AND AUTHORITIES**

Date: Thursday, September 26, 2024  
Time: 1:30 p.m.  
Judge: Hon. Richard Seeborg  
Location: San Francisco Courthouse  
Courtroom 3 – 17th Floor  
450 Golden Gate Avenue  
San Francisco, CA 94102



## TABLE OF CONTENTS

		<b>Page</b>
1	NOTICE OF MOTION AND MOTION .....	1
2	MEMORANDUM OF POINTS AND AUTHORITIES .....	1
3	I. INTRODUCTION .....	1
4	II. STATEMENT OF FACTS & RELEVANT PROCEDURE .....	3
5	A. Relevant Facts .....	3
6	B. Procedural History .....	4
7	C. The New Allegations Advanced in the SAC .....	6
8	1. Allegations regarding the scope of the policy and COVID-19	
9	vaccination mandates in general .....	6
10	2. Alleged details regarding TPMG’s exemption review process .....	7
11	III. LEGAL STANDARD.....	8
12	IV. ANALYSIS.....	10
13	A. The SAC’s Second, Third and Fourth Causes of Action Must be Dismissed	
14	Because Plaintiff Cannot Plead She Informed TPMG of the Conflict Between	
15	Her Religious Beliefs and the Policy .....	10
16	1. When evaluating Plaintiff’s exemption request, the Court should	
17	consider only the documents Plaintiff actually submitted to TPMG.....	10
18	2. The SAC provides no basis upon which to reconsider the Court’s	
19	previous determinations regarding Plaintiff’s exemption request .....	11
20	a. Plaintiff’s exemption request established an objective basis	
21	for TPMG to seek additional information.....	12
22	b. Plaintiff declined to participate in TPMG’s process to obtain	
23	additional information regarding her alleged religious belief.....	13
24	c. TPMG had no obligation to continue a dialogue with Plaintiff after	
25	she was given and declined the opportunity to provide additional	
26	information regarding her alleged religious belief.....	15
27	3. Because the SAC’s failure to accommodate claims fail, the failure to	
28	prevent discrimination claim fails as well .....	16
	B. Plaintiff Does Not State a Claim Under the California Constitution for Violation	
	of Privacy and Bodily Autonomy .....	17
	1. Plaintiff’s right to privacy claim is based on the false premise that TPMG	
	required its employees to receive an emergency use authorization vaccine.....	17

1	2.	Plaintiff cannot plead all the required elements of a breach of privacy	
2		claim.....	18
3	a.	Plaintiff fails to allege a legally protected privacy interest because	
4		the California Constitution does not prohibit vaccine mandates .....	19
5	b.	Plaintiff fails to allege a serious invasion of privacy .....	20
6	c.	The Policy substantially furthered countervailing interests.....	21
7	C.	Plaintiff Does Not State a Claim for Breach of the Implied Covenant of Good	
8		Faith and Fair Dealing .....	23
9	V.	CONCLUSION.....	25

**TABLE OF AUTHORITIES**

**Page(s)**

**Federal Cases**

<i>America’s Frontline Doctors v. Wilcox</i> , No. 5:21-cv-01243-JGB-kk, 2021 WL 4546923 (C.D. Cal. July 30, 2021).....	21
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....	9
<i>Barrett v. Apple Inc.</i> , 523 F.Supp.3d 1132 (N.D. Cal. 2021) .....	10
<i>Bauer v. Summey</i> , 568 F.Supp.3d 573 (D.S.C. 2021).....	21
<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544 (2007).....	9
<i>Borrello v. Respironics Cal., LLC</i> , No. 3:23-cv-00580-GPC-WVG, 2023 WL 5986135 (S.D. Cal. Sept. 14, 2023) .....	23
<i>Bridges v. Houston Methodist Hosp.</i> , 543 F.Supp.3d 525 (S.D. Tex. 2021) .....	18
<i>Bridgewater v. Michigan Gaming Control Bd.</i> , 282 F.Supp.3d 985 (E.D. Mich. 2017).....	15
<i>Bush v. Mondelez Int’l, Inc.</i> , No. 3:16-cv-02460-RS, 2016 WL 5886886 (N.D. Cal. Oct. 7, 2016).....	9
<i>Campanelli v. Bockrath</i> , 100 F.3d 1476 (9th Cir. 1996) .....	9
<i>Chinnery v. Kaiser Found. Health Plan of the Mid-Atl. States, Inc.</i> , No. 1:23-cv-01110-DJN-JFA, 2024 WL 3152348 (E.D. Va. June 24, 2024) .....	11, 25
<i>United States ex rel. Chunie v. Ringrose</i> , 788 F.2d 638 (9th Cir. 1986) .....	9
<i>In re Cornerstone Propane Partners, L.P.</i> , 355 F.Supp.2d 1069 (N.D. Cal. 2005) .....	10
<i>Craven v. Shriners Hosps. for Children</i> , No. 3:22-cv-01619-IM, 2024 WL 21557 (D. Or. Jan. 2, 2024).....	11
<i>Crawford v. Trader Joe’s Co.</i> , No. 5:21-cv-01519-JGB-SHK, 2023 WL 3559331 (C.D. Cal. May 4, 2023).....	12

1	<i>Curtis v. PeaceHealth,</i>	
2	No. 3:23-cv-05741-RJB, 2024 WL 248719 (W.D. Wash. Jan. 23, 2024).....	6, 17, 18
3	<i>Finkelstein v. AXA Equitable Life Ins. Co.,</i>	
4	325 F.Supp.3d 1061 (N.D. Cal. 2018).....	10
5	<i>Harris v. University of Mass., Lowell,</i>	
6	557 F.Supp.3d 304 (D. Mass. 2021).....	22
7	<i>Heller v. EBB Auto Co.,</i>	
8	8 F.3d 1433 (9th Cir. 1993) .....	12
9	<i>Hittle v. City of Stockton,</i>	
10	No. 2:12-cv-00766-TLN-KJN, 2016 WL 1267703 (E.D. Cal. Mar. 31, 2016).....	12
11	<i>Jacobson v. Commonwealth of Mass.,</i>	
12	197 U.S. 11 (1905).....	21
13	<i>Johnson v. Brown,</i>	
14	567 F.Supp.3d 1230 (D. Or. 2021) .....	6, 18, 21
15	<i>Johnson v. Federal Home Loan Mortg. Corp.,</i>	
16	793 F.3d 1005 (9th Cir. 2015) .....	10
17	<i>Lazy Y Ranch Ltd. v. Behrens,</i>	
18	546 F.3d 580 (9th Cir. 2008) .....	9, 10
19	<i>Legaretta v. Macias,</i>	
20	603 F.Supp.3d 1050 (D.N.M. 2022).....	18
21	<i>M.L.A. v. Maisels,</i>	
22	No. 5:21-cv-08121-VKD, 2022 WL 1489473 (N.D. Cal. May 11, 2022).....	10
23	<i>Maniscalco v. New York City Dep’t of Educ.,</i>	
24	563 F.Supp.3d 33 (E.D.N.Y. 2021),	
25	<i>aff’d</i> , No. 21-2343, 2021 WL 4814767 (2d Cir. Oct. 15, 2021) .....	21
26	<i>Marder v. Lopez,</i>	
27	450 F.3d 445 (9th Cir. 2006) .....	9
28	<i>Massachusetts Correction Officers Federated Union v. Baker,</i>	
	567 F.Supp.3d 315 (D. Mass. 2021).....	21
	<i>Mathis v. City of Red Bank,</i>	
	657 F.App’x 557 (6th Cir. 2016) .....	15
	<i>Medrano v. Kaiser Permanente, et al.,</i>	
	No. 8:23-cv-02501-DOC-ADSx, 2024 WL 3383704 (C.D. Cal. July 10, 2024) .....	14

1	<i>Moss v. United States Secret Serv.</i> ,	
2	572 F.3d 962 (9th Cir. 2009) .....	9
3	<i>Peak v. TigerGraph, Inc.</i> ,	
4	No. 4:21-cv-02603-PJH, 2021 WL 5865523 (N.D. Cal. Dec. 10, 2021) .....	10, 24
5	<i>Reinhardt v. Gemini Motor Transp.</i> ,	
6	879 F.Supp.2d 1138 (E.D. Cal. 2012).....	23
7	<i>Retail Prop. Trust v. United Bhd. of Carpenters &amp; Joiners of Am.</i> ,	
8	768 F.3d 938 (9th Cir. 2014) .....	9
9	<i>Smith v. W.W. Grainger, Inc.</i> ,	
10	No. 5:18-cv-01405-JGB-SP, 2019 WL 1670942 (C.D. Cal. Feb. 5, 2019).....	16
11	<i>Snapp v. United Transp. Union</i> ,	
12	889 F.3d 1088 (9th Cir. 2018) .....	15
13	<i>Taylor v. Adams &amp; Assocs., Inc.</i> ,	
14	No. 2:16-cv-00311-TLN-KJN, 2017 WL 4340276 (E.D. Cal. Sept. 29, 2017) .....	17
15	<i>Together Employees v. Mass Gen. Brigham Inc.</i> ,	
16	573 F.Supp.3d 412 (D. Mass. 2021),	
17	<i>aff'd</i> , 32 F.4th 82 (1st Cir. 2022).....	15
18	<i>Townsend v. Holman Consulting Corp.</i> ,	
19	929 F.2d 1358 (9th Cir. 1990) .....	7
20	<i>Troogstad v. City of Chicago</i> ,	
21	571 F.Supp.3d 901 (N.D. Ill. 2021) .....	20
22	<i>United States v. Ritchie</i> ,	
23	342 F.3d 903 (9th Cir. 2003) .....	9
24	<i>Valdez v. Grisham</i> ,	
25	559 F.Supp.3d 1161 (D.N.M. 2021),	
26	<i>aff'd</i> , No. 21-2105, 2022 WL 2129071 (10th Cir. June 14, 2022).....	18
27	<i>Williams v. Brown</i> ,	
28	567 F.Supp.3d 1213 (D. Or. 2021) .....	18
	<i>Wolfe v. Logan</i> ,	
	No. 2:22-cv-06463-JLS-PD, 2023 WL 2239062 (C.D. Cal. Jan. 25, 2023).....	20
	<b>State Cases</b>	
	<i>Abeel v. Clark</i> ,	
	84 Cal. 226 (Cal. 1890).....	19, 21

