

No. 24-6609

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

MIMI WEISS,
Plaintiff-Appellant,

v.

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

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 Judge

EXCERPTS OF RECORD

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EXCERPTS OF RECORD**INDEX**

Document	File Date	District Court Docket No.	ER Pages
Judgment	09/30/2024	72	004
Order Granting Motion to Dismiss	09/30/2024	71	005 – 012
Declaration of Sean T. Strauss in Support of Defendant The Permanente Medical Group, Inc.'s Motion to Dismiss Plaintiff's Second Amended Complaint	08/02/2024	58-1	013 – 017
Exhibit A to Strauss Declaration – Mimi Weiss Exemption Request	08/02/2024	58-2	018 – 020
Exhibit B to Strauss Declaration – Exemption Request Approval	08/02/2024	58-3	021 – 023
Exhibit C to Strauss Declaration – Exemption Policy Update	08/02/2024	58-4	024 – 027
Exhibit D to Strauss Declaration – Defendant Request for Additional Information	08/02/2024	58-5	028 – 034
Plaintiff's Second Amended Complaint for Damages and Injunctive Relief	07/12/2024	55	035 – 057

Document	File Date	District Court Docket No.	ER Pages
Order Granting Motion for Judgment on the Pleadings	06/21/2024	54	058 – 067
Notice of Appeal	10/25/2024	73	068 – 070
Complete Civil Docket of Proceedings for Case No.: 3:23-cv-03490 (N.D. California)			071 – 083

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MIMI WEISS,

Plaintiff,

v.

THE PERMANENTE MEDICAL GROUP,
INC.,

Defendant.

Case No.23-cv-03490-RS

JUDGMENT

On September 30, 2024, the Court granted The Permanente Medical Group, Inc.’s (“TPMG”) motion to dismiss. Pursuant to Federal Rule of Civil Procedure 58, the Court hereby ENTERS judgment in favor of TPMG and against Weiss. The Clerk of Court shall close the file in this matter.

IT IS SO ORDERED.

Dated: September 30, 2024



RICHARD SEEBORG
Chief United States District Judge

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

Plaintiff Mimi Weiss (“Weiss”) sued her former employer, The Permanente Medical Group (“TPMG”), under Title VII of the Civil Rights Act of 1964 (“Title VII”) and the California Fair Employment and Housing Act, California Government Code 12940 (“FEHA”). In her First Amended Complaint (“FAC”), Weiss raised eight claims, generally averring that TPMG failed to accommodate her religious beliefs and wrongfully terminated her for not complying with The Kaiser Permanente Vaccination Policy (“the Policy”) during the COVID-19 pandemic. Four of those were dismissed on December 4, 2023. *Weiss v. Permanente Med. Grp., Inc.*, No. 23-cv-03490, 2023 WL 8420974, at *4 (N.D. Cal. Dec. 4, 2023). Another claim was dismissed pursuant to stipulation on April 24, 2024. After TPMG moved for judgment on the pleadings, the remaining three claims were dismissed on June 21, 2024. *Weiss v. Permanente Med. Grp., Inc.*, No. 23-cv-03490, 2024 WL 3090496, at *5 (N.D. Cal. June 21, 2024). Although “it would appear that amendment would be futile,” Weiss received leave to amend. *Id.*

Weiss thereafter filed a Second Amended Complaint (“SAC”). In it, she raised five claims

for relief, averring that TPMG: (1) violated her right to privacy and bodily autonomy under Article I, Section 1 of the California Constitution; (2) failed to accommodate her religious beliefs under Title VII; (3) failed to accommodate her religious beliefs under FEHA; (4) failed to prevent discrimination under FEHA; and (5) breached an implied covenant of good faith and fair dealing in her employment contract. The second, third, and fourth claims reiterated ones previously dismissed in the FAC.

TPMG moved to dismiss the SAC in its entirety, with prejudice and without leave to amend, and requested judgment in its favor. For the reasons discussed below, the motion is granted.

II. BACKGROUND

Prior orders in this case discussed at length its factual background. *See Weiss*, 2023 WL 8420974 at *1–2; *Weiss*, 2023 WL 3090496 at *3–4. TPMG, for which Weiss worked remotely during the COVID-19 pandemic, terminated her employment on January 10, 2022. The termination resulted from her failure to comply with the Policy, which required TPMG employees to provide proof of full vaccination for COVID-19 or secure an approved exemption by September 30, 2021. The Policy subjected those who did not comply to 60 days of unpaid leave. If an employee failed to achieve compliance during that period, their employment was to be terminated.

Weiss, who identifies as a “Christian Jew”, had submitted an exemption request in or around late August 2021, asserting that her religious beliefs prevented her from taking the vaccine but acknowledging that she had not previously declined to receive vaccines because of these beliefs. “It’s not that the covid-19 vaccine is different for me,” she wrote in her initial request. “What’s different is that during the last 18 months . . . I’ve recommitted to my Jewish roots and earlier this year have accepted Jesus Christ as the Messiah.” Strauss Decl., Ex. A 2–3, ECF No. 58-2.¹ Although TPMG provisionally granted the request, it later notified Weiss that it would

¹ Exhibit A to the Strauss Declaration is Weiss’s initial request for a religious exemption, which the SAC incorporated by reference. Weiss has not contested its authenticity.

conduct further review because other employees submitted similar or identical requests with language taken verbatim from free and paid templates available online.

TPMG subsequently sought additional information from Weiss to evaluate her exemption request. The company asked Weiss the following questions: “What else besides the COVID-19 vaccine do you refuse to put in your body as a result of your religious belief?”; “Have you put this belief into practice in any other areas of your life?”; “Do you currently take or have you ever taken medications of any kind (over the counter or prescription) as an adult?”; if that answer was yes, “When is the last time you took such medicine? Is the COVID-19 vaccine different from these medicines? If so, how?”; “Why does your religious belief prevent you from receiving the COVID-19 vaccination but not from taking other medications?”; and, finally, “Please resubmit your request for accommodation in your own words without using template or stock language from the internet or other sources.” Strauss Decl., Ex. D 3–4, ECF No. 58-5.²

Weiss’s answers were incomplete. As to the first question, Weiss stated that she refuses to ingest “any chemicals/substances that would be unclean” due to her beliefs; as to the second, she stated that her “religious beliefs inform all meaning and purpose in my life.” *Id.* Weiss refused, however, to answer the questions about whether she takes any other medications and, if so, why those medications are distinct from the COVID-19 vaccine, stating: “[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.*³ As to the inquiry regarding why her beliefs prevented her from receiving the COVID-19 vaccination but not from taking other medications, she expressed confusion as to its relevance and reiterated her position that “my religious beliefs do not allow me to alter the perfection of my God-given immune system.” *Id.* As to the question asking her to

² Exhibit D to the Strauss Declaration is Weiss’s response to TPMG’s request for additional clarification, which the SAC incorporated by reference. Weiss has not contested its authenticity.

³ The questionnaire specifically noted that it was “not asking you [to] tell us what medications you take or why you take them – please do not share that information with us.” Strauss Decl., Ex. D 4, ECF No. 58-5.

1 restate, in her own words, her initial request, Weiss “failed even to provide a response.” *Weiss*,
2 2024 WL 3090496, at *4.

3 TPMG thereafter denied Weiss’s exemption request and placed her on unpaid leave
4 pending proof of vaccination. When Weiss contacted management in hopes of discussing the
5 denial, she learned there was no appeal process and that TPMG was using a third-party company
6 to review the requests. After the term of unpaid leave concluded with no proof of vaccination
7 provided, TPMG terminated her. This case followed.

8 **III. LEGAL STANDARD**

9 A complaint must be “a short and plain statement of the claim showing that the pleader is
10 entitled to relief.” Fed. R. Civ. P. 8(a)(2). While “detailed factual allegations” are not required, a
11 complaint must have sufficient factual allegations to state a claim that is “plausible on its face.”
12 *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555,
13 570 (2007)). A claim is facially plausible “when the plaintiff pleads factual content that allows the
14 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*
15 (citing *Twombly*, 550 U.S. at 556). This standard “does not unlock the doors of discovery for a
16 plaintiff armed with nothing more than conclusions.” *Id.* at 678–79. The plausibility
17 determination is a context-specific task requiring the court “to draw on its judicial experience and
18 common sense.” *Id.* at 679.

19 A Rule 12(b)(6) motion to dismiss tests the sufficiency of the claims alleged in the
20 complaint. Such a dismissal may rest on either the “lack of a cognizable legal theory” or on “the
21 absence of sufficient facts alleged under a cognizable legal theory.” *See Conservation Force v.*
22 *Salazar*, 646 F.3d 1240, 1242 (9th Cir. 2011) (internal quotation marks and citation omitted).
23 When evaluating a Rule 12(b)(6) motion, the court must accept all material allegations in the
24 complaint as true and construe them in the light most favorable to the non-moving party. *In re*
25 *Quality Sys., Inc. Sec. Litig.*, 865 F.3d 1130, 1140 (9th Cir. 2017). It must also “draw all
26 reasonable inferences in favor of the nonmoving party.” *Usher v. City of Los Angeles*, 828 F.2d
27 556, 561 (9th Cir. 1987).

IV. DISCUSSION

A. First Claim: Violation of Right to Privacy and Bodily Autonomy under California Constitution Article I § 1

To allege an invasion of privacy under the California Constitution, a 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. Nat’l Collegiate Athletic Ass’n*, 7 Cal. 4th 1, 39-40 (1994). Regarding the legally protected privacy interest element, California law recognizes two categories: “(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’).” *Id.* at 35. As to the serious invasion element, any alleged intrusion on privacy must be “‘so serious . . . as to constitute an egregious breach of the social norms’ such that the breach is ‘highly offensive.’” *In re Facebook, Inc., Internet Tracking Litig.*, 956 F.3d 589, 601 (9th Cir. 2020) (alteration in original) (quoting *Hernandez v. Hillside, Inc.*, 47 Cal. 4th 272, 287 (2009)).

“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.” *Hill*, 7 Cal. 4th at 40. Whether such interests exist is a “threshold question[] of law for the court.” *Id.*

TPMG argues that Weiss’s privacy claim must be dismissed because her SAC failed to establish either a legally protected privacy interest or a serious invasion of it. Moreover, TPMG raises the affirmative defense that its Policy furthered a sufficient countervailing interest—promoting public health. Weiss opposes dismissal, arguing that she sufficiently plead a legally protected informational interest in being free from intrusive questions and a legally protected autonomy interest in not getting a vaccine. She also asserts that TPMG seriously invaded those interests by conditioning her employment on vaccination and contends that promoting public health is not a sufficient countervailing interest given her role as a remote employee.

Contrary to her opposition brief, Weiss did not establish an informational privacy right in the SAC, which identified a right to personal autonomy only. *See, e.g.*, SAC ¶ 100, 101, 110. As for the autonomy right which she did describe, California courts have long recognized that, when the alleged invasion 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) (citing *Coshov v. City of Escondido*, 132 Cal. App. 4th 687, 712 (2005)). “[T]he right to be free from nonconsensual invasions of bodily integrity is not absolute” and a “simple vaccination permissible to protect public health” is legally distinguishable from “a substantial surgical procedure, with the potential not only to cause discomfort and pain but also to create additional risks[.]” *Thor v. Super. Ct.*, 5 Cal. 4th 725, 738, 740 (1993). In this regard, the California right to privacy is “no more sacred than any other fundamental rights that have readily given way to a State’s interest in protecting the health and safety of its citizens[.]” *Love*, 29 Cal. App. 5th at 994 (internal quotation marks omitted). Weiss attempts to distinguish these cases as involving public institutions rather than private employers such as TPMG, but she provides no basis on which to do so and no authority requiring it. She therefore has failed both to allege a serious invasion of her right to bodily autonomy and to rebut TPMG’s countervailing interest in protecting public health. The privacy claim is dismissed with prejudice.

B. Second, Third, and Fourth Claims: Failure to Accommodate Religious Beliefs under Title VII and FEHA and Failure to Prevent Discrimination under FEHA

Title VII and FEHA “require employers to accommodate [an employee’s] religious beliefs unless doing so would pose an undue hardship.” *Bolden-Hardge v. Off. of Calif. State Controller*, 63 F.4th 1215, 1222 (9th Cir. 2023). Claims of failure to accommodate, under either statute, require analysis under a two-step, burden-shifting framework:⁴ first, the employee must plead a prima facie case of failure to accommodate religion; second, if the employee succeeds, the burden

⁴ “FEHA is interpreted consistently with Title VII[.]” *See Ambat v. City & Cnty. of San Francisco*, 757 F.3d 1017, 1023 n.2 (9th Cir. 2014). Thus, Weiss’s federal and state law claims are analyzed jointly.

shifts to the employer to “show either that it initiated good faith efforts to accommodate reasonably the employee’s religious practices or that it could not reasonably accommodate the employee without undue hardship.” *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 830 (9th Cir. 1999) (internal citation omitted). The plaintiff’s prima facie burden is to show that “(1) [s]he had a bona fide religious belief, the practice of which conflicted with an employment duty; (2) [s]he informed [her] employer of the belief and conflict; and (3) the employer . . . subjected [her] to discriminatory treatment, including discharge, because of [her] inability to fulfill the job requirements.” *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1438 (9th Cir. 1993).

TPMG argues that the reiterated Title VII and FEHA claims in the SAC must be dismissed because Weiss fails to allege with plausibility that she adequately explained the conflict between her religious beliefs and the Policy—the second element of her prima facie case, on which her FAC previously foundered. Weiss opposes dismissal, claiming that her SAC *does* plausibly allege having provided the necessary notice to TPMG of that conflict.