<i>Brown v. Smith</i> , 24 Cal.App.5th 1135 (Cal. Ct. App. 2018) .....	19
<i>Foley v. Interactive Data Corp.</i> , 47 Cal.3d 654 (Cal. 1988).....	23
<i>French v. Davidson</i> , 143 Cal. 658 (Cal. 1904).....	19
<i>Guz v. Bechtel Nat’l, Inc.</i> , 24 Cal.4th 317 (Cal. 2000).....	24
<i>Hill v. National Collegiate Athletic Assn.</i> , 7 Cal.4th 1 (Cal. 1994).....	18, 19, 20
<i>Kuhn v. Department of Gen. Servs.</i> , 22 Cal.App.4th 1627 (Cal. Ct. App. 1994) .....	23
<i>Love v. State Dept. of Educ.</i> , 29 Cal.App.5th 980 (Cal. Ct. App. 2018) .....	18, 19
<i>People v. Martinez</i> , 88 Cal.App.4th 465 (Cal. Ct. App. 2001) .....	20
<i>Pettus v. Cole</i> , 49 Cal.App.4th 402 (Cal. Ct. App. 1996) .....	20
<i>Thor v. Superior Ct.</i> , 5 Cal.4th 725 (Cal. 1993).....	20
<b>Federal Statutes</b>	
21 U.S.C. § 360bbb-3 .....	6, 18
28 U.S.C. § 1407.....	5
Civil Rights Act of 1964 Title VII, 42 U.S.C. § 2000d, et seq.....	<i>passim</i>
<b>State Statutes</b>	
California Fair Employment and Housing Act, Cal. Gov. Code § 12940.....	<i>passim</i>
Cal. Lab. Code § 2922 .....	24

## Rules

### Federal Rules of Civil Procedure

Rule 11 .....	7
Rule 12(b)(6) .....	8, 9

## Regulations

### Occupational Safety and Health Admin., *COVID-19 Vaccination and Testing;*

<i>Emergency Temp. Standard,</i> 86 Fed.Reg. 61402 (Nov. 5, 2021) .....	22
--	----

### Medicare and Medicaid Programs, *Ominbus COVID-19 Health Care Staff Vaccinations,*

86 Fed.Reg 61555 (Nov. 5, 2021) .....	16, 22
---------------------------------------	--------

## Constitutional Provisions

### California Constitution

Article I, § 1 .....	2, 5, 17, 19
----------------------	--------------

## Other Authorities

### California Dept. of Pub. Health, *State Pub. Health Officer Order* (Aug. 5, 2021),

available at <a href="https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Health-Care-Worker-Vaccine-Requirement-8-5-2021.aspx">https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Health-Care-Worker-Vaccine-Requirement-8-5-2021.aspx</a> .....	22
--	----

### Kaiser Permanente, *Protecting Health and Safety Through Vaccination* (Aug. 2, 2021),

available at <a href="https://about.kaiserpermanente.org/news/protecting-health-and-safety-through-vaccination">https://about.kaiserpermanente.org/news/protecting-health-and-safety-through-vaccination</a> .....	21
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**NOTICE OF MOTION AND MOTION**

**PLEASE TAKE NOTICE** that on **Thursday, September 26, 2024, at 1:30 p.m.**, or as soon thereafter as counsel can be heard in the above-entitled Court, in Courtroom 3 – 17th Floor, 450 Golden Gate Avenue, San Francisco, CA 94102, Defendant THE PERMANENTE MEDICAL GROUP, INC. (“TPMG”), will and hereby does move pursuant to Federal Rule of Civil Procedure 12(b)(6) to dismiss all claims asserted against it by Plaintiff MIMI WEISS (“Plaintiff”) in her Second Amended Complaint for Damages and Injunctive Relief, filed on July 12, 2024 [ECF #55] (the “SAC”).

TPMG respectfully requests that the Court find Plaintiff fails to establish any cause of action because the SAC’s (1) Second, Third, and Fourth Causes of Action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. section 2000d, et seq. (“Title VII”) or California’s Fair Employment and Housing Act, California Government Code section 12940 (“FEHA”) have not alleged specific facts establishing Plaintiff informed TPMG of a conflict between her purported religious beliefs and the Kaiser Permanente COVID-19 Vaccination Policy (the “Policy”); (2) First Cause of Action for violation of Plaintiff’s Right to Privacy and Bodily Autonomy under Article I, Section 1 of the California Constitution does not allege facts sufficient to state a claim, and (3) Fifth Cause of Action for breach of the implied covenant of good faith and fair dealing does not allege facts sufficient to state a claim.

This motion is based on this notice of motion, the below memorandum of points and authorities, the Declaration of Sean T. Strauss and exhibits thereto filed herewith, the Request for Judicial Notice filed herewith, all pleadings and documents on file in this case, and on such other and further oral and documentary evidence as may be presented at or before the hearing on this matter.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

On June 21, 2024, the Court granted TPMG’s Motion for Judgment on the Pleadings as to the three remaining causes of action in the First Amended Complaint’s (“FAC”), which advanced failure to accommodate theories under FEHA and Title VII as well as a failure to prevent discrimination claim under FEHA, after concluding Plaintiff “failed to aver plausibly that she adequately informed TPMG of the conflict between her religious beliefs and the Policy[.]” Because this conclusion was based on the Court’s analysis of Plaintiff’s actual submissions to TPMG of her request for religious exemption from



the Policy – the substance of which cannot be altered by any amendment or allegations – the Court specifically noted “it would appear that amendment would be futile,” but nevertheless granted Plaintiff leave to amend. Review of the SAC now cements that amendment was indeed futile, as the SAC fails to advance any new allegations or claims that can resuscitate this lawsuit. For the following reasons, the Court should again dismiss Plaintiff’s claims, this time with prejudice and without leave to amend.

First, as to the previously dismissed and now restated claims for failure to accommodate and failure to prevent discrimination under Title VII or FEHA, Plaintiff attempts to add details fleshing-out allegations made in the FAC, yet the SAC does not materially alter the facts underlying, or establish a rationale to reconsider, the Court’s previous rulings. The reason for this is clear. Regardless of Plaintiff’s newly manufactured and sometimes demonstrably false criticisms of the Policy and TPMG’s religious exemption review process, Plaintiff’s submissions say what they say and cannot change. As the Court previously determined, those submissions establish Plaintiff failed to adequately inform TPMG of a conflict between her religious beliefs and the Policy. Because Plaintiff cannot establish this essential element of her religious discrimination claims, those claims should again be dismissed.

Second, the new claim for violation of Plaintiff’s right to bodily autonomy under Article I, Section 1 of the California Constitution is based entirely on a false premise, namely that all the COVID-19 vaccines TPMG mandated its employees receive absent a medical or religious exemption were only emergency use authorized by the United States Food and Drug Administration (“FDA”). Furthermore, Plaintiff cannot advance facts establishing the Policy (1) violated a legally protected privacy right, (2) constituted a serious invasion of privacy; or (3) did not rationally and substantially further one or more interests countervailing to Plaintiff’s body autonomy.

Third, the new claim for violation of the implied covenant of good faith and fair dealing is fatally deficient for several reasons. Plaintiff indisputably failed to comply with the Policy and thus cannot establish she fulfilled all the obligations of her employment relationship with TPMG. The SAC also does not describe the terms of any alleged employment contract between Plaintiff and TPMG and thus cannot establish any link between the alleged breaches of good faith described in the SAC and her alleged employment contract. Further, this claim is substantively based on Plaintiff’s alleged unlawful termination, but there are no facts in the SAC establishing Plaintiff was anything other than an at-will

employee. Finally, the SAC’s implied covenant claim is entirely dependent on the purported bad acts underlying the SAC’s other claims, none of which were unlawful.

The Court has given Plaintiff more than ample opportunity to state viable claims and, yet again, Plaintiff fails to do so. The allegations in the SAC demonstrate that the Court should once again dismiss Plaintiff’s claims, as Plaintiff fails to advance any viable rationale to permit this case to proceed. Plaintiff cannot rewrite the facts of this case, no matter how she attempts to dress them. The SAC should accordingly be dismissed, this time with prejudice and without leave to amend.

## II. STATEMENT OF FACTS & RELEVANT PROCEDURE

### A. Relevant Facts

The Court is already familiar with the facts of this case, as discussed at length in its December 4, 2023 Order Granting Motion to Dismiss (“ECF #23”) and June 21, 2024 Order Granting Motion for Judgment on the Pleadings (“ECF #54”). In brief summary, in August 2021, TPMG “required all employees to be vaccinated for COVID-19. The [Policy] mandated TPMG employees to provide proof of full vaccination or have an approved exemption by September 30, 2021, or else they would be placed on an unpaid leave of 60 days to come into compliance. If an employee failed to achieve compliance by the end of the 60 days, their employment would be terminated.” ECF #23 at 2; *see* SAC, ¶¶ 28, 29.

In August 2021, Plaintiff was employed by TPMG as a “Managerial Senior Consultant with the Regional Department, Health Engagement Consulting Services.” ECF #23 at 2; *see* SAC, ¶ 26. On August 26, 2021, Plaintiff “sought an exemption from the [Policy], indicating that her religious beliefs prohibited insertion of foreign materials into her body.” ECF #54 at 2; *see* Declaration of Sean T. Strauss in Support of Motion to Dismiss Plaintiff’s SAC (“Strauss Decl.”), Ex. A at 1; SAC, ¶ 39. Specifically, Plaintiff’s exemption request stated, *inter alia*, that:

The COVID-19 vaccines go directly against my belief that I am not to introduce foreign substances into my body temple that change how my Creator designed it. God created my body temple with an immune system, the mechanism to ward off disease, and there is need [sic] to inject a man-made substance in an effort to “improve” my God given abilities.

ECF #54 at 2; Strauss Decl., Ex. A at 1; SAC, ¶ 52.

In her exemption request, Plaintiff “also admitted to never having declined a vaccine due to her religious beliefs. When asked what makes the COVID-19 vaccine different from others, [Plaintiff]

provided no direct response, and instead shared that her religious views had changed in recent months[.]” ECF #54 at 6; *see* Strauss Decl., Ex. A at 2; SAC, ¶ 67 (Plaintiff alleges her exemption request asserted her objection to the COVID-19 vaccines “was attributable to a recent religious awakening or conversion experience”).

TPMG provisionally granted Plaintiff’s exemption request on August 30, 2021 (*see* Strauss Decl., Ex. B), but informed Plaintiff on September 21, 2021 that it was conducting further review of exemption requests “to ensure our continual compliance with our responsibilities under state mandates and KP policy.” Strauss Decl., Ex. C at 1; *see* ECF #23 at 2; ECF #54 at 2. Plaintiff was specifically informed that “you may be asked for additional information so that we can better understand the nature of your religious belief. You will receive an email if more detail is required.” Strauss Decl., Ex. C at 2. Plaintiff’s “unclear, generic, and vague responses in her initial exemption request served as a basis for TPMG to seek clarity on the very responses she had already provided[.]” ECF #54 at 8.

“On October 21, 2021, TPMG informed [Plaintiff] that additional information was needed from her to evaluate her exemption request.” ECF #23 at 2; *see* SAC, ¶ 64. Plaintiff “either refused to answer or provided vague and generic responses, objecting to the information sought by TPMG as unduly intrusive.” ECF #54 at 2; *see* ECF #23 at 2 (Plaintiff “refused to answer several questions, regarding them as intrusive and a violation of privacy”); Strauss Decl., Ex. D at 2-3. “As a result, [Plaintiff’s] exemption request was denied on November 30, 2021. Pursuant to the Policy, [Plaintiff] was then placed on unpaid leave on December 5, 2021, and was terminated from employment on January 10, 2022 for failing to come into compliance with the Policy.” ECF #54 at 2-3; *see* SAC, ¶¶ 76, 93, 94.

## **B. Procedural History**

Plaintiff filed her Complaint on July 13, 2023. *See* ECF #1. On August 29, 2023, TPMG filed a Motion to Dismiss that Complaint. *See* ECF #13. Rather than respond to that Motion to Dismiss, on September 14, 2023, Plaintiff filed the FAC. *See* ECF #15.

On September 28, 2023, TPMG filed a Motion to Dismiss the FAC’s First (disparate treatment under Title VII), Third (retaliation under Title VII), Fifth (disparate treatment under FEHA), and Seventh (retaliation under FEHA) Causes of Action. *See* ECF #16. On December 4, 2023, the Court granted that motion and dismissed those claims with leave to amend. *See* ECF #23 at 7.

On December 5, 2023, TPMG provided notice it had filed with the Judicial Panel on Multidistrict Litigation (“JPML”) a Motion to Transfer this Action to the Central District of California pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings (the “Motion to Transfer”). *See* ECF #24. Pursuant to stipulation, on December 20, 2023, the Court entered an Order (1) setting a deadline of January 18, 2024 for Plaintiff to file a SAC, and (2) aside from Plaintiff’s filing of a SAC on or before January 18, 2024, staying this case until the further case management conference set for March 7, 2024. *See* ECF #29.

Plaintiff did not file a SAC on or before her January 18, 2024 deadline. On January 20, 2024, the JPML provided notice the Motion to Transfer was denied. *See* ECF #30. Pursuant to stipulation, on March 15, 2024, the Court entered an order setting a March 29, 2024 deadline for TPMG to respond to the four remaining claims in the FAC. *See* ECF #36. On March 29, 2024, TPMG filed its Answer to the FAC. *See* ECF #41.

On April 17, 2024, TPMG filed a Motion for Judgment on the Pleadings, challenging the FAC’s remaining Second (failure to accommodate under Title VII), Fourth (religious coercion – harassment under Title VII), Sixth (failure to accommodate under FEHA), and Eighth (failure to prevent discrimination and harassment under FEHA) Causes of Action. *See* ECF #43. On April 24, 2024, pursuant to stipulation the Court dismissed the FAC’s Fourth Cause of Action for religious coercion-harassment under Title VII with prejudice and without leave to amend. *See* ECF #45, 46. On June 21, 2023, the Court entered ECF #54, granting the Motion for Judgment on the Pleadings in its entirety and dismissing the three remaining claims asserted in the FAC. *See* ECF #54 at 9. While the Court noted “it would appear that amendment would be futile,” it granted Plaintiff leave to amend. *Id.*

On July 12, 2024, Plaintiff filed the SAC. *See* ECF #55. The SAC advances five causes of action. *See* SAC, ¶¶ 96-149. The SAC reasserts the two failure to accommodate claims and the failure to prevent discrimination claim that were previously dismissed in ECF #54. *See id.*, ¶¶ 113-142 (Second, Third, and Fourth Causes of Action). The SAC also advances two new claims: (1) the First Cause of Action for violation of Plaintiff’s right to privacy and bodily autonomy pursuant to Article I, Section 1 of the California Constitution (*see id.*, ¶¶ 96-112), and (2) the Fifth Cause of Action for breach of the implied covenant of good faith and fair dealing (*see id.*, ¶¶ 144-149).

### C. The New Allegations Advanced in the SAC

While the SAC advances some new (and in a few instances described below, fully fabricated) details elaborating on allegations previously asserted in the FAC, the SAC does not materially alter the facts upon which the Court based its previous decisions or establish a rationale to reconsider those rulings. The new allegations fall broadly into two categories: Plaintiff’s complaints about (1) the scope of the Policy and COVID-19 vaccination requirements generally, and (2) TPMG’s alleged process for evaluating requests for exemption from the Policy. *See generally* Strauss Decl., Ex. E.

#### 1. Allegations regarding the scope of the policy and COVID-19 vaccination mandates in general

Plaintiff opens the SAC by asserting “[i]n the fall of 2020, the F.D.A. granted emergency use authorization (‘EUA’) to three medical substances --‘vaccines’ -- in response to the Covid-19 pandemic” and the EUA statute “requires that those offered such products” be provided “the right to refuse.”<sup>1</sup> SAC, ¶¶ 1-2. Plaintiff contends that TPMG knew “mandating the vaccine was unlawful, since it was approved only on an emergency use basis, in a statute that explicitly protected the right to refuse the product.”<sup>2</sup> *Id.*, ¶ 31. Plaintiff thus asserts that TPMG had “no employment interest” in mandating “the vaccine for all employees,” including employees like plaintiff “who were working remotely.” *Id.*, ¶ 4.

Plaintiff contends that, as of August 2021, science showed and TPMG knew “the vaccines did not prevent infection with the Covid-19 virus, nor did they prevent the spread of the virus.” SAC, ¶ 30. The SAC advances other allegations about the purported ineffectiveness of COVID-19 vaccines and

<sup>1</sup> The statute at issue actually requires, as a “condition[] of authorization” for an “unapproved product” that “a person who carries out any activity for which the authorization is issued” establishes appropriate “conditions designed to ensure that individuals to whom the product is administered are informed . . . of the option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks[.]” 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III) (“Section 360bbb-3” or the “EUA Statute”). As such, Section 360bbb-3’s “conditions of informed consent” apply only to “the medical providers who administer the vaccine, not those who issue vaccine mandates.” *Johnson v. Brown*, 567 F.Supp.3d 1230, 1256 (D. Or. 2021) (citing cases).

<sup>2</sup> This allegation is demonstrably false, as the Pfizer-BioNTech COVID-19 vaccine received full FDA authorization on August 23, 2021 - *before* TPMG required any employee to be vaccinated and *before* Plaintiff had even submitted a request for exemption from the Policy. *See* SAC, ¶¶ 29 (compliance deadline under the Policy was Sept. 30, 2021), 39 (“On August 26, 2021, [Plaintiff] completed [TPMG’s] religious exemption request form.”); *Curtis v. PeaceHealth*, No. 3:23-cv-05741-RJB, 2024 WL 248719, at \*4 (W.D. Wash. Jan. 23, 2024) (“On August 23, 2021, the Pfizer-BioNTech vaccine received full FDA approval for individuals 16 and older.”).

what TPMG allegedly knew at the time about the science surrounding those vaccines. *See id.*, ¶¶ 31-35. Plaintiff concludes her criticism of mandating vaccination for COVID-19 by asserting, “as part of the much larger American public health establishment, [TPMG] promoted the policy of mandating vaccines, not because of the science, but contrary to what the known science would support.” *Id.*, ¶ 36.

## 2. Alleged details regarding TPMG’s exemption review process

The SAC provides more detail about Plaintiff’s criticisms of TPMG’s alleged exemption review process by first asserting that the form she used to submit her exemption request was allegedly improper because the “Acknowledgment” section (1) did not describe any risks associated with taking the Covid vaccines, (2) purportedly displayed “a bias against religious exemption requests,” and (3) “insinuate[ed] to [Plaintiff] that her faith was in error[.]” SAC, ¶¶ 42-44. Plaintiff continues to criticize the substantive questions posed, asserting they “betray[] a complete lack of understanding of religion” and “presume[ ] that those requesting the religious exemption are competent to provide written explanations.”<sup>3</sup> *Id.*, ¶¶ 45-51. The SAC also makes several additional allegations about Plaintiff’s own personal interpretation of her exemption request. *Id.*, ¶¶ 52-55. None of these assertions differ materially from allegations made in the FAC, which also conveyed Plaintiff’s mischaracterizations of the questions posed by TPMG, the unspoken and alleged basis for Plaintiff’s exemption request, and the purported unreliability of written explanations of religious beliefs. *See* FAC, ¶¶ 17-22, 30-33.

Next, Plaintiff conjures from whole cloth the allegation that TPMG “obtained the services of Shaw HR Consulting to provide logistical support to enable the processing of thousands of religious exemption requests.”<sup>4</sup> SAC, ¶ 56. Plaintiff contends that Shaw HR Consulting (1) “did not have the

<sup>3</sup> The questions posed by TPMG are closely analogous to those asked by federal agencies when seeking information about their own employees’ requests for religious exemption from the federal government’s COVID-19 vaccination requirement. *See* Strauss Decl., Exs. F-H. Apparently, Plaintiff believes that the Equal Employment Opportunity Commission (“EEOC”) itself unlawfully failed to sufficiently describe the risks associated with receipt of a COVID-19 vaccine and betrayed “a complete lack of understanding of religion” when posing substantively indistinguishable questions to its own employees to the questions asked by TPMG. SAC, ¶ 46; *see id.*, ¶ 45; Strauss Decl., Exs. A, D, I.

<sup>4</sup> While the Court is required to accept this allegation as true in connection with this Motion, TPMG (1) represents to the Court that it is factually baseless and categorically false from an objective perspective and (2) has serious questions about whether Plaintiff and her counsel conducted the required reasonable and competent inquiry before advancing it in a pleading filed in federal court. *See Townsend v. Holman Consulting Corp.*, 929 F.2d 1358, 1362 (9th Cir. 1990) (“Since the charges against Wilson & Reitman in the first amended complaint were baseless, the lack of inquiry justified the district court’s finding under the ‘frivolousness’ prong of Rule 11.”).



professional expertise to evaluate the thousands of religious accommodation requests submitted by [TPMG’s] employees”; (2) “had no capacity to do more than determine whether exemption request language complied with whatever criteria [TPMG] provided”; (3) “favored certain beliefs, and disfavored other beliefs”; and (4) “could do little more than use key word searches to categorize requests, and then to issue stock follow-up questions.” SAC, ¶¶ 57-63. While more detailed, these allegations do not differ materially from the FAC’s assertions that TPMG “hired a third-party company to review the exemptions” and “utilized individuals to screen religious accommodation requests without regard to whether they had any knowledge or experience of religious faith, and whether they were spiritually qualified to discern sincerity of religious belief.” FAC, ¶¶ 34, 43.