Weiss’s argument is unavailing. The order granting TPMG judgment on the pleadings explained why “Weiss’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.” *Weiss*, 2024 WL 3090496, at *5. In refusing to explain the conflict between the vaccine and her beliefs, her reference to privacy concerns failed to explain “why asking a question already answered is any more invasive the second time around.” *Id.* Moreover, nothing in the SAC addresses the court’s prior determination that Weiss’s accommodation request sought “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.” *Id.* at *3 (quoting *Finkbeiner v. Geisinger Clinic*, 623 F. Supp. 3d 458, 465 (M.D. Pa. 2022)). Nor does the SAC provide cause to reconsider the conclusion that “TPMG was well within its rights as the employer seeking to implement a uniform policy across its employees to inquire narrowly into Weiss’ beliefs and any conflicts with the Policy” via the follow-up questionnaire. *Id.* at *4.

What the SAC does provide is new, conclusory elaborations aimed at bolstering Weiss's initial exemption request and characterizing her response to TPMG's request for clarification. *See, e.g.*, SAC, ¶¶ 50, 53, 61, 69, 76. But a "[p]laintiff cannot retroactively supplement her religious conflict as she framed it to Kaiser when it denied her exemption." *Chinnery v. Kaiser Found. Health Plan of the Mid-Atl. States, Inc.*, No. 1:23-cv-01110, 2024 WL 3152348, at *5 n.7 (E.D. Va. June 24, 2024). When such conclusory allegations are ignored, the relevant claims in the SAC bear an uncanny resemblance to those from the FAC on which TPMG previously secured judgment in its favor. Because the SAC provides no new factual allegations as to Weiss having provided TPMG sufficient notice of the conflict between her beliefs and the vaccine, TPMG's motion to dismiss is granted as to Weiss's second and third claims.

TPMG also moves to dismiss Weiss's fourth claim, which avers a failure to prevent discrimination and harassment under FEHA, because it hinges on the viability of her second and third claims. "[A]n employee cannot seek to hold an employer liable for failing to prevent discrimination that did not happen." *Weiss*, 2024 WL 3090496, at *5 (citation omitted). Thus, given the dismissal of Weiss's second and third claims, her fourth claim is likewise dismissed.

C. Fifth Claim: Breach of the Covenant of Good Faith and Fair Dealing

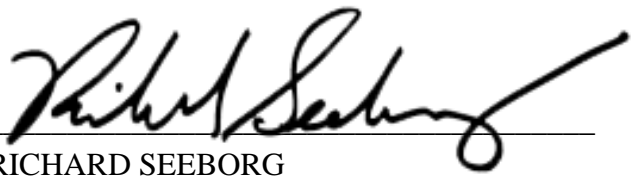
When TPMG moved to dismiss Weiss's fifth claim, Weiss did not contest its dismissal. The claim is therefore dismissed with prejudice.

V. CONCLUSION

For the reasons above, TPMG's motion to dismiss is granted. Weiss's claims are hereby dismissed without leave to amend. Judgment is entered in favor of TPMG.

IT IS SO ORDERED.

Dated: September 30, 2024


RICHARD SEEBORG
Chief United States District Judge

ORDER GRANTING MOTION TO DISMISS
CASE NO. 23-cv-03490-RS

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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

**DECLARATION OF SEAN T. STRAUSS
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

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 to Dismiss (the “Motion”) as to Plaintiff Mimi Weiss’s (“Plaintiff’s”) Second Amended Complaint for Damages and Injunctive Relief (the “SAC”). As attorney of record for TPMG, 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 the Request for a Religious Exemption from the Kaiser Permanente COVID-19 Vaccination Policy submitted by Plaintiff on or around August 26, 2021. This document is incorporated by reference in Paragraph 17 of Plaintiff’s Complaint, Paragraph 24 of Plaintiff’s First Amended Complaint (the “FAC”), and Paragraph 39 of Plaintiff’s SAC. This document was submitted as an exhibit in connection with TPMG’s Motion to Dismiss Plaintiff’s Complaint (*see* ECF #13-1 at 5-6), TPMG’s Motion to Dismiss Plaintiff’s FAC (*see* ECF #16-1 at 5-6), and TPMG’s Motion for Judgment on the Pleadings (*see* ECF #43-2), and Plaintiff has never challenged its authenticity or accuracy. Because this document is central to Plaintiff’s claims and its authenticity has never been disputed by Plaintiff, it is appropriate to consider it in connection with the Motion. *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 n.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. This document is incorporated by reference in Paragraph 18 of Plaintiff’s Complaint, Paragraph 25 of Plaintiff’s FAC, and Paragraph 40 of Plaintiff’s SAC. This document was

submitted as an exhibit in connection with TPMG’s Motion to Dismiss Plaintiff’s Complaint (*see* ECF #13-1 at 8-9), TPMG’s Motion to Dismiss Plaintiff’s FAC (*see* ECF #16-1 at 8-9), and TPMG’s Motion for Judgment on the Pleadings (*see* ECF #43-3), and Plaintiff has never challenged its authenticity or accuracy. Because this document is central to Plaintiff’s claims and its authenticity has never been disputed by Plaintiff, it is appropriate to consider it in connection with the Motion. *See Marder*, 450 F.3d at p. 448; *Russell*, 2020 WL 10964919, at *2; *Bush*, 2016 WL 5886886, at *1 n.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. This document is incorporated by reference in Paragraph 19 of Plaintiff’s Complaint, Paragraph 26 of Plaintiff’s FAC, and Paragraph 41 of Plaintiff’s SAC. This document was submitted as an exhibit in connection with TPMG’s Motion to Dismiss Plaintiff’s Complaint (*see* ECF #13-1 at 11-13), TPMG’s Motion to Dismiss Plaintiff’s FAC (*see* ECF #16-1 at 11-13), and TPMG’s Motion for Judgment on the Pleadings (*see* ECF #43-4), and Plaintiff has never challenged its authenticity or accuracy. Because this document is central to Plaintiff’s claims and its authenticity has never been disputed by Plaintiff, it is appropriate to consider it in connection with the Motion. *See Marder*, 450 F.3d at p. 448; *Russell*, 2020 WL 10964919, at *2; *Bush*, 2016 WL 5886886, at *1 n.1.

6. Attached hereto as **Exhibit D** is a true and correct copy of an October 26, 2021 message Plaintiff sent in response to TPMG’s request for additional information regarding Plaintiff’s request for a religious exemption from the Kaiser Permanente COVID-19 Vaccination Policy. This document is incorporated by reference in Paragraphs 20 and 22 of Plaintiff’s Complaint, Paragraphs 27, 28, and 36 of Plaintiff’s FAC, and Paragraphs 75 and 76 of the SAC. This document was submitted as an exhibit in connection with TPMG’s Motion to Dismiss Plaintiff’s Complaint (*see* ECF #13-1 at 20-25), TPMG’s Motion to Dismiss Plaintiff’s FAC (*see* ECF #16-1 at 20-25), and TPMG’s Motion for Judgment on the Pleadings (*see* ECF #43-6), and Plaintiff has never challenged its authenticity or accuracy. Because this document is central to Plaintiff’s claims and its authenticity has never been disputed by Plaintiff, it is appropriate to consider it in connection with the Motion. *See Marder*, 450 F.3d at p. 448; *Russell*, 2020 WL 10964919, at *2; *Bush*, 2016 WL 5886886, at *1 n.1.

7. Attached hereto as **Exhibit E** is a true and correct copy of a relined comparison of Plaintiff's FAC (original document) [ECF #15] compared against Plaintiff's Second Amended Complaint (modified document) [ECF #55], 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. This document was prepared by converting PDF copies of the FAC and SAC to Microsoft Word and then using iManage comparison software to reflect changes between the two documents.

8. Attached hereto as **Exhibit F** 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 July 29, 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. The Court previously granted TPMG's request to judicially notice this document in connection with its Motion for Judgment on the Pleadings. *See* ECF #43-13, ¶ 1; ECF #54 at 9 ("TPMG's request for judicial notice, which asks the court to notice public records of administrative agencies, is granted").

9. Attached hereto as **Exhibit G** is a true and correct copy of the United States Department of Agriculture Request for a Religious Exception to the COVID-19 Vaccination Requirement Form, available at <https://www.usda.gov/sites/default/files/documents/usda-religious-covid-request-form.pdf> (last visited July 29, 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. The Court previously granted TPMG's request to judicially notice this document in connection with its Motion for Judgment on the Pleadings. *See* ECF #43-13, ¶ 2; ECF #54 at 9 ("TPMG's request for judicial notice, which asks the court to notice public records of administrative agencies, is granted").

10. Attached hereto as **Exhibit H** is a true and correct copy of the United States Department of Commerce Request for a Religious Exception to the COVID-19 Vaccination Requirement Form,

available at https://www.commerce.gov/sites/default/files/2021-10/DOC_Religious_Exception_Request_Form_Fillable-100621.pdf (last visited July 29, 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. The Court previously granted TPMG’s request to judicially notice this document in connection with its Motion for Judgment on the Pleadings. *See* ECF #43-13, ¶ 3; ECF #54 at 9 (“TPMG’s request for judicial notice, which asks the court to notice public records of administrative agencies, is granted”).

11. Attached hereto as **Exhibit I** is a true and correct copy of the United States Equal Employment Opportunity Commission Religious Accommodation Request Form, available at <https://www.eeoc.gov/sites/default/files/2021-10/EEOC%20Religious%20Accommodation%20Request%20Form%20-%20for%20web.pdf> (last visited July 29, 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. The Court previously granted TPMG’s request to judicially notice this document in connection with its Motion for Judgment on the Pleadings. *See* ECF #43-13, ¶ 4; ECF #54 at 9 (“TPMG’s request for judicial notice, which asks the court to notice public records of administrative agencies, is granted”).

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

Executed on August 2, 2024 in San Francisco, California.

/s/ Sean T. Strauss
Sean T. Strauss

EXHIBIT A

COVID-19 Vaccination Exemption

Case Number: 41036891

Created: 2021-08-26 18:51:09 UTC

Case Details

Case Title	COVID-19 Vaccination Exemption	Current Status	Exemption Not Approved
Employee Name	Mimi April-Cyd Weiss	Employee NUID	A807245

Submitter Details

Submitter	Mimi Weiss	Submitter NUID	A807245
Business Office Phone		Daytime Contact Phone Number	
Preferred Email	mimi.a.weiss@kp.org	Alternate Email	

Form Details

Request Type	New/Revise Request
I have not been fully vaccinated because – choose all that apply	I have a sincerely held religious belief, practice, or observance that prevents me from receiving any COVID-19 vaccine
Acknowledgement	<p>Religious Belief/Practice=></p> <p>I understand the personal and public health benefits of COVID-19 vaccinations and the risks associated with not receiving the COVID-19 vaccine</p> <p>I understand that I may be required to take additional education on COVID-19 vaccines and safety training, routinely show proof of negative COVID-19 test results and wear a mask during work hours if I am not vaccinated</p> <p>To be eligible for this exemption, I understand that I must disclose below the religion and identify the specific doctrine or teaching that prevents me from receiving any COVID-19 vaccine</p> <p> </p>
My religion is as follows:	Christian Jew
The specific religious doctrine or teaching that	My religious beliefs as a Christian Jew do not allow me to receive a Covid-19 vaccine: The Torah prohibits us from accepting foreign material into our bodies, Deuteronomy 14:1 prohibits needle wounds except for direct curative benefit. One must maintain his body and blood uncontaminated under Jewish law. I consider these COVID-19 vaccines to represent a defilement of my body, blood and soul and a rejection of the trust we must have as Jews in the natural healing powers bestowed upon the human body by our Creator. “Do you not know that your bodies are temples of the Holy

ER - 019

prevents me from receiving a vaccine is:	Spirit, who is in you, whom you have received from God?”(1 Cor 6:19) 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 to inject a man-made substance in an effort to “improve” my God given abilities.
I have previously declined to receive other vaccines because of my religious belief, practice or observance?	No
If yes, please identify the other vaccines you have declined If no, please explain what makes the COVID-19 vaccine different from the other vaccines you have not declined	It’s not that the covid-19 vaccine is different for me. What’s different is that during the last 18 months I’ve experienced extreme isolation and depression. I have sought comfort in God and in my faith to get me through this time. I’ve recommitted to my Jewish roots and earlier this year have accepted Jesus Christ as the Messiah.
Please type name to confirm your agreement	Mimi A Belser
Name of Provider Certifying Exemption:	
License Number of Provider Certifying Exemption:	
Expected end date per your provider:	

EXHIBIT B



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	41036891
Message Date	8/30/2021 3:19 PM
Created By	Nina Chew , 8/30/2021 3:19 PM

Address Information

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

Message Content

Subject	Approval of Exemption from COVID-19 Vaccination Requirement - Religion
HTML Body	Click here to view HTML version
Text Body	<p>Dear Mimi A Belser:</p> <p>We received your request for a Religion-based exemption in connection with the COVID-19</p> <p>Based on the information you provided, your Request for Exemption has been APPROVED. If your views change, and you no longer have a sincerely held religious belief, you may request a revocation of your exemption. For more information, please visit https://hrconnect.kp.org/wps/myportal/hr/workatkp/compliance/vaxverify/.</p> <p>Duration: This approval is valid until further notice.</p> <p>Future Vaccination: If your views change, and you no longer have a sincerely held religious belief, you may request a revocation of your exemption. For more information, please visit https://hrconnect.kp.org/wps/myportal/hr/workatkp/compliance/vaxverify/.</p> <p>Until you are fully vaccinated*, you must comply with the safety rules specified for those who are not fully vaccinated.</p>

HRconnect

Dear Mimi A Belser:

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.*

Duration: This approval is valid until further notice.