Plaintiff also renews her criticism of the supplemental questions TPMG sent to her on October 21, 2021, asserting that they were “intrusive” and “stock follow up questions” that “did not seek more information about her religious beliefs” and “ignored the actual belief [Plaintiff] stated.” *See* SAC, ¶¶ 64-70. Plaintiff further asserts that none of the questions propounded by TPMG “were addressed to [Plaintiff’s] specific religious belief” and “had any of the questions asked [Plaintiff] about her faith and experience, rather than doctrine, she would have gladly answered[.]” *Id.*, ¶¶ 72, 75. These allegations essentially repeat and restate criticisms already advanced in the FAC. *See* FAC, ¶¶ 27-29, 35-36.

Finally, Plaintiff restates her prior assertion that TPMG purportedly had an obligation to continue attempting to solicit information regarding her alleged religious beliefs after she refused to provide meaningful responses to TPMG’s supplemental questions and after her exemption request was thus denied. Specifically, Plaintiff contends that TPMG “did not engage in a good faith interactive process to evaluate [Plaintiff’s] religious exemption request,” that Plaintiff “made serious attempts to continue the interactive process by following up with her managers” after her exemption request was denied, and TPMG “arbitrarily cut off the process, and then blamed [Plaintiff] telling her that ‘your submission did not meet the threshold for granting a religious exemption.’” SAC, ¶¶ 89, 90. Once again, these allegations do not materially alter allegations advanced in the FAC. *See* FAC, ¶¶ 45-47.

### III. LEGAL STANDARD

A motion to dismiss under Rule 12(b)(6) challenges the legal sufficiency of the claims stated in the complaint. *See* Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, the complaint “must contain

sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. A complaint that offers mere “labels and conclusions” or “a formulaic recitation of the elements of a cause of action will not do.” *Id.*; see also *Moss v. United States Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (citing *Iqbal*, 556 U.S. at 678).

When reviewing a Rule 12(b)(6) motion, a court “must accept as true all factual allegations in the complaint and draw all reasonable inferences in favor of the nonmoving party.” *Retail Prop. Trust v. United Bhd. of Carpenters & Joiners of Am.*, 768 F.3d 938, 945 (9th Cir. 2014). Nevertheless, a court “need not assume the truth of legal conclusions cast in the form of factual allegations.” *United States ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir. 1986). That is, to defeat a Rule 12(b)(6) motion, a complaint must provide “more than labels and conclusions, and a formulaic recitation of the elements.” *Twombly*, 550 U.S. at 555.

When evaluating a motion to dismiss, a court’s review is generally limited to the contents of the complaint. See *Campanelli v. Bockrath*, 100 F.3d 1476, 1479 (9th Cir. 1996). The Court may, however, also consider documents attached to the complaint, documents incorporated by reference in the complaint, or matters subject to judicial notice. See *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). Under the incorporation by reference doctrine, the Court may consider documents “on which the complaint ‘necessarily relies’ if: (1) the complaint refers to the document; (2) the document is central to the plaintiff’s claim; and (3) no party questions the authenticity of the copy attached to the 12(b)(6) motion.” *Bush v. Mondelez Int’l, Inc.*, No. 3:16-cv-02460-RS, 2016 WL 5886886, at \*1 n.1 (N.D. Cal. Oct. 7, 2016) (Seeborg, J.) (quoting *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006)). When evaluating the allegations of a complaint, the Court should disregard “allegations contradicting documents that are referenced in the complaint or that are properly subject to judicial notice.” *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008).



#### IV. ANALYSIS

##### A. The SAC's Second, Third and Fourth Causes of Action Must be Dismissed Because Plaintiff Cannot Plead She Informed TPMG of the Conflict Between Her Religious Beliefs and the Policy

The SAC's Second, Third, and Fourth Causes of Action respectively assert failure to accommodate claims in violation of Title VII or FEHA and failure to prevent discrimination under FEHA. All three claims are based on the same premise, that TPMG allegedly wrongfully denied Plaintiff's request for a religious exemption from the Policy. As discussed in detail below, each of these claims is wrong on both the facts and the law. Moreover, this Court already addressed this issue when it reviewed Plaintiff's actual exemption submissions and held Plaintiff "failed to aver plausibly that she adequately informed TPMG of the conflict between her religious beliefs and the Policy." ECF #54 at 8.

##### 1. When evaluating Plaintiff's exemption request, the Court should consider only the documents Plaintiff actually submitted to TPMG

At the outset, it is important to recognize that the allegations Plaintiff makes in her SAC are irrelevant to consideration of this Motion to the extent they differ from, contradict, or seek to supplement and explain the documents Plaintiff actually submitted to TPMG as her request for a religious exemption from the Policy. While the Court is obligated to accept all material allegations in the SAC as true in connection with this Motion, it "need not accept as true allegations contradicting documents that are referenced in the complaint[.]" *Lazy Y Ranch Ltd. v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008).<sup>5</sup> Because Plaintiff has never challenged the authenticity of her exemption documents attached as Exhibits A-D of the Strauss Declaration, which are incorporated by reference in the SAC and have been incorporated by reference in every previous iteration of Plaintiff's complaint, the Court may consider those documents in connection with this Motion. *See Finkelstein v. AXA Equitable Life Ins. Co.*, 325 F.Supp.3d 1061, 1066 (N.D. Cal. 2018); *In re Cornerstone Propane Partners, L.P.*, 355 F.Supp.2d 1069, 1076 (N.D. Cal. 2005); Strauss Decl., ¶¶ 3-6. Those documents constitute Plaintiff's actual exemption request and take precedence over allegations advanced in the SAC.

<sup>5</sup> See also *Johnson v. Federal Home Loan Mortg. Corp.*, 793 F.3d 1005, 1008 (9th Cir. 2015) ("[W]e need not accept as true allegations contradicting documents that are referenced in the complaint."); *M.L.A. v. Maisels*, No. 5:21-cv-08121-VKD, 2022 WL 1489473, at \*3 (N.D. Cal. May 11, 2022); *Peak v. TigerGraph, Inc.*, No. 4:21-cv-02603-PJH, 2021 WL 5865523, at \*4 (N.D. Cal. Dec. 10, 2021); *Barrett v. Apple Inc.*, 523 F.Supp.3d 1132, 1144 (N.D. Cal. 2021).

In her SAC, Plaintiff provides a number of new allegations seeking to explain her interpretation of her exemption submissions (*see* SAC, ¶¶ 52-55) or mischaracterizing the questions posed by TPMG to Plaintiff (*see id.*, ¶¶ 43-49, 64-70, 72, 75). These allegations must be disregarded, as the actual exemption request Plaintiff submitted to TPMG and her response to TPMG’s supplemental information request demonstrate she (1) offered an internally self-contradictory initial exemption request that failed to provide a direct response to at least one essential question (*see* Strauss Decl., Ex. A), and (2) declined to participate in TPMG’s attempt to gather additional information because she was purportedly “unclear on the legal relevance (Title VII) [of TPMG’s additional questions] to my already approved exemption request” and believed “[m]y medical information and history is protected, and private, therefore I will not answer questions about medicines that I may or may not have taken” (*id.*, Ex. D at p. 2).

Because the only alleged religious belief and conflict Plaintiff stated is in her exemption submissions, the documents attached to the Strauss Declaration are the only statements of her alleged belief that should be considered by the Court in connection with this Motion. *See Craven v. Shriners Hosps. for Children*, No. 3:22-cv-01619-IM, 2024 WL 21557, at \*4 (D. Or. Jan. 2, 2024) (“under the second element of a prima facie case, the conflict a Title VII Plaintiff alleges [with a COVID-19 vaccination requirement] must be the same conflict of which he informed his employer.”). This is because Plaintiff “cannot retroactively supplement her religious conflict as she framed it to Kaiser when it denied her exemption. In other words, even if [Plaintiff] were to now provide a more fulsome explanation of her religious objection to the vaccine, such grounds would have been unknown to Kaiser at the time that it declined [Plaintiff’s] accommodation.” *Chinnery v. Kaiser Found. Health Plan of the Mid-Atl. States, Inc.*, No. 1:23-cv-01110-DJN-JFA, 2024 WL 3152348, at \*5 n.7 (E.D. Va. June 24, 2024). The SAC’s allegations attempting to supplement, explain, or mischaracterize Plaintiff’s exemption submissions should accordingly be disregarded by the Court.

## **2. The SAC provides no basis upon which to reconsider the Court’s previous determinations regarding Plaintiff’s exemption request**

The SAC’s (1) Second Cause of Action for Failure to Accommodate pursuant to Title VII; (2) Third Cause of Action for Failure to Accommodate pursuant to FEHA, and (4) Fourth Cause of Action for Failure to Prevent Discrimination and Harassment pursuant to FEHA each require Plaintiff to

establish she has a bona fide religious belief, the practice of which conflicted with an employment duty, and that she informed TPMG of the nature of her religious belief and its conflict with her employment duties.<sup>6</sup> After analyzing Plaintiff’s exemption submissions, the Court already concluded Plaintiff “failed to aver plausibly that she adequately informed TPMG of the conflict between her religious beliefs and the Policy, and judgement is accordingly warranted for TPMG on” the FAC’s failure to accommodate claims. ECF #54 at 8. The SAC advances no facts that could even arguably justify revisiting this determination. These claims should accordingly again be dismissed.

**a. Plaintiff’s exemption request established an objective basis for TPMG to seek additional information**

In its order granting TPMG’s Motion for Judgment on the Pleadings, the Court concluded that Plaintiff’s “generic explanations” in her exemption request “amounted to the kind of ‘blanket privilege’ that would have resulted in a ‘limitless excuse for avoiding all unwanted obligations’ and provided little basis for TPMG to evaluate the extent of her religious beliefs’ potential conflict with the Policy.” ECF #54 at 6 (quoting *Finkbeiner v. Geisinger Clinic*, 623 F.Supp.3d 458, 465-66 (M.D. Pa. 2022)). In an attempt to overcome this conclusion, the SAC now criticizes the “Acknowledgment” portion of the exemption request form (*see* SAC, ¶¶ 42-44), alleges that the question asking “the specific doctrine or teaching that prevents me from receiving a vaccine” purportedly “betrays a complete lack of understanding of religion” (*id.*, ¶¶ 45-46), and asserts that Plaintiff’s “biblically grounded” response was “lost on whatever computer program was sorting through the exemption requests, and if ever reviewed by a human being, the person lacked any comprehension of religion” (*id.*, ¶ 54).<sup>7</sup> These allegations in no way establish that Plaintiff’s exemption submission was sufficient.