Future Vaccination: If your views change, and you no longer have a sincerely held religious belief, practice, or observance that prevents you from receiving any COVID-19 vaccine, please provide proof of full vaccination, [here](#).

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.

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

*"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.)

EXHIBIT C



- [Close Window](#)
- [Print This Page](#)
- [Expand All](#) | [Collapse All](#)

Case: 41258163

Employee Name	Mimi April-Cyd Weiss	WIP Flag	<input type="checkbox"/>
Employee Id	10306755	Case Number	41258163 [View Hierarchy]
NUID	A807245	Status	Closed
Submitter		Sub-Status	Closed - Auto Closed
Submitter (User)		Quick Code	
Show on Initiator Dashboard	<input type="checkbox"/>	Category	Employee Health
Case Title	Week of 9/20/21 COVID Vaccination Religious Exemption Request - Provisional	Sub-Category 1	Form
Case Description	Provisional approval email sent. An important message for employees requesting religious exemption from COVID Vaccination Mandate. Subject: Reexamination of Provisionally Approved Requests. September 21, 2021 Dear Employee, You are receiving this letter because you have been provisionally approved for a religious exemption from our COVID-19 Vaccination for KP Workforce Members Policy (NATL.HR.057) requiring that all employees be fully vaccinated by September 30, 2021, and we want to let you know that we are engaging in additional review of exemption requests. 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). 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	Sub-Category 2	Misc

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. 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, and that we uphold our ethical standards as outlined in our Principles of Responsibility. We are also taking this opportunity to remind employees that there is still time to get vaccinated and meet the September 30, 2021 deadline.

You continue to be provisionally approved; however, note the following:

- Requests for exemption must be in your own words. If your 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.

- If your exemption request included a personal statement in your own words, 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.

- It is important that you provide accurate and truthful information when you submit an exemption request. Failure to do so can result in disciplinary action, up to and including termination of employment. If you would like to cancel your previously submitted exemption request and become vaccinated, we will not take any further action on your exemption request and you can then upload your vaccination information when it becomes available. You can cancel your request by going to HRconnect: select "Complete exemption form", and then select the "Cancel previous request" option. Please do so as soon as possible but no later than September 30, 2021.

- Should you choose to become vaccinated, you can still meet the September 30 deadline by receiving the single-dose Johnson & Johnson vaccine. You can schedule a vaccine appointment by visiting kp.org and submit proof of vaccination on HRconnect.

Please note we are still making decisions about what, if any, reasonable accommodations can be made for employees with approved exemptions to allow them to safely perform their job

duties. Once decisions are made, it will be communicated to impacted employees.

For additional information, please go to the COVID-19 Vaccine Verification & Testing site on HRconnect or talk with your manager. General inquiries on the COVID-19 vaccine verification and testing process may also be directed to the National HR Service Center at 1-877-457-4772 - follow the prompts for the COVID-19 Vaccine Verification support queue.

Transaction Effective Date		Assigned To	
Transaction Id		Assignment Queue	Employee Health
Source	MCC	SLA Start Date	
Priority	Normal	SLA Target Date	
Case Updated by Other	<input type="checkbox"/>	Next Action Date	
Legacy Case ID		Next Action	
		Escalation	<input type="checkbox"/>
		Escalation Reason	
		Escalation Notes	
		Escalation Outcome	
		Escalation Start Time	
		Escalation End Time	

Form Details

Alternate Email

Alternate Phone

EXHIBIT D



Q Mir

Home	Mimi Weiss	Mimi April-Cyd W...	+
Details	Mimi April-Cyd W...	41036891	Inbound Email M... +

Inbound Email Message


Email Message Detail

Reply Reply To All Forwa

Information

Parent Case	41036891
Message Date	10/26/2021 2:30 PM
Created By	email2case , 10/26/2021 2:31 PM

Address Information

From Address	mimibelser@yahoo.com
From Name	Mimi Belser
To Address	hrconnect-cases@hr.kp.org
CC Address	
Headers	Click here to view original email headers
Related To	41036891
Is Incoming	

Message Content

Subject	Re: Request for Addl Info Exemption-COVID-19 Vaccination Req.-Religion r
HTML Body	Click here to view HTML version
Text Body	Caution: This email came from outside Kaiser Permanente. Do not open att

"If you have additional information you would like to submit in support of you

Dear Human Resources,

First, I want to thank you for accommodating my religious exemption. And, k
accommodating my religious exemption)

Next, I'm compelled to share the following feedback....I do know inclusivity i

Finally, regarding your specific questions, I am unclear of the legal relevance

I trust this matter will be fully resolved upon receipt of this email.

Thank you again,

Mimi A Weiss

ADDITIONAL QUESTIONS REGARDING YOUR REQUEST FOR RELIGIO

Question:

Caution: This email came from outside Kaiser Permanente. Do not open attachments or click on links if you do not recognize the sender.

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

Dear Human Resources,

First, I want to thank you for accommodating my religious exemption. And, kindly I would like to reiterate, as a Christian Jew my body is a sovereign gift from God, and I am commanded by God in both the Torah and New Testament not to interfere with God's perfection. *(Additional information for accommodating my religious exemption)*

Next, I'm compelled to share the following feedback....I do know inclusivity is foundational to Kaiser Permanente as messaged in our annual compliance trainings. I am saddened to note, the line of questioning in your email appears to be incongruent KP's commitment to inclusivity.

Finally, regarding your specific questions, I am unclear of the legal relevance (Title VII) to my already approved religious exemption. However, in my desire to be considerate of your request I did provide brief answers, see below. *(Additional information for accommodating my religious exemption)*

I trust this matter will be fully resolved upon receipt of this email.

Thank you again,

Mimi A Weiss

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:

Any chemicals/substances that would be unclean as guidance from my Creator.

Question:

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

Answer:

Yes, my religious beliefs inform all meaning and purpose in my life.

Question:

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

Answer:

My medical information and history is protected, and private, therefore I will not answer questions about medicines that I may or may not have taken.

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:

Once again, my medical information and history is protected, and private, therefore I will not answer questions about medicines I may or may not have taken. To draw any comparisons as asked above is not applicable.

Question:

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

Answer:

I am not understanding the relevance of this question related to my sincerely held religious beliefs and accommodating my religious exemption. As previously stated, my religious beliefs do not allow me to alter the perfection of my God-given immune system.

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:

On Oct 21, 2021, at 6:52 PM, hrconnect-cases@hr.kp.org wrote:

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.

For information on the safety and effectiveness of the COVID 19 vaccine go to 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

CHURCH STATE COUNCIL
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Westlake Village, CA 91361
805.413-7398
Fax: 805.497-3828
E-mail: ajreinach@churchstate.org
jcherne@churchstate.org

Counsel for Plaintiff MIMI WEISS

**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 SECOND AMENDED
COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

1. Violation of Plaintiff's Constitutional Right to Privacy and Bodily Autonomy, Right to Refuse Medical Treatment, California Constitution Article 1 § 1.
2. Failure to Provide Religious Accommodation in Violation of Title VII of the Civil Rights Act of 1964
3. Religious Discrimination-Failure to Accommodate, in violation of Cal. Gov. Code § 12940(l)
4. Failure to Prevent Discrimination
5. Breach of the Implied Covenant of Good Faith and Fair Dealing

JURY TRIAL DEMAND

INTRODUCTION

1. In 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.

2. The EUA statute requires that those offered such products both be provided information about the benefits and risks of these products, but also the right to refuse. 21 U.S.C. § 360bbb-3.
3. As a leading American health care provider, Defendant The Permanente Medical Group, a Kaiser company, was fully informed as to the legal and regulatory status of these vaccines, yet chose to require employees to be vaccinated as a condition of continued employment in flagrant violation of the law.
4. Moreover, not only did Defendant mandate the vaccine for all employees, it included those employees, like Plaintiff Mimi Weiss, who were working remotely, despite having no employment interest in doing so.
5. As a fully remote employee, Weiss had no physical contact with Defendant's employees, customers, contractors, etc. She had physical contact with no one on account of her employment by Defendant.
6. Kaiser determined it could safely permit medical personnel to work in a hospital setting, providing hands on care to immune compromised patients, so it subsequently provided religious exemptions from its vaccine mandate to more than 10,000 employees, in many job categories.
7. Thus, despite having little or no interest in requiring objecting employees to be required to receive the Covid-19 vaccine, Defendant insisted on subjecting all those requesting religious accommodations to an arbitrary and impersonal inquisitorial process in an attempt to weed out a few thought to be seeking to game the system.
8. Defendant had so little interest in whether the decisions made to approve or deny exemption requests were sound, it farmed out the entire procedure to a third party provider, Shaw HR Consulting.
9. Moreover, its lack of interest in insuring that its valued employees were treated fairly is further shown by its refusal to provide those employees who felt wrongly denied an

- 1 exemption from the vaccine the opportunity to appeal, by meeting directly with any of
2 Defendant's own employees.
- 3 10. No employee could challenge the decision or explain to a human being the basis of their
4 religious objection to the vaccine, or demonstrate the sincerity of their belief.
- 5 11. Plaintiff Mimi Weiss lost both her job and career as a health education administrator because
6 she became a victim of Defendant's reckless disregard for her civil rights.
- 7 12. Defendant's policies and procedures were enacted and approved by the highest levels of
8 management and were so flagrant and lawless as to warrant a very significant award of
9 punitive damages, in addition to compensating Plaintiff Weiss for the very considerable
10 economic loss and emotional distress so unnecessarily inflicted upon her by Defendant's
11 scofflaw conduct.
- 12 13. Just as standardized tests have been criticized for testing only one's ability as a test taker,
13 Defendant's reliance on written answers to arbitrary questions did not actually test the
14 sincerity of one's beliefs, but only one's ability to "read the tea leaves" and figure out what
15 answers would pass muster with the screeners.¹
- 16 14. Despite purporting to act to protect the health and safety of its employees and patients, at a
17 time when the health care system was overloaded due to the pandemic, Defendant
18 undermined the effective provision of health care services by firing thousands of employees
19 at a time when it needed more, not fewer health care workers serving during the pandemic.
20 Plaintiff Weiss was a victim of this misguided policy.

21 **PARTIES**

- 22 15. Plaintiff Mimi Weiss is an individual who, during all relevant times, resided in Campbell,
23 California. She is and was protected by Title VII of the Civil Rights Act of 1964 and the
24

25
26
27
28 ¹ <https://lasvegassun.com/news/2021/jun/07/standardized-tests-measure-test-taking-ability-not/>
(last accessed September 11, 2023).

California Fair Employment and Housing Act. She is a member of a protected class on account of her religion, Christian Jew.

16. 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

17. This action arises under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000 et seq.; the California Constitution, Article I § 1; and the California Fair Employment and Housing Act. Plaintiff seeks damages for unlawful discrimination arising from her termination due to her religion – Christian Jew.

18. 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.

19. In accordance with 28 U.S.C. § 1367, supplemental jurisdiction is proper with respect to Plaintiff's California constitutional and statutory civil rights claims because these claims arise from the same case and controversy as Plaintiff's Title VII claims.

20. 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.

21. 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.

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

23. 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

24. Weiss demands a jury trial.

STATEMENT OF FACTS

25. 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.

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

1 27. Throughout the relevant period, Weiss' position was **fully remote**. She had no in-person
2 contact with patients, other employees or any other people while conducting her job duties. Thus,
3 there was no risk she would spread COVID-19 to patients or employees. As of the time of filing
4 the complaint herein, the department never returned to the office, but remains fully remote!

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

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

11 30. As of August, 2021, Defendant knew that the vaccines did not prevent infection with the
12 Covid-19 virus, nor did they prevent the spread of the virus.

13 31. Defendant also knew that mandating the vaccine was unlawful, since it was approved only on
14 an emergency use basis, in a statute that explicitly protected the right to refuse the product.

15 32. Defendant evaluated that unvaccinated employees could safely provide medical services to
16 immunocompromised patients because it approved exemption requests for more than ten
17 thousand employees, many of whom worked in hands on patient care.

18 33. Defendant knew that the science showed that while asymptomatic individuals rarely spread
19 the virus, those with symptoms were likely to spread the virus to others.

20 34. Defendant also knew that vaccine effectiveness decreased dramatically after about six (6)
21 months. Yet when it required vaccine compliance by late October, 2021, those health care
22 employees who had been in the first group to receive the vaccine were well past the six
23 month period. Thus, if their vaccine status was to prove relevant they should have been
24 required to obtain a booster, but they were not so required.

25 35. Defendant also knew that natural immunity gained by those who had been sick with Covid
26 provided substantial protection, perhaps equal to or better than the vaccine. Yet Kaiser's
27
28

1 vaccine mandate made no provision for those with natural immunity to be exempt from its
2 vaccine mandate.

3 36. Thus, as part of the much larger American public health establishment, Defendant promoted
4 the policy of mandating vaccines, not because of the science, but contrary to what the known
5 science would support.

6 37. Weiss is a Christian Jew

7 38. In 2016, Weiss attended a nine week certification course on natural healing. One of the
8 presentations was by a Messianic Jew about the connection between diet, health and faith.
9 Thereafter, Weiss changed her diet, stopped eating meat, began eating a mostly raw diet, and
10 eliminating chemicals and foreign substances. She did this as an expression of her faith, as taught
11 by the Messianic Jew.

12 39. On August 26, 2021, Weiss completed Defendant's religious exemption request form.

13 40. Defendant promptly approved Weiss' religious exemption from its vaccine mandate.

14 41. Nevertheless, on September 21, 2021, Defendant issued new directives to employees to
15 resubmit their exemption requests, providing a form to fill out.

16 42. This form first required Weiss to acknowledge: "I understand the personal and public
17 health benefits of COVID-19 vaccinations and the risks associated with not receiving the
18 COVID-19 vaccine.

19 43. Despite the EUA statute requiring dissemination of both benefits and risks, Defendant
20 emphasized only the benefits, thereby displaying a bias against religious exemption requests,
21 and clearly communicating its desire that those requesting religious exemptions take the shot
22 instead.

23 44. The form also informed Weiss that she "may be required to take additional education on
24 COVID10 vaccines and safety training..." insinuating to her that her faith was in error, and
25 that she should change her beliefs and get with the shot program.
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1 45. The form then asked Weiss to state: “The specific religious doctrine or teaching that prevents
2 me from receiving a vaccine is:”

3 46. This question betrays a complete lack of understanding of religion.

4 47. Religion cannot be reduced to the rational expression of a doctrine or belief. Religion is an
5 experience and a community as much as it is a belief or doctrine.

6 48. By asking only about doctrine or teaching, the question displays a bias *against* religious
7 experience, ruling out such things as prayer and faith as a legitimate basis for rejecting the
8 vaccine.

9 49. Moreover, the question presumes that those requesting the religious exemption are competent
10 to provide written explanations.

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

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

19 52. Nevertheless, Weiss completed the form in good faith, and stated:

20
21 My religious beliefs as a Christian Jew do not allow me to receive a Covid-19
22 vaccine: The Torah prohibits us from accepting foreign material into our bodies,
23 Deuteronomy 14:1 prohibits needle wounds except for direct curative benefit. One
24 must maintain his body and blood uncontaminated under Jewish law. I consider
25 these COVID-19 vaccines to represent a defilement of my body, blood and soul
26 and a rejection of the trust we must have as Jews in the natural healing powers
27 bestowed upon the human body by our Creator. “Do you not know that your
28 bodies are temples of the Holy Spirit, who is in you, whom you have received
from God?” (1 Cor 6:19) 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 to inject a man-made
substance in an effort to “improve” my God given abilities.

53. Weiss here articulated complex theological concepts about the primacy of Scripture, the sovereignty of God, the nature of faith, and the obligations of her faith.

54. These biblically grounded statements were lost on whatever computer program was sorting through the exemption requests, and if ever even reviewed by a human being, the person lacked any comprehension of religion.

55. By referencing defilement of the soul, Weiss said plainly that for her to receive the vaccine would be both immoral and sinful.

56. Defendant obtained the services of Shaw HR Consulting to provide logistical support to enable the processing of thousands of religious exemption requests.

57. Shaw's core business is to aid employers in obtaining the information needed to process employee requests for disability accommodations. It is not in the business of evaluating accommodation requests, and did not have the professional expertise to evaluate the thousands of religious accommodation requests submitted by Defendant's employees.

58. Nevertheless, Weiss and others were all told that there was no person at Kaiser who could discuss their religious exemption requests, because the evaluations were all being done by a third party.

59. Defendant thereby insulated itself from having to deal directly with any employee religious exemption requests.

60. If Defendant's representations were true, that all decisions were farmed out to Shaw HR, well, Shaw HR had no capacity to do more than determine whether exemption request language complied with whatever criteria Defendant provided.

61. Defendant's criteria favored certain beliefs, and disfavored other beliefs.

62. Among the disfavored beliefs was Weiss' reference to the body as the temple of the Holy Spirit.

63. Shaw HR could do little more than use key word searches to categorize requests, and to then issue stock follow up questions.

64. On October 21, 2021, Defendant emailed Weiss requiring Weiss to answer intrusive questions, such as whether Weiss had ever taken medications of any kind, and what other substances besides the COVID vaccine she refused to put into her body.

65. That Defendant did not understand Weiss' submission is clearly shown by the stock follow up questions she was required to answer.

66. These questions did not seek more information about her religious beliefs. They did not ask her to give further explanation of her beliefs, instead they were stock questions designed to expose inconsistency of practice.

67. As such, the questions failed to account for the second part of Weiss' initial answer. There she said her belief was attributable to a recent religious awakening or conversion experience:

It's not that the covid-19 vaccine is different for me. What's different is that during the last 18 months I've experienced extreme isolation and depression. I have sought comfort in God and in my faith to get me through this time. I've recommitted to my Jewish roots and earlier this year have accepted Jesus Christ as the Messiah.

68. Had anyone been paying attention, they would not have asked a stock question about whether Weiss had ever used medications in her adult life. Weiss professed that her belief had been dramatically changed by accepting Jesus just months earlier that same year.

69. Whoever generated the stock questions, person or machine, clearly did not account for the relevant time period subsequent to Weiss' recent religious conversion experience.

70. Moreover, the questions also ignored the actual belief Weiss stated. She did not assert an objection to medications, generally. She asserted a very narrow objection to "needle wound" injections unless for direct curative benefit.

71. Because the products offered as vaccines were marketed as preventive, rather than curative, Weiss' faith did not permit her to partake.

72. None of the questions were addressed to Weiss' specific religious belief.

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

3 74. Weiss was terrified to lose her position because her financial situation was precarious, but
4 she firmly believed God was instructing her to trust him with her life even if she were
5 terminated.

6 75. Had any of the questions asked Weiss about her faith and experience, rather than her
7 doctrine, she would have gladly answered that her decision to reject the vaccine was an answer
8 to prayer, and she was confident and joyful in God's leading in her life. She would have told
9 them she did not dare disobey the will of God.

10 76. Although Weiss responded in good faith to Defendant's request for additional
11 information about her religious beliefs, and provided a cogent explanation of her faith,
12 Defendant denied Weiss a religious exemption by email dated November 30, 2021.

13 77. Defendant told Weiss she would be placed on unpaid leave on December 5, 2021,
14 pending receipt of full vaccination.

15 78. Defendant rejected Weiss's religious accommodation because, according to the denial
16 letter, "it has been determined that your request does not meet the standards necessary for
17 granting an exemption from obtaining any COVID-19 vaccine."

18 79. Defendant's letter failed to explain what the standards were or in what way Weiss failed
19 to meet them.

20 80. Weiss had no other objection to receiving the Covid-19 vaccine other than her religious
21 faith, nor did Defendant determine that she had an alternative reason for rejecting the vaccine.

22 81. On information and belief, Weiss' co-worker, Alicia Okoh, a Seventh-day Adventist, also
23 requested religious accommodation to avoid the vaccination requirement.

24 82. Unlike Weiss, Ms. Okoh used specific catch-phrases like "the mark of the beast" and
25 "fetal cell lines," in her application. Unlike Weiss, Ms. Okoh's application was approved.
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83. Also on information and belief, there are married couples who submitted identical written requests, in which, one spouse was granted an exemption, while the other was denied, thus demonstrating the arbitrary nature of the procedure itself.

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

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

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

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

88. At no time during the exemption screening process did Defendant or any of its employees/agents ever meet with Weiss in person, by phone, or by video conference; at no time was there any direct human contact, and on information and belief, at no time did Defendant ever consult with any of Weiss's direct supervisor to learn whether she was religious, or to inquire about the sincerity of her religious objection to the COVID-19 vaccine.

89. ***Defendant did not engage in a good faith interactive process to evaluate Weiss' religious exemption request. Nor did it cut off the "process" in good faith. Weiss made serious attempts to continue the interactive process by following up with her managers, even going to the highest level of administration, but Defendant failed and refused to participate in any discussion with her about her religious exemption request.***

90. Defendant arbitrarily cut off the process, and then blamed Weiss telling her that “your submission did not meet the threshold for granting a religious exemption.”

91. Weiss was further informed that Defendant did not assess her faith or whether she held sincere religious beliefs, only whether she had “articulated a sincerely held religious belief” that “prevents you from receiving a COVID-19 vaccine.” The high level official who wrote that to Weiss in an email never saw what Weiss submitted.

92. Defendant’s “analysis” of Weiss submission was completely unfounded. Instead of seeking to understand Weiss’ religious belief, Defendant engaged in a game of “gotcha” asking irrelevant follow up questions in an effort to prove she was inconsistent. It proved no such thing, but fired her anyway.

93. On or about December 5, 2022, Defendant placed Weiss on unpaid administrative leave because of her refusal to obtain the vaccine.

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

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

FIRST CAUSE OF ACTION
VIOLATION OF PLAINTIFF’S RIGHT TO PRIVACY AND BODILY AUTONOMY,
CALIFORNIA CONSTITUTION ARTICLE I § 1

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

97. Article I, section 1 of the California Constitution provides:

1 All people are by nature free and independent and have inalienable rights.
2 Among these are enjoying and defending life and liberty, acquiring,
3 possessing, and protecting property, and pursuing and obtaining safety,
4 happiness, and privacy.

5 98. In *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal. 4th 1, 20, the California
6 Supreme Court definitively held that the privacy clause of article I, section 1, of the state
7 Constitution "creates a right of action against private as well as government entities." See
8 *Pettus v. Cole* (1996) 49 Cal. App. 4th 402, 439-40.

9 99. *Hill* defined the threshold elements for such a constitutional claim: "(1) a legally protected
10 privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by
11 defendant constituting a serious invasion of privacy." *Hill*, 7 Cal. 4th at 39-40.

12 "Californians have a constitutional privacy right that protects against receiving
13 unwanted medical treatment. Our Supreme Court has stated that 'a competent adult
14 has the right to refuse medical treatment, even treatment necessary to sustain
15 life.'... The right to privacy guaranteed by the California Constitution, article I
16 section 1 'guarantees to the individual the freedom to choose to reject, or refuse to
17 consent to, intrusions of his bodily integrity.(citation omitted)' *In re Terrazas*, 73
18 Cal. App. 5th 960, 966-967 (2022).

19 100.This dimension of the privacy right reflects a "fundamental interest in personal autonomy."
20 (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 532, 110 Cal.Rptr.2d 412, 28 P.3d
21 151.) Id.

22 101.The California right to privacy has long recognized that it protects one's right to make
23 medical decisions, and that an employee does not forfeit that right by virtue of being
24 employed:

25 ...we are aware of no law or policy which suggests that a person forfeits his or her
26 right of medical self-determination by entering into an employment relationship,
27 *Pettus v. Cole*, 49 Cal. App. 4th 402, 459, 57 Cal. Rptr. 2d 46, 84 (1996), as
28 modified on denial of reh'g (Oct. 15, 1996).

102.The appellate court in *Pettus* went further:

1 Indeed, it would be unprecedented for this court to hold that an employer may
2 dictate to an employee the course of medical treatment he or she must follow,
3 under pain of termination, with respect to a nonoccupational illness or injury. It is,
4 thus, eminently reasonable for employees to expect that their employers will
5 respect—i.e., not attempt to coerce or otherwise interfere with—their decisions
6 about their own health care...

Pettus, supra.

7 103. The California constitutional right to privacy protects Californians against invasions of
8 their privacy by both government and private employers.

9 104. As a large, sophisticated health care provider operating one of the nation’s largest health
10 care organizations, Kaiser, the parent of Defendant herein, has considerable expertise in the
11 regulatory approval process regarding new medications and medical treatments.

12 105. On information and belief, Defendant’s management was fully informed that the Covid-
13 19 vaccines it required its employees to receive had obtained only emergency use authorization.

14 106. Defendant further knew that the EUA statute does not permit compulsion in the
15 administration of such statutes. The statute requires “that individuals to whom the product is
16 administered are informed—i. that the Secretary has authorized the emergency use of
17 the product; ii. of the significant known and potential benefits and risks of such use, and of the
18 extent to which such benefits and risks are unknown; and iii. of the option to accept or refuse
19 administration of the product, of the consequences, if any, of refusing administration of
20 the product, and of the alternatives to the product that are available and of their benefits and
21 risks.

22 107. Despite knowing that mandating employees to receive a vaccine enjoying only EUA
23 approval violated the terms of the EUA approval, Defendant imposed a vaccine mandate on all
24 of its employees, including those who were working fully remotely.

25 108. Kaiser lacked any cognizable interest in whether remote employees, such as Plaintiff
26 Mimi Weiss, received a Covid-19 vaccine.
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1 109. Moreover, on information and belief, Defendant failed and refused to consider the
2 privacy rights of remote employees in establishing and implementing its vaccine mandate, in
3 flagrant violation of Article I section 1 of the California Constitution.

4 110. Accordingly, Defendant trampled on Plaintiff Weiss' right to privacy and bodily
5 autonomy, well established and recognized rights under California decisional law, without any
6 regard whatsoever to the existence of those rights, and without any countervailing interest
7 whatsoever.

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

11 112. As a further direct and proximate result of Defendant's discriminatory action against
12 Plaintiff, as alleged above, Plaintiff has been harmed in that she suffered humiliation, mental
13 anguish, and emotional physical distress, and has been injured in mind and body, in an amount
14 according to proof.
15

16 **SECOND CAUSE OF ACTION**
17 **RELIGIOUS DISCRIMINATION**
18 **FAILURE TO ACCOMMODATE**
19 **TITLE VII**

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

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

24 115. When faced with requests for religious accommodation, employers are obligated to
25 provide reasonable accommodation to an employee's religious observance or practice. 42 U.S.C.
26 2000e(j). Protected religious belief or observance includes "all aspects of religious observance
27 and practice, as well as belief." Id.
28

116. 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.