<sup>6</sup> *See Heller v. EBB Auto Co.*, 8 F.3d 1433, 1438 (9th Cir. 1993) (stating elements of a failure to accommodate claim under Title VII); *Crawford v. Trader Joe’s Co.*, No. 5:21-cv-01519-JGB-SHK, 2023 WL 3559331, at \*8 (C.D. Cal. May 4, 2023) (elements of a prima facie failure to accommodate claim under FEHA are identical to a claim under Title VII); *Hittle v. City of Stockton*, No. 2:12-cv-00766-TLN-KJN, 2016 WL 1267703, at \*6 (E.D. Cal. Mar. 31, 2016) (claim for failure to prevent religious discrimination and harassment may not be maintained if plaintiff fails to establish cause of action for religious discrimination).

<sup>7</sup> The SAC’s also generally criticizes the questions posed in the exemption form because they purportedly “presume[]s that those requesting the religious exemption are competent to provide written explanations” and “[s]incerely held religious beliefs are not always easy to express in writing[.]” SAC, ¶¶ 49, 50. The SAC does not, however, allege that Plaintiff, a former “Managerial Senior Consultant” with TPMG (*id.*, ¶ 26), was personally incompetent to describe alleged her religious belief in writing.

Quite simply, Plaintiff’s exemption request says what it says. It does not matter whether a “computer program” (SAC, ¶ 54), “Shaw HR Consulting” (*id.*, ¶ 56), or a panel made up of priests, rabbis, and imams reviewed it. Plaintiff asserted that her religious belief prohibited introduction of “foreign substances into my body temple[.]” “accepting foreign material into our bodies[.]” and “needle wounds except for direct curative benefit” (SAC, ¶ 52, 70, 73) while, at the same time, admitting “to never having declined a vaccine due to her religious beliefs” (ECF #54 at 6; *see* Strauss Decl., Ex. A). Under EEOC guidance, even if Plaintiff’s “belief had been dramatically changed by accepting Jesus just months earlier that same year” (SAC, ¶ 68), TPMG had an objective basis upon which to seek additional information from Plaintiff because she admitted in her initial exemption request to behaving “in a manner markedly inconsistent with the professed belief[.]” EEOC, Compliance Manual on Religious Discrimination, § 12-I(A)(2) (Jan. 21, 2021). There is thus no allegation in the SAC, no matter how outlandish or demonstrably false, that undermines the Court’s previous conclusion that Plaintiff’s “unclear, generic, and vague responses in her initial exemption request served as a basis for TPMG to seek clarity on the very responses she had already provided[.]” ECF #54 at 8.

**b. Plaintiff declined to participate in TPMG’s process to obtain additional information regarding her alleged religious belief**

The SAC similarly fails to advance any factual allegations undermining the Court’s conclusion that Plaintiff’s response to TPMG’s supplemental information request did not inform TPMG of a conflict between Plaintiff’s religious beliefs and the Policy. *See* ECF #54 at 8. As the Court previously noted, Plaintiff “either refused to answer each of TPMG’s follow up questions or provided vague and generic responses.” *Id.* at 7. Once again, as is the case with Plaintiff’s exemption request, Plaintiff’s response to TPMG’s supplemental information request says what it says. Even after the Court accepts as true Plaintiff’s fabrications “that all decisions were farmed out to Shaw HR” and “Shaw HR had no capacity to do more than determine whether exemption request language complied with whatever criteria Defendant provided” (SAC, ¶ 60; *see supra*, at 7 n.4), these allegations do not and cannot change the responses to the questions Plaintiff actually submitted and the Court already evaluated.

The SAC’s other criticisms of TPMG’s supplemental questions similarly fall flat. For example, Plaintiff repeats her contention that the questions were “intrusive[.]” SAC, ¶ 64. Plaintiff also asserts

that the questions were improper because they purportedly “did not ask her to give further explanations of her beliefs, instead they were stock questions designed to expose inconsistency of practice[.]” “clearly did not account for the relevant time period subsequent to [Plaintiff’s] recent religious conversion experience[.]” and “ignored the actual belief [Plaintiff] stated.” SAC, ¶¶ 66, 69, 70. These allegations do not change the Court’s previous conclusions that (1) “[i]t is difficult to see TPMG’s follow up questions to the initial exemption request as anything other than an appeal for clarity about the conflict between [Plaintiff’s] newfound beliefs and the Policy[.]” and (2) “[t]he follow up questions were designed to ensure TPMG’s compliance with the law and were not, as [Plaintiff] suggests, unduly intrusive[.]” ECF #54 at 7, 8. The SAC, which does nothing more than add color to Plaintiff’s previous criticisms of TPMG’s process, does not provide a viable basis upon which to revisit the Court’s conclusions.

Moreover, the SAC now criticizes TPMG’s supplemental questions by asserting,

Had any of the questions asked [Plaintiff] about her faith and experience, rather than her doctrine, she would have gladly answered that her decision to reject the vaccine was an answer to prayer, and that she was confident and joyful in God’s leading in her life. She could have told them she did not dare disobey the will of God.

SAC, ¶ 75. TPMG’s request for supplemental information asked Plaintiff to “[p]lease resubmit your request for accommodation in your own words without using template or stock language from the internet or other sources” and “[i]f you have additional information you would like to submit in support of your request for exemption, please provide it here[.]” Strauss Decl., Ex. D at 3. These prompts were the ideal place for Plaintiff to provide any information “about her faith and experience” that she so desired. SAC, ¶ 75. ***Even so, Plaintiff left responses to both of these prompts entirely blank.***<sup>8</sup> See Strauss Decl., Ex. D at 3. As the Court already concluded, because Plaintiff did not make a good faith response to TPMG’s supplemental questions and failed to provide any new information, she cannot now establish “she adequately informed TPMG of the conflict between her religious beliefs and the Policy[.]” ECF #54 at 8; *see also Medrano v. Kaiser Permanente, et al.*, No. 8:23-cv-02501-DOC-

<sup>8</sup> Indeed, Plaintiff included a four paragraph statement before her non-responses to the supplemental questions where she, *inter alia*, shared her opinions that “the line of questioning in your email appears to be incongruent [sic] KP’s commitment to inclusivity” and that she was purportedly “unclear of the legal relevance (Title VII) to my already approved religious exemption.” Strauss Decl., Ex. D at 2. If Plaintiff actually wanted to share with TPMG that “her decision to reject the vaccine was an answer prayer” (SAC, ¶ 75), she thus unambiguously demonstrated her ability to make such a statement, regardless of the specific questions posed by TPMG.

ADSx, 2024 WL 3383704, at \*5 (C.D. Cal. July 10, 2024). The SAC’s failure to accommodate claims should accordingly again be dismissed, this time with prejudice and without leave to amend.

**c. TPMG had no obligation to continue a dialogue with Plaintiff after she was given and declined the opportunity to provide additional information regarding her alleged religious belief**

In a final attempt to resuscitate her failure to accommodate claims, Plaintiff contends that TPMG “*did not engage in a good faith interactive process to evaluate [Plaintiff’s] religious exemption request*” because she “*made serious attempts to continue the interactive process by following up with her managers*” but TPMG “*failed and refused to participate in any discussion with her about her religious exemption request.*” SAC, ¶ 89 (emphasis in original). The SAC’s recharacterization of Plaintiff’s complaints voiced after denial of her exemption request as an attempt to “continue the interactive process” does not, however, materially alter the allegations in the FAC or provide a basis upon which to revisit the Court’s previous rulings.<sup>9</sup> SAC, ¶ 89; *see* FAC, ¶¶ 43, 46, 47.

Plaintiff submitted her non-response to TPMG’s request for additional information on October 26, 2021, and TPMG denied her request for an exemption from the Policy via an email dated November 30, 2021. *See* Strauss Decl., Ex. D at 1; SAC, ¶ 76. It was not until “after receiving the denial of her accommodation request” that Plaintiff reached out to various managers to ask “who she could talk to about the denial.” *Id.*, ¶ 84. Plaintiff offers absolutely no authority establishing TPMG had a legal obligation to engage in further dialogue with her *after* she refused to provide substantive responses to TPMG’s additional questions and *after* TPMG accordingly denied her exemption request. In fact, case law supports that the very process adopted by TPMG for evaluating requests for religious exemption from the Policy constituted good faith engagement in any required interactive process. *See Together*

<sup>9</sup> The SAC’s very reference to TPMG’s alleged failure to “engage in a good faith interactive process” (SAC, ¶ 89) is a misnomer, because the obligation to engage in the interactive process does not arise until after a plaintiff establishes need for an accommodation. *See Snapp v. United Transp. Union*, 889 F.3d 1088, 1095 (9th Cir. 2018)). The interactive process is utilized to determine whether a reasonable accommodation can be made, not to determine whether an employee states a viable basis for receiving an accommodation in the first place. *See Mathis v. City of Red Bank*, 657 F.App’x 557, 563 (6th Cir. 2016) (“The employer’s duty to engage in the interactive process arises only after an employee proposes a reasonable accommodation or shows the need for one.”); *Bridgewater v. Michigan Gaming Control Bd.*, 282 F.Supp.3d 985, 997 (E.D. Mich. 2017) (same). Because (1) Plaintiff’s initial exemption request established an objective basis upon which to seek additional information regarding her alleged religious belief, and (2) Plaintiff failed to provide good faith responses or any new information when responding to TPMG’s request, Plaintiff never established the need for an accommodation. *See* ECF #54 at 8.



*Employees v. Mass Gen. Brigham Inc.*, 573 F.Supp.3d 412, 442 (D. Mass. 2021), *aff'd*, 32 F.4th 82 (1st Cir. 2022) (hospital employer engaged in good faith interactive process when it denied unvaccinated employees' requests for religious exemption from mandatory COVID-19 vaccination policy after considering written accommodation requests, sending and considering responses to follow-up questions, and employees were free to submit any supporting documentation desired).