117. By its own admission, providing religious exemptions to those who objected would not cause Defendant any undue hardship since it readily permitted thousands of unvaccinated employees to engage in all manner of hands on health care.

118. Despite this, Defendant rejected Weiss' religious exemption request without any factual or legal basis for doing so, despite her having informed Defendant of her sincerely held religious belief, and despite this information being more than sufficient to inform someone who was qualified to evaluate religious exemption requests.

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

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

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

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

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

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

THIRD CAUSE OF ACTION
RELIGIOUS DISCRIMINATION
FAILURE TO ACCOMMODATE
GOVERNMENT CODE § 12940(l)(1),

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

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

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

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

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

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

131. Plaintiff Weiss satisfied her obligation to inform Defendant of her religious belief, *and* that her belief conflicted with its vaccine mandate (which itself was objectively unreasonable to apply to a fully remote employee!)

132. Defendant’s failure and refusal to comprehend Weiss’ belief, and that her belief conflicted with its vaccine mandate cannot be attributed to any lack in Weiss’ communication, but is entirely attributable to Defendant’s wilful incompetence, and refusal to have such requests evaluated by those competent persons who understand religious beliefs and experience.

1 133. By failing and refusing to provide Weiss a religious accommodation, Defendant
2 discriminated against her, terminating her from her position.

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

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

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

18 Defendant had in place policies and procedures that specifically prohibited and required
19 Defendant's managers, officers, and agents to prevent discrimination, retaliation, and harassment
20 against and upon employees of Defendant. Defendant's manager, officer, and/or agent was
21 aware of Defendant's policies and procedures requiring Defendant's managers, officers, and
22 agents to prevent, and investigate discrimination, retaliation, and harassment/hostile work
23 environment against and upon employees of Defendant. Furthermore, Defendant's manager,
24 officer, and/or agent maintained broad discretionary powers regarding staffing, managing, hiring,
25 firing, contracting, supervising, assessing and establishing of corporate policy and practice in the
26 defendant's facilities. However, Defendant's manager, officer, and/or agent chose to
27
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1 consciously and willfully ignore said policies and procedures and therefore, their outrageous
2 conduct was fraudulent, malicious, oppressive, and was done in wanton disregard for the rights
3 of Weiss and the rights and duties owed by each Defendant to Weiss. Each Defendant aided,
4 abetted, participated in, authorized, ratified, and/or conspired to engage in the wrongful conduct
5 alleged above. Weiss should, therefore, be awarded exemplary and punitive damages against
6 each Defendant in an amount to be established that is appropriate to punish each Defendant and
7 deter others from engaging in such conduct.
8

9
10 **FOURTH CAUSE OF ACTION**
11 **FAILURE TO PREVENT DISCRIMINATION**
12 **CAL. GOV. CODE § 12940(k)**

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

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

21 139. Defendants failed to take immediate and appropriate corrective action to end the
22 discrimination and harassment. Defendants also failed to take all reasonable steps necessary to
23 prevent the harassment and discrimination from occurring.

24 140. In failing and/or refusing to take immediate and appropriate corrective action to end the
25 discrimination and harassment and in failing and/or refusing to take all reasonable steps
26 necessary to prevent harassment and discrimination from occurring, Defendants violated
27 Government Code § 12940, subdivisions (a), (j) and (k), causing Weiss to suffer damages.
28

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

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

143. 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).

FIFTH CAUSE OF ACTION
BREACH OF THE COVENANT
OF GOOD FAITH AND FAIR DEALING

144. Weiss realleges and incorporates herein by reference all of the above paragraphs as though fully set forth herein, except any allegations inconsistent with this cause of action.

145. In 2020, the parties entered into an employment relationship.

146. At all relevant times, Plaintiff Weiss performed all of her job duties in a satisfactory (or exemplary) manner.

147. California law recognizes "an implied promise of good faith and fair dealing" in every employment contract. "This implied promise means that neither the employer nor the employee will do anything to unfairly interfere with the right of the other to receive the benefits of the employment relationship." CACI 2423.

1 148. Defendant breached its obligation to act in good faith and fairly with respect to Plaintiff
2 Weiss, in that:

3 a. Defendant failed to inform Weiss that she had a right to know the benefits and risks
4 of the vaccine products, and the right to consent or refuse their use;

5 b. Imposed its vaccine mandate upon her despite her fully remote work, and lacking any
6 employment interest in doing so;

7 c. It failed to take into account Weiss' constitutional right to privacy, and her right to
8 make her own medical decisions, especially in the absence of any countervailing interest of its
9 own;

10 d. It did not evaluate her religious exemption request in good faith, denying Weiss not
11 because she failed to inform Defendant of her sincerely held religious objection to the vaccine,
12 but because Defendant refused to understand it, and refused to ask for more information so that
13 it would be able to understand her belief.
14

15 e. Defendant terminated Weiss' employment despite having no employment interest in
16 whether or not she was vaccinated, and despite Weiss having successfully performed all of her
17 job requirements.

18 149. Defendant harmed Weiss by its breach of the implied covenant of good faith and fair
19 dealing in an amount of damages to be proven at trial, including, but not limited to, her reputation,
20 career, lost income and lost benefits.

21
22 **PRAYER FOR RELIEF**

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

- 24 1. Declaratory Relief, declaring that Defendant violated Plaintiff's rights to be
25 free of discrimination in the workplace;
26 2. All available injunctive relief, including but not limited to reinstatement,
27 compelling Defendants to refrain from discrimination in the workplace;
28

1 including requiring Defendant both to adopt adequate policies with respect to
2 religious discrimination, accommodation, retaliation and harassment, and to
3 provide training on these policies to managers and human resources
4 professionals;

- 5 3. Compensatory economic damages;
- 6 4. Compensatory non-economic damages, including, but not limited to, pain,
7 suffering and emotional distress, in an amount according to proof at trial.
- 8 5. Order Defendant to pay prejudgment interest;
- 9 6. Order Defendants to pay punitive damages sufficient to make an example of
10 and to punish Defendants.
- 11 7. Order Defendant to pay Plaintiff's reasonable attorney's fees and costs.
- 12 8. Grant such further relief as this Court deems just and proper.
- 13

14 Respectfully submitted,

15
16 Dated: July 12, 2024
17 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 FOR
JUDGMENT ON THE PLEADINGS**

I. INTRODUCTION

Plaintiff Mimi Weiss (“Weiss”) brought this action against her former employer, The Permanente Medical Group (“TPMG”) under Title VII of the Civil Rights Act of 1964 (“Title VII” and the California Fair Employment and Housing Act, California Government Code 12940 (“FEHA”). In the First Amended Complaint (“FAC”), Weiss brought eight claims, broadly averring that TPMG failed to accommodate her religious beliefs and wrongfully terminated her for not coming into compliance with The Kaiser Permanente Vaccination Policy (“the Policy”). Claims 1, 3, 5, and 7 of the FAC were dismissed on December 4, 2023. Pending now is TPMG’s motion for judgment on the remaining pleadings. Both parties have also filed requests for judicial notice. For the reasons herein, the motion for judgment on the pleadings is granted.

II. BACKGROUND

After TPMG filed the instant motion, the parties stipulated to dismiss with prejudice Claim 4—religious coercion – harassment, in violation of Title VII—from the FAC. The following three claims remain in the FAC and are the subject of TPMG’s motion for judgment on the pleadings:

(2) failure to provide religious accommodation, in violation of Title VII; (6) religious discrimination – failure to accommodate, in violation of FEHA; and (8) failure to prevent discrimination and harassment, in violation of FEHA.

The factual background of this case was previously discussed at length in the order granting TPMG’s motion to dismiss. *See* Dkt. 23. In brief, Weiss worked for TPMG until 2022, when she was terminated from employment for failing to come into compliance with TPMG’s internal COVID-19 requirements. In response to the COVID-19 pandemic, TPMG instituted the Policy, which mandated employees provide proof of full COVID-19 vaccination or have an approved exemption by September 30, 2021. An employee who failed to comply by that date would be placed on unpaid leave for 60 days. If the employee was still non-compliant with the Policy at the conclusion of that period, the employee would be terminated. Weiss sought an exemption from the COVID-19 vaccination requirement, indicating that her religious beliefs prohibited the insertion of foreign materials into her body. Weiss’s exemption request specifically stated, *inter alia*:

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.

Dkt. 43, Exh. A. Initially, TPMG provisionally granted Weiss’s exemption request, but, upon further review of her responses and after learning that she (and other TPMG employees) had made identical or substantially similar requests by pulling language from templates available online, asked Weiss to provide additional information to clarify the conflicts between their religious beliefs and the Policy. In the second round of questions, TPMG “asked that employees restate their religious accommodation requests in their own words” and provide further clarification on their religious beliefs so that the employer would be better equipped to evaluate whether an accommodation was warranted. FAC ¶ 26. Weiss either refused to answer or provided vague and generic responses, objecting to the information sought by TPMG as unduly intrusive. As a result,

her exemption request was denied on November 30, 2021. Pursuant to the Policy, Weiss 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. She filed this action against her former employer in July of 2023. TPMG now moves on the basis that the pleadings in the FAC fail to establish facts to show any liability on TPMG’s part.

III. LEGAL STANDARD

Federal Rule of Civil Procedure 12(c) permits a party to move for judgment on the pleadings after the pleadings close but “early enough not to delay trial.” A motion for judgment on the pleadings is “functionally identical” to a motion to dismiss for failure to state a claim. *See Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). “A judgment on the pleadings is properly granted when, taking all the allegations in the pleadings as true,” there is no genuine issue of material fact in dispute and the movant is entitled to judgment as a matter of law. *Lyon v. Chase Bank USA, N.A.*, 656 F.3d 877, 883 (9th Cir. 2011) (citation omitted); *Fleming v. Pickard*, 581 F.3d 922, 925 (9th Cir. 2009).

IV. DISCUSSION

A. Motion for Judgment on the Pleadings: Claims 2, 6, and 8

In Weiss’s second and sixth claims, she avers that TPMG failed to accommodate her religious beliefs in violation of Title VII and FEHA, respectively. 42 U.S.C. § 2000e-2(a)(1); Cal. Gov. Code. § 12940(a). Both Title VII and FEHA “require employers to accommodate [an employee’s] religious beliefs unless doing so would pose an undue hardship.” *Bolden-Hardge v. Off. of Calif. State Controller*, 63 F.4th 1215, 1222 (9th Cir. 2023). These claims are analyzed under a two-step, burden-shifting framework:¹ first, the employee must plead a prima facie case of failure to accommodate religion; second, if the employee succeeds, the burden shifts to the employer to “show either that it initiated good faith efforts to accommodate reasonably the

¹ The Ninth Circuit has noted that “FEHA is interpreted consistently with Title VII” so the federal and state law claims are analyzed uniformly. *See Ambat v. City & Cnty. of S.F.*, 757 F.3d 1017, 1023 n.2 (9th Cir. 2014).

employee’s religious practices or that it could not reasonably accommodate the employee without undue hardship.” *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 830 (9th Cir. 1999) (internal citation omitted).

To establish a prima facie case of failure to accommodate, a plaintiff must show that “(1) [s]he had a bona fide religious belief, the practice of which conflicted with an employment duty; (2) [s]he informed [her] employer of the belief and conflict; and (3) the employer threatened [her] or subjected [her] to discriminatory treatment, including discharge, because of [her] inability to fulfill the job requirements.” *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1438 (9th Cir. 1993). TPMG does not argue that it initiated good faith efforts to accommodate Weiss or was otherwise unable to due to some undue hardship. Instead, TPMG bases its motion on the notion that Weiss has failed to plead a prima facie failure-to-accommodate claim.

As an initial matter, Weiss argues that she is being held to a heightened pleading standard by being required to plead a prima facie case at this juncture. In support, Weiss invokes *Swierkiewicz v. Sorema N.A.*, a pre-*Twombly* and *Iqbal* case in which the Supreme Court held that “an employment discrimination plaintiff need not plead a prima facie case of discrimination.” 534 U.S. 506, 515 (2002); cf. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). A complaint must, however, advance specific averments to show that the plaintiff is plausibly entitled to relief. Weiss need not prove her case at this juncture, but she must plead enough facts to satisfy the underlying elements of a failure-to-accommodate claim. Fed. R. Civ. P. 8(a).