Given the SAC's allegations, it appears Plaintiff believes that TPMG had a legal obligation to provide her with endless opportunities to submit additional information or to appeal and revisit the decision to deny her request for a religious exemption from the Policy *during the height of a global pandemic*. As the Court previously concluded, however, TPMG "did seemingly give [Plaintiff] a supplementary process to provide more information about her request by following up with her and seeking additional answers" (ECF #23 at 6), Plaintiff "either refused to answer each of TPMG's follow up questions or provided vague and generic responses" (ECF #54 at 7), and TPMG was "under no obligation to continue the conversation with [Plaintiff] after she had been given and declined an opportunity" (ECF #23 at 6) to provide more information.<sup>10</sup> The SAC advances no basis justifying reconsideration of these conclusions and its failure to accommodate claims should thus be dismissed.

### **3. Because the SAC's failure to accommodate claims fail, the failure to prevent discrimination claim fails as well**

In the SAC's Fourth Cause of Action, Plaintiff restates the FAC's failure to prevent discrimination claim under FEHA. *See* SAC, ¶¶ 137-143. As the Court previously concluded, "an employee cannot seek to hold an employer liable for failing to prevent discrimination that did not happen." ECF #54 at 8 (citing *Trujillo v. North County Transit Dist.*, 63 Cal.App.4th 280, 284 (Cal. Ct. App. 1998)). The SAC's failure to accommodate claims are the only discrimination claims advanced in the SAC. *See* SAC, ¶¶ 96-149. Because Plaintiff cannot allege viable failure to accommodate claims, Plaintiff's failure to prevent discrimination claim also necessarily fails. *See Smith v. W.W. Grainger*,

<sup>10</sup> Moreover, Medicare and Medicaid regulations in place at the time required employers like TPMG to evaluate and document requests for exemption from COVID-19 vaccination requirements by a specific deadline. *See* Medicare and Medicaid Programs, *Ominbus COVID-19 Health Care Staff Vaccinations*, 86 Fed.Reg 61555, 61573 (Nov. 5, 2021) (compliance deadline of "30 days after publication" for "all staff [to] have received, at a minimum, the first dose of the primary series or a single dose COVID-19 vaccine, or requested and/or been granted a lawful exemption"). TPMG was thus required to complete its review of exemption requests and issue decisions by no later than December 6, 2021. *See id.*

*Inc.*, No. 5:18-cv-01405-JGB-SP, 2019 WL 1670942, at \*8 (C.D. Cal. Feb. 5, 2019); *Taylor v. Adams & Assocs., Inc.*, No. 2:16-cv-00311-TLN-KJN, 2017 WL 4340276, at \*6 (E.D. Cal. Sept. 29, 2017). The SAC’s Second, Third, and Fourth Causes of Action under Title VII and FEHA should accordingly again be dismissed, this time with prejudice and without leave to amend.

**B. Plaintiff Does Not State a Claim Under the California Constitution for Violation of Privacy and Bodily Autonomy**

In SAC’s new First Cause of Action for “Violation of Plaintiff’s Right to Privacy and Bodily Autonomy” under Article I, Section 1 of the California Constitution, Plaintiff alleges that because TPMG was purportedly aware that “the COVID-19 vaccines it required its employees to receive had obtained only emergency use authorization[,]” it wrongfully “trampled on [Plaintiff’s] right to privacy and bodily autonomy” when adopting a facially neutral COVID-19 vaccination policy that applied equally to “all of its employees, including those who were working fully remotely.” SAC, ¶¶ 105, 107, 110. In essence, Plaintiff contends that TPMG violated her right to bodily autonomy by mandating COVID-19 vaccination for all employees when all then available COVID-19 vaccines only had EUA authorization. *See* SAC, ¶¶ 104-110. As is discussed below, there are a number of fatal deficiencies in this claim, which Plaintiff asserts now for the first time, more than a year after she filed this case.

**1. Plaintiff’s right to privacy claim is based on the false premise that TPMG required its employees to receive an emergency use authorization vaccine**

First and foremost, Plaintiff’s right to privacy claim is based on a false premise, namely that “the Covid-19 vaccines [TPMG] required its employees to receive had obtained only emergency use authorization.” SAC, ¶ 105. While Plaintiff asserts that “[i]n the fall of 2020, the F.D.A. granted emergency use authorization (‘EUA’) to three medical substances -- ‘vaccines’ -- in response to the Covid-19 pandemic” (SAC, ¶ 1), the SAC ignores the well-established fact that the Pfizer-BioNTech COVID-19 vaccine received full FDA authorization on August 23, 2021 - **before** TPMG required any employee to be vaccinated and **before** Plaintiff submitted a request for exemption from the Policy. *See* SAC, ¶¶ 29 (compliance deadline under the Policy was Sept. 30, 2021), 39 (“On August 26, 2021, [Plaintiff] completed [TPMG’s] religious exemption request form”); *Curtis*, 2024 WL 248719, at \*4 (“On August 23, 2021, the Pfizer-BioNTech vaccine received full FDA approval for individuals 16 and



older.”); *Legaretta v. Macias*, 603 F.Supp.3d 1050, 1055-56 (D.N.M. 2022) (“Pfizer’s vaccine received . . . in August 2021, **full FDA approval** for individuals 16 and older.”) (emphasis in original); *Williams v. Brown*, 567 F.Supp.3d 1213, 1219 (D. Or. 2021) (“The Pfizer vaccine was granted official approval by the FDA on August 23, 2021.”). It is a demonstrable fallacy that “the Covid-19 vaccines [TPMG] required its employees to receive had obtained only emergency use authorization.” SAC, ¶ 105. Because this claim is based entirely on alleged invasions of bodily autonomy arising from Plaintiff’s contention that the EUA “statute does not permit compulsion in the administration of such statutes” (*id.*, ¶ 106), the SAC’s misrepresentation of fact regarding FDA approval is alone fatal to this claim.<sup>11</sup>

## 2. Plaintiff cannot plead all the required elements of a breach of privacy claim

In addition to being dependent on a fundamental misrepresentation, the First Cause of Action also does not plead facts necessary to state a claim. To allege an invasion of privacy under the California Constitution, Plaintiff must establish: “(1) a legally protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by defendant constituting a serious invasion of privacy.” *Hill v. National Collegiate Athletic Assn.*, 7 Cal.4th 1, 39-40 (Cal. 1994). “A defendant may prevail in a state constitutional privacy case by negating any of the three elements . . . or by pleading and proving, as an affirmative defense that the invasion of privacy is justified because it substantially furthers one or more countervailing interests.” *Id.* at 40. “The existence of sufficient countervailing interest . . . present[s] threshold questions of law for the court.” *Id.* When the challenged action relates to public health, “there is a presumption both of constitutional validity and that no violation of privacy has occurred.” *Love v. State Dept. of Educ.*, 29 Cal.App.5th 980, 993 (Cal. Ct. App. 2018).

<sup>11</sup> Even if Plaintiff argues, contrary to established fact, that the Court must accept her EUA approval allegations as true for purposes of this Motion, the EUA Statute does not apply to TPMG in its capacity as a private employer requiring its employees to become vaccinated against COVID-19. *See Johnson*, 567 F.Supp.3d at 1256 (holding the “conditions of informed consent” in Section 360bbb-3 apply only to “the medical providers who administer the vaccine, not those who issue vaccine mandates”); *Valdez v. Grisham*, 559 F.Supp.3d 1161, 1172 (D.N.M. 2021), *aff’d*, No. 21-2105, 2022 WL 2129071 (10th Cir. June 14, 2022) (Section 360bbb-3’s “informed consent requirement ‘only applies to medical providers.’”) Although TPMG, *as a medical provider*, acted as an administrator of COVID-19 vaccinations, that capacity is separate from its position *as an employer*. Courts have held that the EUA Statute does not prevent private employers in the healthcare sector (who also administer vaccines) from implementing a COVID-19 vaccination requirement for their own employees. *See Curtis*, 2024 WL 248719, at \*7 (“[Section 360bbb-3] does not apply to a private employer’s enforcement of a vaccine mandate.”); *Bridges v. Houston Methodist Hosp.*, 543 F.Supp.3d 525, 527 (S.D. Tex. 2021) (rejecting plaintiff’s challenge to hospital employer’s COVID-19 vaccination policy because it “misconstrues [Section § 360bbb-3],” which “does not apply at all to private employers like the hospital in this case”).

“Legally recognized privacy interests are generally of two classes: (1) interests in precluding dissemination or misuse of sensitive and confidential information (‘informational privacy’); and (2) interests in making intimate personal decisions or conducting personal activities without observation, intrusion, or interference (‘autonomy privacy’).” *Hill*, 7 Cal.4th at 18. Plaintiff does not allege that any of her sensitive or confidential information was disseminated or misused (*see* SAC, ¶¶ 96-112), so autonomy is the only privacy interest at issue in the SAC. Plaintiff’s violation of autonomy privacy claim fails because she cannot establish (1) a legally protected privacy right, (2) a serious invasion of privacy; or (3) that the Policy did not substantially and rationally further countervailing interests.

**a. Plaintiff fails to allege a legally protected privacy interest because the California Constitution does not prohibit vaccine mandates**

Plaintiff asserts that the Policy violated her right to autonomy privacy by imposing “a vaccine mandate on all of [TPMG’s] employees, including those who were working fully remotely” despite TPMG allegedly “knowing that mandating employees to receive a vaccine enjoying only EUA approval violated the terms of the EUA approval.” SAC, ¶ 107. As there was in fact a COVID-19 vaccine fully-approved by the FDA prior to the Policy’s September 30, 2021 compliance deadline (*see supra*, at 17-18), this argument boils down to the contention Plaintiff has a legally protected privacy right to refuse any vaccination required as a condition of her employment by TPMG. That simply is not the case.

For more than 130 years, California courts have recognized that mandatory vaccination is a reasonable restraint on autonomy privacy rights. *See Abeel v. Clark*, 84 Cal. 226, 230 (Cal. 1890) (upholding law mandating vaccines for students and school’s refusal to admit unvaccinated student); *French v. Davidson*, 143 Cal. 658, 662 (Cal. 1904). California courts still apply these cases when dismissing bodily autonomy claims challenging mandatory vaccination under Article I, Section 1 of the California Constitution. *See Love*, 29 Cal.App.5th at 993-94 (rejecting the argument that *Abeel* is not good law when sustaining demurrer to right to privacy claim challenging mandatory vaccination of school children); *Brown v. Smith*, 24 Cal.App.5th 1135, 1146 (Cal. Ct. App. 2018) (relying on *Abeel* when sustaining demurrer to various California constitutional claims challenging mandatory vaccinations). Bodily autonomy in the context of compulsory vaccination differs from other medical procedures because the spread of contagious disease is a matter of public health rather than individual

freedom. *See Thor v. Superior Ct.*, 5 Cal.4th 725, 740 (Cal. 1993) (distinguishing autonomy interest in “substantial surgical procedure” from a “simple vaccination permissible to protect public health”).

The SAC advances no viable rationale to depart from this long-standing authority to now find an autonomy privacy right arising from the California Constitution in connection with vaccination for COVID-19. Quite simply, TPMG was well within its rights to condition employment on vaccination for COVID-19 unless a medical or religious exemption was granted. *See Wolfe v. Logan*, No. 2:22-cv-06463-JLS-PD, 2023 WL 2239062, at \*6 (C.D. Cal. Jan. 25, 2023); *cf. Troogstad v. City of Chicago*, 571 F.Supp.3d 901, 908 (N.D. Ill. 2021) (requiring COVID-19 vaccination and regular testing as a condition of employment did not infringe on plaintiffs’ federal constitutional right to bodily autonomy). Plaintiff thus cannot allege a legally-protected privacy interest at issue with the Policy.

**b. Plaintiff fails to allege a serious invasion of privacy**

“No community could function if every intrusion into the realm of private action, no matter how slight or trivial, gave rise to a cause of action for invasion of privacy.” *Hill*, 7 Cal.4th at 37; *see also id.* at 39-40 (conduct by defendant must constitute “a serious invasion of privacy”); *People v. Martinez*, 88 Cal.App.4th 465, 478 (Cal. Ct. App. 2001) (“Complete privacy does not exist in this world except in a desert, and anyone who is not a hermit must expect and endure the gravity of the ordinary incidents of the community life of which he is a part.”). “The extent and gravity of the invasion is an indispensable consideration in assessing an alleged invasion of privacy.” *Martinez*, 88 Cal.App.4th at 478.

Plaintiff cannot show a serious invasion of her autonomy rights because the SAC does not identify any invasion of privacy aside from the Policy’s requirement that all TPMG employees receive a COVID-19 vaccination unless a medical or religious exemption was approved. *See SAC*, ¶¶ 104-110. Required vaccination is not a serious invasion of autonomy privacy because vaccination is not an extensive or grave medical procedure or treatment. *See Thor*, 5 Cal.4th at 720.<sup>12</sup>

<sup>12</sup> The California Court of Appeal’s decision in *Pettus v. Cole*, 49 Cal.App.4th 402 (Cal. Ct. App. 1996), which is quoted at length in paragraphs 101 and 102 of the SAC, does not dictate a different result. In that case, the court found Pettus “had an ‘autonomy privacy’ interest in making intimate personal decisions about an appropriate course of medical treatment for his disabling stress condition” that his employer violated by “discharging Pettus because he refused to enroll in an inpatient alcohol treatment program as directed by his employer as a condition of continued employment[.]” *Pettus*, 49 Cal.App.4th at 452, 458. Mandatory enrollment in an inpatient alcohol treatment program as a specific and newly imposed condition of employment is obviously a vastly different requirement than receipt of a vaccine. *See Thor*, 5 Cal.4th at 720.

Additionally, Plaintiff cannot show that the Policy constituted a serious invasion of her right to privacy because TPMG did not force Plaintiff to get the vaccine. The Policy provided all employees with the choice of (1) becoming vaccinated, (2) requesting and obtaining a religious or medical exemption, or (3) being terminated from employment after expiration of a period of unpaid leave to come into compliance. *See* SAC, ¶ 29. None of these constitutes a serious invasion of any legal-protected privacy interest. Moreover, Plaintiff did not receive any COVID-19 vaccine. So, even if vaccination as a condition of employment constituted a serious invasion of Plaintiff's autonomy privacy (it did not), that supposed invasion never occurred because Plaintiff did not become vaccinated. Plaintiff thus cannot establish a serious invasion of her autonomy privacy rights.

**c. The Policy substantially furthered countervailing interests**

Finally, even if all the of the above were not true, Plaintiff cannot establish that TPMG lacked sufficient countervailing interests to require COVID-19 vaccination for all of its employees unless an exemption was granted. It has been settled law for more than a century that mandatory vaccination serves the important function of promoting public health. *See, e.g., Jacobson v. Commonwealth of Mass.*, 197 U.S. 11, 27-28 (1905); *Abeel*, 84 Cal. at 230. Following *Jacobson*, numerous courts have concluded that mandating vaccination against COVID-19 was a rational manner to stem the spread of the disease and end the pandemic.<sup>13</sup> As stated when the Policy was announced, "Making vaccination mandatory is the most effective way we can protect our people, our patients, and the communities we serve." Kaiser Permanente, *Protecting Health and Safety Through Vaccination* (Aug. 2, 2021), available at <https://about.kaiserpermanente.org/news/protecting-health-and-safety-through-vaccination>. Protection

<sup>13</sup> *See, e.g., Massachusetts Correction Officers Federated Union v. Baker*, 567 F.Supp.3d 315, 327 (D. Mass. 2021) (finding that COVID-19 vaccine mandate was "a rational way [to] attain" the compelling interest of "stemming the spread of COVID-19"); *Bauer v. Summey*, 568 F.Supp.3d 573, 595 (D.S.C. 2021) (noting that "numerous courts have recognized that preventing the spread of COVID-19 provides a rational justification for vaccine mandates."); *Maniscalco v. New York City Dep't of Educ.*, 563 F.Supp.3d 33, 39 (E.D.N.Y. 2021), *aff'd*, No. 21-2343, 2021 WL 4814767 (2d Cir. Oct. 15, 2021) ("Ultimately, even if plaintiffs disagree with it, the [vaccine mandate] at issue represents a rational policy decision surrounding how best to protect children during a global pandemic."); *Johnson*, 567 F.Supp.3d at 1253 ("The decision to require vaccination among state executive agency employees, and critical populations such as healthcare workers and providers and education workers and volunteers, is a rational way to further the State's interest in protecting health and safety during the COVID-19 pandemic."); *America's Frontline Doctors v. Wilcox*, No. 5:21-cv-01243-JGB-kk, 2021 WL 4546923, at \*5 (C.D. Cal. July 30, 2021) (holding that "there is clearly a rational basis for Defendants to institute the Policy requiring vaccination" to further the goal of facilitating the "protection of the health and safety of the University community").

of public health and the community is certainly a significant countervailing interest to any autonomy privacy right Plaintiff might have in remaining unvaccinated. Moreover, both the state of California and the federal government mandated vaccination for the vast majority of TPMG’s employees.<sup>14</sup> Requiring vaccination for all employees unless excused by a religious or medical exemption was thus also at least rationally related to TPMG’s significant countervailing interest of ensuring its compliance with both California and federal law.

Plaintiff will likely argue TPMG’s adoption of the Policy was unjustified, relying on the SAC’s new fabrications that TPMG purportedly somehow knew in August 2021 that the COVID-19 vaccines were ineffective. *See* SAC, ¶¶ 30-36. Even if the Court accepts these allegations as true, however, TPMG was still entitled to rely on the significant and substantive scientific guidance from federal agencies when implementing the Policy. *See Harris v. University of Mass., Lowell*, 557 F.Supp.3d 304, 313 (D. Mass. 2021) (holding that university’s decision to mandate receipt of COVID-19 vaccines was based “upon both medical and scientific evidence and research and guidance . . . and thus is at least rationally related to” the “legitimate interests” of “curbing the spread of COVID-19” and “returning students safely to campus”). Just two pieces of that substantial body of guidance unambiguously stated,

The evidence is clear that the safe and effective vaccines authorized and/or approved for use in the United States greatly reduce the likelihood of [death and serious cases of COVID-19 requiring hospitalization]

(Occupational Safety and Health Admin., *COVID-19 Vaccination and Testing; Emergency Temp. Standard*, 86 Fed.Reg. 61402, 61424 (Nov. 5, 2021)), and

After a review of all available information, the Advisory Committee on Immunization Practices (ACIP) and CDC have concluded the lifesaving benefits of COVID-19 vaccination outweigh the risks or possible side effects

(Medicare and Medicaid Programs, *Omnibus COVID-19 Health Care Staff and Vaccination*, 86 Fed.Reg. 61555, 61562 (Nov. 5, 2021)). Significant countervailing factors accordingly justified any arguable invasion of autonomy privacy rights Plaintiff suffered as a result of the Policy. For all of these reasons, the SAC’s First Cause of Action must be dismissed.

<sup>14</sup> *See* California Dept. of Pub. Health, *State Pub. Health Officer Order* (Aug. 5, 2021), available at <https://www.cdph.ca.gov/Programs/CID/DCDC/Pages/COVID-19/Order-of-the-State-Public-Health-Officer-Health-Care-Worker-Vaccine-Requirement-8-5-2021.aspx>; Medicare and Medicaid Programs, *Omnibus COVID-19 Health Care Staff Vaccinations*, 86 Fed.Reg 61555, 61560 (Nov. 5, 2021).



**C. Plaintiff Does Not State a Claim for Breach of the Implied Covenant of Good Faith and Fair Dealing**

Plaintiff's Fifth Cause of Action is a new claim that TPMG allegedly violated the covenant of good faith and fair dealing inherent in the implied contract arising from her employment relationship with TPMG. *See* SAC, ¶¶ 144-149. To establish a breach of the implied covenant of good faith and fair dealing under California law, Plaintiff must allege facts demonstrating "(1) the parties entered into a contract; (2) the plaintiff fulfilled his obligations under the contract; (3) any conditions precedent to the defendant's performance occurred; (4) the defendant unfairly interfered with the plaintiff's rights to receive the benefits of the contract; and (5) the plaintiff was harmed by the defendant's conduct." *Reinhardt v. Gemini Motor Transp.*, 879 F.Supp.2d 1138, 1145 (E.D. Cal. 2012) (quoting *Rosenfeld v. JPMorgan Chase Bank, N.A.*, 732 F.Supp.2d 952, 968 (N.D. Cal. 2010)). For a variety of reasons, Plaintiff cannot state a claim for breach of the implied covenant of good faith and fair dealing based on the SAC's underling allegations.

First, Plaintiff cannot establish she fulfilled all the obligations of her employment relationship with TPMG. As is alleged in the SAC, in August 2021 TPMG mandated as a condition of employment that all employees must either (1) become vaccinated for COVID-19 or (2) request and obtain a medical or religious exemption from that requirement. *See* SAC, ¶¶ 28, 29. Because Plaintiff indisputably did not do either, she cannot establish she fulfilled all her employment obligations. Plaintiff thus cannot establish an essential element of a claim for breach of the implied covenant of good faith and fair dealing. *See Borrello v. Respironics Cal., LLC*, No. 3:23-cv-00580-GPC-WVG, 2023 WL 5986135, at \*14 (S.D. Cal. Sept. 14, 2023).