TPMG’s primary argument is that it was unable to determine that Weiss held a bona fide religious belief prohibiting her from accepting the COVID-19 vaccine because Weiss failed to provide it with notice about the conflict between her beliefs and the Policy. In particular, TPMG characterizes both Weiss’s initial exemption request and her responses to TPMG’s six follow up questions as bereft of adequate information such that it had no factual basis to conclude that she had a bona fide religious belief that conflicted with the Policy.

i. Bona Fide Religious Belief

TPMG first suggests that Weiss fails to aver a viable religious belief. The Supreme Court and the Ninth Circuit have cautioned against opining on the reasonableness of an individual's asserted religious belief, explaining that a court should avoid "second-guessing the reasonableness of an individual's assertion that a requirement burdens her religious beliefs." *Bolden-Hardge*, 63 F.4th at 1223. Instead, the "narrow function" of the court in this instance is to determine whether the espoused belief represents an "honest conviction." *Id.* (internal citation and quotations omitted). Here, Weiss's initial exemption request to TPMG, incorporated by reference herein,² stated that Weiss, a "Christian Jew," was prohibited "from accepting foreign material into [her] bod[y]." The reasonableness of Weiss's religious beliefs concerning the COVID-19 vaccine is not up for exploration, and whether her asserted beliefs are otherwise insincere is a factual question about her credibility, the determination of which would be improper at this juncture.

ii. Notice to TPMG

The bulk of TPMG's motion rests on the argument that Weiss failed to inform TPMG adequately about the nature of Weiss's religious beliefs and their conflict with her employment duties. An employee seeking an accommodation need only provide "enough information...to permit the employer to understand the existence of a conflict between the employee's religious practices and the employer's job requirements." *Heller*, 8 F.3d at 1439; *see also Redmond v. GAF Corp.*, 574 F.2d 897, 902 (7th Cir. 1978) ("The employee has the duty of informing [her] employer of [her] religious needs so that the employer has notice of the conflict"). "Any greater notice requirement would permit an employer to delve into the religious practices of an employee in order to determine whether religion mandates the employee's adherence," and if a court may not do so, neither may the employer. *Heller*, 8 F.3d at 1439 (invoking *Fowler v. Rhode Island*, 345 U.S. 67, 70 (1953), which held that, in a First Amendment context, a court may not determine

² A document may be incorporated by reference where "(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." *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006). Since a 12(b)(6) motion is analogous to a 12(c) motion, this rule is applicable here, where these conditions are met. As a result, Weiss's exemption request will be incorporated by reference.

whether a particular religious practice is required by the religion). The employee must, however, relay sufficient information about the conflict between the religious belief and the employer’s practice or policy, not simply the employee’s desired accommodation, in order for an employer to ensure it has met its obligations under both FEHA and Title VII.

The parties primarily contest the adequacy of Weiss’s notice to TPMG regarding the conflict between her religious beliefs and the Policy, which, in turn, informs whether it was reasonable for TPMG to seek additional information from Weiss after the initial exemption request. TPMG contends that the initial exemption request, in which Weiss explained that her beliefs prohibited her from receiving the COVID-19 vaccine, provided a basis for it to seek additional information from Weiss regarding her religious beliefs. In the initial submission, Weiss stated that the COVID-19 vaccine went “directly against [her] belief” to abstain from accepting “foreign substances into [her] body temple that change how [her] Creator designed it.” TPMG’s Motion for Judgment on the Pleadings (“TPMG’s Mot.”), Exh. A. Weiss also admitted to never having declined a vaccine due to her religious beliefs. When asked what makes the COVID-19 vaccine different from others, Weiss provided no direct response, and instead shared that her religious views had changed in recent months such that she had “recommitted to [her Jewish roots and ... accepted Jesus Christ as the messiah.” *Id.* Weiss’s generic explanations 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. *See Finkbeiner v. Geisinger Clinic*, 623 F. Supp. 3d 458, 465-66 (M.D. Pa. 2022) Instead of outright denying her request, however, TPMG provided Weiss with another opportunity to provide further information regarding the purported conflict.

Following that initial submission, TPMG sent Weiss an email with six follow up questions asking for clarity on the scope of her objections to the Policy to help it ascertain whether Weiss’s exemption request constituted a religious belief or an isolated teaching.³ The United States Equal

³ The follow up questions are also incorporated by reference herein. *See* TPMG’s Mot., Exh. E.

Employment Opportunity Commission (“EEOC”) provides guidance on this very practice:

Where the accommodation request itself does not provide enough information to enable the employer to make a determination, and the employer has a bona fide doubt as to the basis for the accommodation request, it is entitled to make a limited inquiry into the facts and circumstances of the employee’s claim that the belief or practice at issue is religious and sincerely held, and that the belief or practice gives rise to the need for the accommodation.

EEOC, *Compliance Manual on Religious Discrimination*, § 12-IV(A)(2) (Jan. 15, 2021). In the follow up questions, Weiss was asked whether she had taken medication that differed from the COVID-19 vaccine, and, if so, why she had been willing to accept other medication but raised objections to the COVID-19 vaccine. She was also asked whether her religious beliefs prohibited her from accepting other substances into her body, as well as how her beliefs emerged in other aspects of her life. Finally, TPMG requested that Weiss resubmit her request for accommodation in her “own words without using template or stock language from the internet or other sources.”

Weiss either refused to answer each of TPMG’s follow up questions or provided vague and generic responses. She asserted that her religion prohibited her from accepting “any chemicals/substances that would be unclear as guidance from my Creator,” and that her religious beliefs “inform[ed] all meaning and purpose” in her life. TPMG’s Mot., Exh. E. When asked whether she currently takes or has ever taken medication of any kind, she provided a nonresponse, asserting that the question impermissibly intruded on her private medical information and history. She also objected to the relevance of the question asking her why her beliefs prevented her from accepting the COVID-19 vaccine but no other medications. Pertinently, she failed even to provide a response to TPMG’s request for Weiss to restate, in her own words, her initial accommodation request.

It 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 Weiss’s newfound beliefs and the Policy. Weiss’s initial exemption request consisted of only general objections to the COVID-19 vaccine. Pursuant to EEOC guidance, TPMG was well within its rights as the employer seeking to implement a uniform policy across its employees to inquire narrowly into Weiss’s beliefs and

any conflicts with the Policy. The follow up questions were designed to ensure TPMG’s compliance with the law and were not, as Weiss suggests, unduly intrusive. Indeed, the questionnaire specifically highlighted that Weiss was not being asked to divulge what medications she took or why she took them, but to explain the distinctions between the COVID-19 vaccine and other medications, and this comports with the kind of permissible “limited inquiry” advised by the EEOC.

Even accepting that the bulk of TPMG’s questions were intrusive, however, Weiss has failed to explain why the question asking her to restate her exemption request in her own words should be similarly interpreted. That question simply asked Weiss to clarify a response she had already provided in the initial request and was neither “intrusive” nor “irrelevant” as Weiss contends. That the initial request contained language from online sources almost verbatim is inapposite. Weiss is correct that this fact alone does not provide a basis to question the sincerity of her belief, and TPMG is not claiming that it does so. Rather, Weiss’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, regardless of whether they were adopted from online sources. It is unclear why asking a question already answered is any more invasive the second time around. Weiss has therefore failed to aver plausibly that she adequately informed TPMG of the conflict between her religious beliefs and the Policy, and judgment is accordingly warranted for TPMG on Weiss’s second and sixth claims.⁴

TPMG moves for judgment on Weiss’s eighth claim, for failure to prevent discrimination and harassment under FEHA, on the basis that this claim is entirely dependent on the viability of Weiss’s other claims. Indeed, an employee cannot seek to hold an employer liable for failing to prevent discrimination that did not happen. *See Trujillo v. North County Transit Dist.*, 63 Cal. App. 4th 280, 284 (1998). Since judgment on Weiss’s second and sixth claim is granted for

⁴ TPMG’s motion does not address the third element for a prima facie failure-to-accommodate claim under *Heller*, so it need not be addressed here. *See* 8 F.3d at 1438.

TPMG, the motion is also granted as to Weiss's eighth claim.

B. Requests for Judicial Notice

Both parties file requests for judicial notice. TPMG's requests consist of forms utilized by the United States Department of Homeland Security, Agriculture, and Commerce (Exhibit G-I) and the EEOC Religious Accommodation Form (Exhibit J).⁵ Weiss has filed three successive requests for judicial notice, each of which contain California and federal court decisions in support of her opposition.

Rule 201 permits judicial notice of "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." Fed. R. Evid. 201(b). Facts that may be judicially noticed generally include court filings or matters of public record, including "records and reports of administrative bodies." *See 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)). To that end, TPMG's request for judicial notice, which asks the court to notice public records by administrative agencies, is granted. By contrast, Weiss offers no explanation for why judicial notice should be taken of the court decisions that she could have relied on in her opposition to support her argument. Weiss's request for judicial notice is accordingly denied.

V. CONCLUSION

For the reasons discussed above, TPMG's motion for judgment on the pleadings is granted. While it would appear that amendment would be futile, Plaintiff is granted leave to amend. Any such amended complaint must be filed within 21 days of the date of this order. Otherwise, the action will be dismissed with prejudice.

IT IS SO ORDERED.

⁵ TPMG initially sought judicial notice of one more exhibit, but has since withdrawn that request following the parties' stipulation to dismiss with prejudice the fourth claim in the FAC.

United States District Court
Northern District of California

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Dated: June 21, 2024



RICHARD SEEBORG
Chief United States District Judge

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**
**Form 1. Notice of Appeal from a Judgment or Order of a
United States District Court**

Name of U.S. District Court:

Northern District of California

U.S. District Court case number:

23-cv-03490-RS

Date case was first filed in U.S. District Court:

7/13/2023

Date of judgment or order you are appealing:

9/30/2024

Fee paid for appeal? (*appeal fees are paid at the U.S. District Court*)

☐ Yes ☒ No ☐ IFP was granted by U.S. District Court

List all Appellants (*List each party filing the appeal. Do not use "et al." or other abbreviations.*)

Mimi Weiss

Is this a cross-appeal? ☐ Yes ☒ No

If Yes, what is the first appeal case number?

Was there a previous appeal in this case? ☐ Yes ☒ No

If Yes, what is the prior appeal case number?

Your mailing address:

Church State Council, 2686 Townsgate Road

City:

Westlake Village

State:

CA

Zip Code:

91361

Prisoner Inmate or A Number (if applicable):

Signature

s/ Alan J Reinach

Date

10-25-2024

Complete and file with the attached representation statement in the U.S. District Court

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Form 6. Representation Statement**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form06instructions.pdf>

Appellant(s) (List *each* party filing the appeal, do not use “et al.” or other abbreviations.)

Name(s) of party/parties:

Mimi Weiss

Name(s) of counsel (if any):

Alan J Reinach and Jonathon Cherne

Address: 2686 Townsgate Road, Westlake Village, CA 91361

Telephone number(s): 805-413-7398; 805-231-0890

Email(s): ajreinach@churchstate.org

Is counsel registered for Electronic Filing in the 9th Circuit? ☒ Yes ☐ No

Appellee(s) (List *only the names of parties and counsel who will oppose you on appeal. List separately represented parties separately.*)

Name(s) of party/parties:

The Permanente Medical Group, Inc.

Name(s) of counsel (if any):

Sean Strauss, Christian Rowley

Address: 560 Mission Street, Suite 3100, San Francisco, CA 94105

Telephone number(s): 415-544-1083

Email(s): sstrauss@seyfarth.com

To list additional parties and/or counsel, use next page.

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

Continued list of parties and counsel: *(attach additional pages as necessary)*

Appellants

Name(s) of party/parties:

Mimi Weiss

Name(s) of counsel (if any):

Alan J Reinach and Jonathon Cherne

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Email(s): ajreinach@churchstate.org

Is counsel registered for Electronic Filing in the 9th Circuit? ☐ Yes ☐ No

Appellees

Name(s) of party/parties:

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Name(s) of counsel (if any):

Sean Strauss, Christian Rowley

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Name(s) of counsel (if any):

Address:

Telephone number(s):

Email(s):

Feedback or questions about this form? Email us at forms@ca9.uscourts.gov

ADRMOP,APPEAL,CLOSED,REFDIS,REFSET-LJC

**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:23-cv-03490-RS**

Weiss v. The Permanente Medical Group, Inc.
Assigned to: Judge Richard Seeborg
Referred to: Magistrate Judge Sallie Kim
Magistrate Judge Lisa J. Cisneros (Settlement)
Case in other court: USCA, 24-06609
Cause: 28:451 Employment Discrimination

Date Filed: 07/13/2023
Date Terminated: 09/30/2024
Jury Demand: Plaintiff
Nature of Suit: 442 Civil Rights: Jobs
Jurisdiction: Federal Question

Plaintiff

Mimi Weiss
an individual

represented by **Alan Jay Reinach**
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V.