Second, the implied covenant of good faith and fair dealing is designed to protect the reasonable expectations of the parties based on their mutual promises and express covenants. *See Foley v. Interactive Data Corp.*, 47 Cal.3d 654, 690 (Cal. 1988). The covenant is not meant to protect some general public policy interest not directly tied to the contract. *See id.* The obligations imposed by the implied covenant are therefore measured by the provisions of the particular agreement at issue. *See Kuhn v. Department of Gen. Servs.*, 22 Cal.App.4th 1627, 1637 (Cal. Ct. App. 1994). In the SAC, Plaintiff only alleges that, "In 2020, the parties entered into an employment relationship." SAC, ¶ 145.

She does not describe the terms of any alleged employment contract, how those terms were established, how the alleged conduct described in the SAC is tied to that alleged contract, or why Plaintiff believes her implied employment contract would not require her to comply with a uniform vaccination requirement TPMG applied neutrally to all employees. These failures render this claim fatally infirm.

Third, while the SAC identifies alleged pre-termination breaches of TPMG’s obligation to act in good faith that purportedly resulted in Plaintiff’s wrongful termination (*see* SAC, ¶¶ 148(a)-(d)), the substance of this claim relates entirely to Plaintiff’s termination of employment allegedly without cause despite purportedly “having successfully performed all of her job requirements” (*id.*, ¶ 148(e); *see id.*, ¶ 149 (Plaintiff seeks damages for “breach of the implied covenant of good faith and fair dealing” related to “her reputation, career, lost income and lost benefits”)). Employment relationships in California are, however, at-will by default and Plaintiff does not allege her employment relationship with TPMG was anything other than at-will. *See* Cal. Lab. Code § 2922; SAC, ¶¶ 144-149. Because “a breach of the implied covenant cannot logically be based on a claim that the discharge of an at-will employee was made without good cause[.]” Plaintiff’s implied covenant claim seeking remedy for her allegedly unlawful termination cannot stand. *Guz v. Bechtel Nat’l, Inc.*, 24 Cal.4th 317, 350 (Cal. 2000); *see Peak*, 2021 WL 4061703, at \*6 (“[defendant] cannot be held liable for breach of contract or breach of the implied covenant for doing what they were expressly permitted to do by the terms of the employment agreement: terminate [plaintiff] for any reason”).

Fourth and finally, Plaintiff simply asserts that TPMG purportedly “breached its obligation to act in good faith and fairly with respect to Plaintiff” by taking the actions underlying each of the other claims advanced in the SAC. *See* SAC, ¶¶ 148(a)-(e). This claim is accordingly entirely derivative of and dependent on viability of the SAC’s other claims. As is discussed in detail above, there were no unlawful acts in connection with TPMG’s (1) statements in the “Acknowledgement” section of the form for submitting a request for exemption from the Policy; (2) imposition of a facially neutral COVID-19 vaccination requirement on all its employees; (3) evaluation of Plaintiff’s request for a religious exemption from the Policy; or (4) termination of Plaintiff’s employment for her refusal to comply with the Policy. Because there was no underlying wrongful conduct, the SAC’s Fifth Cause of Action for breach of the implied covenant necessarily fails. That claim should thus be dismissed.

**V. CONCLUSION**

For all of the reasons discussed above, the SAC entirely fails to advance any viable theory of recovery. The reason for this is clear. Because Plaintiff's exemption submissions did not "adequately inform[] TPMG of the conflict between her religious beliefs and the Policy," she cannot now state claims for religious discrimination. ECF #54 at 8. The SAC's new allegations cannot cure this failure because "even if [Plaintiff] were to now provide a more fulsome explanation of her religious objection to the vaccine, such grounds would have been unknown to Kaiser at the time that it declined [Plaintiff's] accommodation." *Chinnery*, 2024 WL 3152348, at \*5 n.7. The SAC's two new claims are similarly entirely without legal or factual merit.

The Court should thus dismiss the SAC in its entirety, with prejudice and without leave to amend, because it is evident that Plaintiff cannot cure these deficiencies with further amendments. In response to TPMG's Motion to Dismiss the Complaint, Plaintiff voluntarily filed her FAC. *See* ECF #13, 15. The Court thereafter granted TPMG's Motion to Dismiss four of the eight claims alleged in the FAC with leave to amend, but Plaintiff chose not to amend those claims. *See* ECF #23, 29. The Court then granted TPMG's Motion for Judgment on the Pleadings as to the FAC's remaining claims, explaining "it would appear that amendment would be futile," but nevertheless gave Plaintiff leave to amend. ECF #54 at 9. Now, the SAC confirms that any further amendments would indeed be futile. Plaintiff has had more than ample opportunities to amend her operative pleading to attempt to state viable claims, yet is still unable to do so.

TPMG accordingly respectfully requests that the Court enter a third dismissal order in this case, that the SAC be dismissed in its entirety with prejudice and without leave to amend, and that judgment be entered in its favor.

DATED: August 2, 2024

Respectfully submitted,

SEYFARTH SHAW LLP

By: /s/ Sean T. Strauss

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MIMI WEISS,

Plaintiff,

v.

THE PERMANENTE MEDICAL GROUP, INC.,

Defendant.

Case No. 3:23-cv-03490-RS

**REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF DEFENDANT THE  
PERMANENTE MEDICAL GROUP,  
INC.'S MOTION TO DISMISS  
PLAINTIFF'S SECOND AMENDED  
COMPLAINT**

Date: Thursday, September 26, 2024  
Time: 1:30 p.m.  
Judge: Hon. Richard Seeborg  
Location: San Francisco Courthouse  
Courtroom 3 – 17th Floor  
450 Golden Gate Avenue  
San Francisco, CA 94102

**REQUEST FOR JUDICIAL NOTICE**

Defendant The Permanente Medical Group, Inc. (“TPMG”), by and through its attorneys of record, hereby requests that the Court take judicial notice of the following documents in connection with its Motion to Dismiss Plaintiff Mimi Weiss’s (“Plaintiff’s”) Second Amended Complaint for Damages and Injunctive Relief (the “SAC”):

1. A reline comparison of Plaintiff’s First Amended Complaint (original document) compared against Plaintiff’s Second Amended Complaint (modified document), which reflects the revisions Plaintiff made to her operative pleading in response to the Court’s June 21, 2024 Order Granting TPMG’s Motion for Judgment on the Pleadings, a true and correct copy of which is attached as **Exhibit E** of the Declaration of Sean T. Strauss in Support of the Motion (“Strauss Decl.” or “Strauss Declaration”), filed herewith.

2. The United States Department of Homeland Security Request for an Exception to the COVID-19 Vaccination Requirement form, a true and correct copy of which is attached as **Exhibit F** of the Strauss Declaration.

3. The United States Department of Agriculture Request for a Religious Exception to the COVID-19 Vaccination Requirement form, a true and correct copy of which is attached as **Exhibit G** of the Strauss Declaration.

4. The United States Department of Commerce Request for a Religious Exception to the COVID-19 Vaccination Requirement form, a true and correct copy of which is attached as **Exhibit H** of the Strauss Declaration.

5. The United States Equal Employment Opportunity Commission Religious Accommodation Request form, a true and correct copy of which is attached as **Exhibit I** of the Strauss Declaration.

Federal Rule of Evidence (“FRE”) 201(b) provides that, “[t]he court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” In accordance with this rule, the Court may take judicial notice “of court filings and other matters of public record[,]” including “government documents available from

reliable sources on the internet” and “court records available through PACER.” *United States v. Raygoza-Garcia*, 902 F.3d 994, 1001 (9th Cir. 2018); *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442 F.3d 741, 746 n. 6 (9th Cir. 2006); *California River Watch v. City of Vacaville*, No. 2:17-cv-00524-KJM-KJN, 2017 WL 3840265, at \*2 n. 1 (E.D. Cal. Sept. 1, 2017); *see also McIntosh v. Wells Fargo Bank, N.A.*, No. 3:20-cv-01649-RS, p WL 8254815, at \*2 n. 2 (N.D. Cal. Dec. 21, 2020) (Seeborg, J.); *Smith v. Barrett, Daffin, Frappier, Treder & Weiss, LLP*, No. 3:18-cv-06098-RS, 2019 WL 2525185, at \*4 (N.D. Cal. June 19, 2019) (Seeborg, J.).

Pursuant to FRE 201(b), courts within the Ninth Circuit take judicial notice of redline comparisons of a plaintiff’s operative and previous complaints, such as Exhibit E, which TPMG provides for the convenience of the Court. *See BMA LLC v. HDR Glob. Trading Ltd.*, No. 3:20-cv-03345-WHO, 2021 WL 4061698, at \*3 n. 4 (N.D. Cal. Sept. 7, 2021) (taking judicial notice of redline comparison of plaintiff’s operative and previous complaints); *Kim v. Shellpoint Partners, LLC*, No. 3:15-cv-00611-LAB-BLM, 2016 WL 1241541, at \*3 (S.D. Cal. Mar. 30, 2016) (same); *In re Hypercom Corp. Sec. Litig.*, No. 2:05-cv-00455-NVW, 2006 WL 1836181, at \*2 (D. Ariz. July 5, 2006) (same).

Similarly, pursuant to FRE 201(b) courts within the Ninth Circuit take judicial notice of the “record and reports of administrative bodies” *Gonzales v. Marriott Int’l, Inc.*, 142 F.Supp.3d 961 (C.D. Cal. 2015) (quoting *United States v. 14.02 Acres of Land More or Less in Fresno Cnty.*, 547 F.3d 943, 955 (9th Cir. 2008)). For this reason, the Court previously granted TPMG’s request for judicial notice of the four federal government forms submitted as Exhibits F-I. *See* ECF #54 at 9.

DATED: August 2, 2024

Respectfully submitted,

SEYFARTH SHAW LLP

By: Sean T. Strauss

Christian J. Rowley

Sean T. Strauss

Galen P. Sallomi

Attorneys for Defendant

THE PERMANENTE MEDICAL GROUP, INC.

### **CERTIFICATE OF SERVICE**

I hereby certify that on April 9, 2025, I electronically filed the foregoing **APPELLEE THE PERMANENTE MEDICAL GROUP, INC.'S SUPPLEMENTAL EXCERPTS OF RECORD** with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the CM/ECF Filing system.

I certify that all participants in the case are registered CM/ECF users and that service on all counsel of record will be accomplished via CM/ECF Filing system.



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Mayela McArthur