Defendant

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ER - 071

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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
07/13/2023	<u>1</u>	COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF; JURY TRIAL DEMAND against The Permanente Medical Group, Inc., (Filing Fee: \$402.00, receipt number ACANDC-18445844). Filed by Mimi Weiss. (Reinach, Alan) (Filed on 7/13/2023) Modified on 7/14/2023 (tn, COURT STAFF). (Entered: 07/13/2023)
07/13/2023	<u>2</u>	Proposed Summons. (Reinach, Alan) (Filed on 7/13/2023) (Entered: 07/13/2023)
07/13/2023	<u>3</u>	Civil Cover Sheet by Mimi Weiss . (Reinach, Alan) (Filed on 7/13/2023) (Entered: 07/13/2023)
07/13/2023	4	Case assigned to Magistrate Judge Thomas S. Hixson. Counsel for plaintiff or the removing party is responsible for serving the Complaint or Notice of Removal, Summons and the assigned judge's standing orders and all other new case documents upon the opposing parties. For information, visit <i>E-Filing A New Civil Case</i> at http://cand.uscourts.gov/ecf/caseopening . Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/judges . Upon receipt, the summons will be issued and returned electronically. A scheduling order will be sent by Notice of Electronic Filing (NEF) within two business days. Consent/Declination due by 7/27/2023. (ark, COURT STAFF) (Filed on 7/13/2023) (Entered: 07/13/2023)
07/14/2023	<u>5</u>	Initial Case Management Scheduling Order with ADR Deadlines: This case may fall within the Initial Discovery Protocols for Employment Cases Alleging Adverse Action. See General Order 71. Parties and Counsel are directed to review General Order 71 to determine whether it applies to this case, and to comply with that General Order if applicable. Joint Case Management Statement due by 10/5/2023. Initial Case Management Conference set for 10/12/2023 at 10:00 AM in San Francisco, Courtroom E, 15th Floor. (tn, COURT STAFF) (Filed on 7/14/2023) (Entered: 07/14/2023)
07/14/2023	<u>6</u>	Summons Issued as to The Permanente Medical Group, Inc.. (tn, COURT STAFF) (Filed on 7/14/2023) (Entered: 07/14/2023)

ER - 072

08/09/2023	7	NOTICE of Appearance by Sean T. Strauss (Strauss, Sean) (Filed on 8/9/2023) (Entered: 08/09/2023)
08/09/2023	8	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by The Permanente Medical Group, Inc.. (Strauss, Sean) (Filed on 8/9/2023) Modified on 8/10/2023 (kmg, COURT STAFF). (Entered: 08/09/2023)
08/09/2023	9	<p>CLERK'S NOTICE OF IMPENDING REASSIGNMENT TO A U.S. DISTRICT COURT JUDGE: The Clerk of this Court will now randomly reassign this case to a District Judge because either (1) a party has not consented to the jurisdiction of a Magistrate Judge, or (2) time is of the essence in deciding a pending judicial action for which the necessary consents to Magistrate Judge jurisdiction have not been secured. You will be informed by separate notice of the district judge to whom this case is reassigned.</p> <p>ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE CURRENT MAGISTRATE JUDGE ARE VACATED AND SHOULD BE RE-NOTICED FOR HEARING BEFORE THE JUDGE TO WHOM THIS CASE IS REASSIGNED.</p> <p><i>This is a text only docket entry; there is no document associated with this notice.</i> (tshlc1, COURT STAFF) (Filed on 8/9/2023) (Entered: 08/09/2023)</p>
08/09/2023	10	ORDER REASSIGNING CASE. Case reassigned using a proportionate, random, and blind system pursuant to General Order No. 44 to Judge Richard Seeborg for all further proceedings. Magistrate Judge Thomas S. Hixson no longer assigned to case,. Signed by Clerk on 8/9/2023. (ark, COURT STAFF) (Filed on 8/9/2023) (Entered: 08/09/2023)
08/09/2023	11	<p>CLERK'S NOTICE RE REASSIGNED CASE:</p> <p>You are notified that the Court has scheduled an Initial Case Management Conference set for 11/2/2023 at 10:00 AM in San Francisco, - Videoconference Only before Judge Richard Seeborg upon reassignment. Case Management Statement due by 10/26/2023.</p> <p>All parties shall appear by videoconference using log-in instructions the Court will provide in advance.</p> <p>For a copy of Judge Seeborg's Standing Order and other information, please refer to the Court's website at www.cand.uscourts.gov</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i></p> <p>(cl, COURT STAFF) (Filed on 8/9/2023) (Entered: 08/09/2023)</p>
08/18/2023	12	Certificate of Interested Entities by The Permanente Medical Group, Inc. (Strauss, Sean) (Filed on 8/18/2023) (Entered: 08/18/2023)
08/29/2023	13	MOTION to Dismiss <i>Complaint for Damages and Injunctive Relief</i> filed by The Permanente Medical Group, Inc.. Motion Hearing set for 11/2/2023 01:30 PM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg. Responses due by 9/12/2023. Replies due by 9/19/2023. (Attachments: # 1 Declaration of Sean Strauss, # 2 Proposed Order)(Strauss, Sean) (Filed on 8/29/2023) (Entered: 08/29/2023)

ER - 073

09/07/2023	14	CLERK'S NOTICE CONTINUING INITIAL CASE MANAGEMENT CONFERENCE. Initial Case Management Conference previously set for 11/2/2023 is continued to 12/7/2023 at 10:00 AM in San Francisco, - Videoconference Only. Case Management Statement due by 11/30/2023. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (cl, COURT STAFF) (Filed on 9/7/2023) (Entered: 09/07/2023)
09/14/2023	15	FIRST AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF; JURY TRIAL DEMAND against The Permanente Medical Group, Inc.. Filed by Mimi Weiss. (Reinach, Alan) (Filed on 9/14/2023) (Entered: 09/14/2023)
09/28/2023	16	MOTION to Dismiss <i>Plaintiff's First Amended Complaint</i> filed by The Permanente Medical Group, Inc.. Motion Hearing set for 12/7/2023 01:30 PM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg. Responses due by 10/12/2023. Replies due by 10/19/2023. (Attachments: # 1 Declaration of Sean T. Strauss in Support of Defendant The Permanente Medical Group, Inc.'s Motion to Dismiss Plaintiff's First Amended Complaint, # 2 Proposed Order)(Strauss, Sean) (Filed on 9/28/2023) (Entered: 09/28/2023)
09/28/2023	17	CLERK'S NOTICE Continuing Motion Hearing as to 13 MOTION to Dismiss <i>Complaint for Damages and Injunctive Relief</i> , 16 MOTION to Dismiss <i>Plaintiff's First Amended Complaint</i> . Motions Hearing previously set for [Docket #13 - 11/2/2023 and Docket #16-12/7/2023] are continued to 12/14/2023 at 01:30 PM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (cl, COURT STAFF) (Filed on 9/28/2023) (Entered: 09/28/2023)
09/29/2023	18	Notice of Withdrawal of Motion to Dismiss <i>Plaintiff Mimi Weiss's Complaint [Dkt. #13]</i> (Strauss, Sean) (Filed on 9/29/2023) (Entered: 09/29/2023)
10/12/2023	19	OPPOSITION/RESPONSE (re 16 MOTION to Dismiss <i>Plaintiff's First Amended Complaint</i>) filed by Mimi Weiss. (Reinach, Alan) (Filed on 10/12/2023) (Entered: 10/12/2023)
10/12/2023	20	Proposed Order re 16 MOTION to Dismiss <i>Plaintiff's First Amended Complaint</i> by Mimi Weiss. (Reinach, Alan) (Filed on 10/12/2023) (Entered: 10/12/2023)
10/19/2023	21	REPLY in Support (re 16 MOTION to Dismiss <i>Plaintiff's First Amended Complaint</i>) filed by The Permanente Medical Group, Inc.. (Strauss, Sean) (Filed on 10/19/2023) (Entered: 10/19/2023)

10/26/2023	22	<p>CLERK'S NOTICE CONTINUING INITIAL CASE MANAGEMENT CONFERENCE.</p> <p>Initial Case Management Conference previously set for 12/7/2023 is continued to 12/14/2023 at 10:00 AM in San Francisco, - Videoconference Only. Case Management Statement due by 12/7/2023.</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (cl, COURT STAFF) (Filed on 10/26/2023) (Entered: 10/26/2023)</p>
12/04/2023	23	<p>ORDER by Chief Judge Richard Seeborg granting 16 Motion to Dismiss. (rslc2, COURT STAFF) (Filed on 12/4/2023) (Entered: 12/04/2023)</p>
12/05/2023	24	<p>NOTICE of Motion for Transfer of Actions to the Central District of California Pursuant to 28 U.S.C. 1407 for Coordinated or Consolidated Pretrial Proceedings by The Permanente Medical Group, Inc..</p> <p><i>These documents are submitted to this court pursuant to JPML Rule 6.2 for informational purposes. The JPML will review the Motion for Transfer to determine whether to consolidate or coordinate the case. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Strauss, Sean) (Filed on 12/5/2023) (Entered: 12/05/2023)</i></p>
12/07/2023	25	<p>REPORT of Rule 26(f) Planning Meeting . (Strauss, Sean) (Filed on 12/7/2023) (Entered: 12/07/2023)</p>
12/11/2023	26	<p>CLERK'S NOTICE SETTING ZOOM HEARING. Initial Case Management Conference set for 12/14/2023 at 10:00 AM in San Francisco, - Videoconference Only.</p> <p>This proceeding will be held via a Zoom webinar.</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.),</i></p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/rs</p> <p>Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. A list of names and emails must be sent to the CRD at rsrd@cand.uscourts.gov no later than December 13,2023 at 12:00 pm.</p> <p>General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p> <p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p>(cl, COURT STAFF) (Filed on 12/11/2023) (Entered: 12/11/2023)</p>
12/14/2023	27	<p>Minute Entry for proceedings held before Judge Richard Seeborg:</p> <p>Initial Case Management Conference held via Zoom on 12/14/2023.</p>

ER - 075

		<p>Case Management Statement due by 2/29/2024. Further Case Management Conference set for 3/7/2024 10:00 AM in San Francisco, - Videoconference Only.</p> <p>Total Time in Court: 5 minutes. Court Reporter: Not Reported or Recorded.</p> <p>Plaintiff Attorney: Alan Reinach. Defendant Attorney: Christian Rowley, Sean Strauss.</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (cl, COURT STAFF) (Date Filed: 12/14/2023) (Entered: 12/14/2023)</p>
12/20/2023	28	STIPULATION AND [PROPOSED] ORDER RE: EXTENSION OF TIME TO FILE FIRST AMENDED COMPLAINT AND STAY OF PROCEEDINGS re 23 Order on Motion to Dismiss filed by Mimi Weiss. (Attachments: # 1 Proposed Order)(Reinach, Alan) (Filed on 12/20/2023) (Entered: 12/20/2023)
12/20/2023	29	STIPULATION AND ORDER RE 28 Case Management Statement due by 2/29/2024. Further Case Management Conference set for 3/7/2024 10:00 AM in San Francisco, - Videoconference Only. Signed by Judge Richard Seeborg on 12/20/2023. (cl, COURT STAFF) (Filed on 12/20/2023) (Entered: 12/20/2023)
01/30/2024	30	ORDER DENYING TRANSFER MDL 3095 In re: Kaiser COVID-19 Vaccination Employment Practices Litigation, by MDL Panel on 01/30/2024. (wsn, COURT STAFF) (Filed on 1/30/2024) (Entered: 01/30/2024)
03/01/2024	31	CASE MANAGEMENT STATEMENT <i>BY PLAINTIFF</i> filed by Mimi Weiss. (Cherne, Jonathon) (Filed on 3/1/2024) (Entered: 03/01/2024)
03/04/2024	32	CASE MANAGEMENT STATEMENT filed by The Permanente Medical Group, Inc.. (Sallomi, Galen) (Filed on 3/4/2024) (Entered: 03/04/2024)
03/04/2024	33	<p>CLERK'S NOTICE SETTING ZOOM HEARING. Further Case Management Conference set for 3/7/2024 at 10:00 AM in San Francisco, - Videoconference Only. This proceeding will be held via a Zoom webinar.</p> <p>Webinar Access: All counsel, members of the public, and media may access the webinar information at https://www.cand.uscourts.gov/rs</p> <p>Court Appearances: Advanced notice is required of counsel or parties who wish to be identified by the court as making an appearance or will be participating in the argument at the hearing. A list of names and emails must be sent to the CRD at rscred@cand.uscourts.gov no later than March 6, 2024 at 12:00 pm.</p> <p>General Order 58. Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited.</p> <p>Zoom Guidance and Setup: https://www.cand.uscourts.gov/zoom/.</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with</i></p>

		<i>this entry.</i>). (cl, COURT STAFF) (Filed on 3/4/2024) (Entered: 03/04/2024)
03/07/2024	34	Minute Entry for proceedings held before Judge Richard Seeborg: Further Case Management Conference held via Zoom on 3/7/2024. Parties to submit new joint proposed scheduling dates by March 21, 2024. Total Time in Court: 13 minutes. Court Reporter: Not Reported or Recorded. Plaintiff Attorney: Jonathon Cherne. Defendant Attorney: Christian Rowley, Sean Strauss. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (cl, COURT STAFF) (Date Filed: 3/7/2024) (Entered: 03/07/2024)
03/15/2024	35	STIPULATION <i>Addressing Case Schedule</i> filed by The Permanente Medical Group, Inc.. (Strauss, Sean) (Filed on 3/15/2024) (Entered: 03/15/2024)
03/15/2024	36	FURTHER CASE MANAGEMENT SCHEDULING ORDER. ORDER REFERRING CASE to Magistrate Judge for Settlement, ORDER REFERRING CASE to Magistrate Judge for Discovery purposes. Further Case Management Conference set for 1/16/2025 at 10:00 AM in San Francisco, - Videoconference Only. Case Management Statement due by 1/9/2025. Pretrial Conference set for 5/21/2025 at 10:00 AM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg. Jury Selection/Trial set for 6/23/2025 at 09:00 AM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg. Signed by Chief Judge Richard Seeborg on 3/15/2024. (cl, COURT STAFF) (Filed on 3/15/2024) (Entered: 03/15/2024)
03/18/2024	37	CASE REFERRED to Magistrate Judge Lisa J. Cisneros for Settlement. (shy, COURT STAFF) (Filed on 3/18/2024) (Entered: 03/18/2024)
03/18/2024		CASE REFERRED to Magistrate Judge Sallie Kim for Discovery. (shy, COURT STAFF) (Filed on 3/18/2024) (Entered: 03/18/2024)
03/19/2024	38	DISREGARD, FILED IN ERROR CLERK'S NOTICE SETTING TELEPHONIC PRE-SETTLEMENT CONFERENCE. Notice is hereby given to all parties that Magistrate Judge Lisa J. Cisneros will convene a telephonic pre-settlement conference to discuss timing and preparation for the settlement conference. Judge Cisneros anticipates that the phone call will last approximately 15-30 minutes. Lead Counsel for all parties shall participate. The conference call shall take place on April 18, 2024 at 10:30 a.m. via the AT&T Teleconference Line. Teleconference Line: (877) 336-1831; Access Code: 6668569.

ER - 077

If counsel for either side is not available for the above date they must meet and confer with the other side and send an email to Judge Cisneros's CRD, Brittany Sims at ljccrd@cand.uscourts.gov providing a new date(s) to the Court within three business days. The parties are directed to review, in advance of the telephone pre-settlement conference Judge Cisneros's Settlement Standing Order on Judge Cisneros's webpage, by going to <https://www.cand.uscourts.gov/wp-content/uploads/judges/cisneros-ljc/LJC-SettlementConferenceStandingOrder.pdf>

The Court may be in session with proceedings in progress when you connect to the conference line. Therefore, mute your phone if possible and wait for the Court to address you before speaking on the line. For call clarity, parties shall NOT use speaker phone or earpieces for these calls, and where at all possible, parties shall use landlines.

PLEASE NOTE: Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited. See General Order 58 at Paragraph III.

(This is a text-only entry generated by the court. There is no document associated with this entry.)(bns, COURT STAFF) (Filed on 3/19/2024) Modified on 3/19/2024 (bns, COURT STAFF). (Entered: 03/19/2024)

03/19/2024	39	<p>AMENDED CLERK'S NOTICE SETTING TELEPHONIC PRE-SETTLEMENT CONFERENCE. Notice is hereby given to all parties that Magistrate Judge Lisa J. Cisneros will convene a telephonic pre-settlement conference to discuss timing and preparation for the settlement conference. Judge Cisneros anticipates that the phone call will last approximately 15-30 minutes. Lead Counsel for all parties shall participate. The conference call shall take place on April 25, 2024 at 10:30 a.m. via the AT&T Teleconference Line. Teleconference Line: (877) 336-1831; Access Code: 6668569.</p> <p>If counsel for either side is not available for the above date they must meet and confer with the other side and send an email to Judge Cisneros's CRD, Brittany Sims at ljccrd@cand.uscourts.gov providing a new date(s) to the Court within three business days. The parties are directed to review, in advance of the telephone pre-settlement conference Judge Cisneros's Settlement Standing Order on Judge Cisneros's webpage, by going to https://www.cand.uscourts.gov/wp-content/uploads/judges/cisneros-ljc/LJC-SettlementConferenceStandingOrder.pdf</p> <p>The Court may be in session with proceedings in progress when you connect to the conference line. Therefore, mute your phone if possible and wait for the Court to address you before speaking on the line. For call clarity, parties shall NOT use speaker phone or earpieces for these calls, and where at all possible, parties shall use landlines.</p> <p>PLEASE NOTE: Persons granted access to court proceedings held by telephone or videoconference are reminded that photographing, recording, and rebroadcasting of court proceedings, including screenshots or other visual copying of a hearing, is absolutely prohibited. See General Order 58 at Paragraph III.</p> <p><i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i></p> <p>(bns, COURT STAFF) (Filed on 3/19/2024) (Entered: 03/19/2024)</p>
03/19/2024	40	<p>NOTICE OF REFERRAL FOR DISCOVERY. Signed by Magistrate Judge Sallie Kim on 3/19/2024. (bxl, COURT STAFF) (Filed on 3/19/2024) (Entered: 03/19/2024)</p>
03/29/2024	41	<p><i>Defendant The Permanente Medical Group, Inc.'s ANSWER to Amended Complaint by The Permanente Medical Group, Inc.. (Strauss, Sean) (Filed on 3/29/2024) (Entered: 03/29/2024)</i></p>
04/02/2024	42	<p>CLERK'S NOTICE ADVANCING TELEPHONIC PRE-SETTLEMENT CONFERENCE. Notice is hereby given that the Telephonic Pre-Settlement Conference set for April 25, 2024 is ADVANCED to April 18, 2024 at 10:00 a.m. before Magistrate Judge Lisa J. Cisneros. Counsel is directed to review Docket No. 39 for instructions and call-in information. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (bns, COURT STAFF) (Filed on 4/2/2024) (Entered: 04/02/2024)</p>
04/17/2024	43	<p>MOTION for Judgment on the Pleadings filed by The Permanente Medical Group, Inc.. Motion Hearing set for 5/30/2024 01:30 PM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg. Responses due by 5/1/2024. Replies due by 5/8/2024. (Attachments: # 1 Declaration Declaration of Sean T. Strauss, # 2 Exhibit A to Declaration of Sean T. Strauss, # 3 Exhibit B to Declaration of Sean T. Strauss, # 4 Exhibit C to Declaration of Sean T. Strauss, # 5 Exhibit D to Declaration of Sean T.</p>

ER - 079

		Strauss, # 6 Exhibit E to Declaration of Sean T. Strauss, # 7 Exhibit F to Declaration of Sean T. Strauss, # 8 Exhibit G to Declaration of Sean T. Strauss, # 9 Exhibit H to Declaration of Sean T. Strauss, # 10 Exhibit I to Declaration of Sean T. Strauss, # 11 Exhibit J to Declaration of Sean T. Strauss, # 12 Exhibit K to Declaration of Sean T. Strauss, # 13 Defendant The Permanente Medical Group, Inc.'s Request for Judicial Notice in Support of Motion for Judgment on The Pleadings, # 14 Proposed Order) (Strauss, Sean) (Filed on 4/17/2024) (Entered: 04/17/2024)
04/18/2024	44	<p>Minute Entry for proceedings held before Magistrate Judge Lisa J. Cisneros: Telephonic Pre-Settlement Conference held on 4/18/2024. Total Time in Court: 15 minutes. Court Reporter: Not Reported.</p> <p>Plaintiff Attorney: Alan Reinach and Jonathon S. Cherne, Church State Counsel, counsel for Plaintiff.</p> <p>Defendant Attorney: Sean T. Strauss, Seyfarth Shaw LLP, counsel for Defendant.</p> <p>Results: The Court sets an in-person settlement conference for September 4, 2024, at 10:00 a.m. Counsel are directed to review Judge Cisneros's Settlement Standing Order.(bns, COURT STAFF) (Date Filed: 4/18/2024) (Entered: 04/18/2024)</p>
04/24/2024	45	STIPULATION WITH PROPOSED ORDER REGARDING SCHEDULED MOTION AND DISMISSAL OF CLAIM re 43 MOTION for Judgment on the Pleadings filed by Mimi Weiss. (Reinach, Alan) (Filed on 4/24/2024) (Entered: 04/24/2024)
04/24/2024	46	ORDER by Judge Richard Seeborg Regarding 45 Scheduled Motion and Dismissal of Claim. (cl, COURT STAFF) (Filed on 4/24/2024) (Entered: 04/24/2024)
04/24/2024		Set/Reset Deadlines as to 43 MOTION for Judgment on the Pleadings . Motion Hearing previously set for 5/30/2024 is continued to 6/20/2024 at 01:30 PM in San Francisco, Courtroom 04, 17th Floor before Judge Richard Seeborg. (cl, COURT STAFF) (Filed on 4/24/2024) (Entered: 04/24/2024)
05/15/2024	47	OPPOSITION/RESPONSE (re 43 MOTION for Judgment on the Pleadings) filed byMimi Weiss. (Attachments: # 1 Supplement Objection to Request for Judicial Notice, # 2 Supplement Weiss' Request for Judicial Notice, # 3 Exhibit To Weiss Request for Judicial Notice)(Reinach, Alan) (Filed on 5/15/2024) (Entered: 05/15/2024)
05/22/2024	48	Request for Judicial Notice re 47 Opposition/Response to Motion, filed byMimi Weiss. (Attachments: # 1 Exhibit Rake v Regents decision)(Related document(s) 47) (Reinach, Alan) (Filed on 5/22/2024) (Entered: 05/22/2024)
05/28/2024	49	Request for Judicial Notice re 47 Opposition/Response to Motion, <i>Second Supplemental</i> filed byMimi Weiss. (Related document(s) 47) (Cherne, Jonathon) (Filed on 5/28/2024) (Entered: 05/28/2024)
05/29/2024	50	REPLY in Support (re 43 MOTION for Judgment on the Pleadings) filed by The Permanente Medical Group, Inc. (Strauss, Sean) (Filed on 5/29/2024) (Entered: 05/29/2024)
05/29/2024	51	REPLY (re 43 MOTION for Judgment on the Pleadings) <i>Response to Plaintiff's Objection to Request for Judicial Notice in Support of Motion for Judgment on the Pleadings</i> filed byThe Permanente Medical Group, Inc.. (Strauss, Sean) (Filed on 5/29/2024) (Entered: 05/29/2024)

05/29/2024	52	OBJECTIONS to 49 Request for Judicial Notice, 48 Request for Judicial Notice, 47 Opposition/Response to Motion, <i>Objection to Plaintiff's Three Successive Requests for Judicial Notice Filed in Opposition to Motion for Judgment on the Pleadings</i> by The Permanente Medical Group, Inc. (Strauss, Sean) (Filed on 5/29/2024) (Entered: 05/29/2024)
06/17/2024	53	CLERK'S NOTICE THE MOTION FOR JUDGMENT ON THE PLEADINGS [#43] SCHEDULED FOR HEARING ON JUNE 20, 2024 AT 1:30 P.M. SHALL BE SUBMITTED WITHOUT ORAL ARGUMENT PURSUANT TO CIVIL LOCAL RULE 7-1(b). ACCORDINGLY, THE MOTION HEARING IS VACATED. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (cl, COURT STAFF) (Filed on 6/17/2024) (Entered: 06/17/2024)
06/21/2024	54	ORDER granting 43 Motion for Judgment on the Pleadings. Signed by Chief Judge Richard Seeborg on June 21, 2024. (rslc2, COURT STAFF) (Filed on 6/21/2024) (Entered: 06/21/2024)
07/12/2024	55	SECOND AMENDED COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF AND JURY TRIAL DEMAND against The Permanente Medical Group, Inc.. Filed by Mimi Weiss. (Reinach, Alan) (Filed on 7/12/2024) (Entered: 07/12/2024)
07/19/2024	56	STIPULATION WITH PROPOSED ORDER re 55 Amended Complaint <i>Setting Deadline to Respond and Briefing Schedule on Motion to Dismiss</i> filed by The Permanente Medical Group, Inc.. (Strauss, Sean) (Filed on 7/19/2024) (Entered: 07/19/2024)
07/19/2024	57	ORDER by Judge Richard Seeborg GRANTING 56 STIPULATION REGARDING SCHEDULE FOR DEFENDANTS MOTION TO DISMISS SECOND AMENDED COMPLAINT. (cl, COURT STAFF) (Filed on 7/19/2024) (Entered: 07/19/2024)
08/02/2024	58	MOTION to Dismiss <i>Plaintiff's Second Amended Complaint</i> filed by The Permanente Medical Group, Inc.. Motion to Dismiss Hearing set for 9/26/2024 01:30 PM in San Francisco, Courtroom 03, 17th Floor. Responses due by 8/16/2024. Replies due by 8/23/2024. (Attachments: # 1 Declaration of Sean T. Strauss in Support of Defendant The Permanente Medical Group, Inc.'s Motion to Dismiss Plaintiff's Second Amended Complaint, # 2 Exhibit A, # 3 Exhibit B, # 4 Exhibit C, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F, # 8 Exhibit G, # 9 Exhibit H, # 10 Exhibit I, # 11 Proposed Order)(Strauss, Sean) (Filed on 8/2/2024) (Entered: 08/02/2024)
08/02/2024	59	Request for Judicial Notice re 58 MOTION to Dismiss <i>Plaintiff's Second Amended Complaint</i> filed by The Permanente Medical Group, Inc.. (Related document(s) 58) (Strauss, Sean) (Filed on 8/2/2024) (Entered: 08/02/2024)
08/22/2024	60	Joint MOTION to Continue <i>Settlement Conference</i> filed by The Permanente Medical Group, Inc.. (Strauss, Sean) (Filed on 8/22/2024) (Entered: 08/22/2024)
08/23/2024	61	ORDER by Magistrate Judge Lisa J. Cisneros: The parties' 60 Joint Request to continue the settlement conference currently set for September 4, 2024 is GRANTED, and the settlement conference is VACATED pending selection of a new a date. The Court is not available on November 4, 2024. The parties shall coordinate with Courtroom Deputy Brittany Sims via email at ljccrd@cand.uscourts.gov to select a date. <i>(This is a text-only entry generated by the court. There is no document associated</i>

		with this entry.) (ljclc2, COURT STAFF) (Filed on 8/23/2024) (Entered: 08/23/2024)
08/28/2024	62	STIPULATION WITH PROPOSED ORDER re 58 MOTION to Dismiss <i>Plaintiff's Second Amended Complaint</i> filed by Mimi Weiss. (Cherne, Jonathon) (Filed on 8/28/2024) (Entered: 08/28/2024)
08/29/2024	63	ORDER by Judge Richard Seeborg GRANTING 62 SECOND STIPULATION REGARDING SCHEDULE FOR DEFENDANTS MOTION TO DISMISS SECOND AMENDED COMPLAINT. (cl, COURT STAFF) (Filed on 8/29/2024) (Entered: 08/29/2024)
08/29/2024	64	CLERK'S NOTICE Continuing Motion Hearing as to 58 MOTION to Dismiss <i>Plaintiff's Second Amended Complaint</i> . Motion Hearing previously set for 9/26/2024 is continued to 10/3/2024 at 01:30 PM in San Francisco, Courtroom 03, 17th Floor before Judge Richard Seeborg. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> ,(cl, COURT STAFF) (Filed on 8/29/2024) (Entered: 08/29/2024)
09/04/2024	65	OPPOSITION/RESPONSE (re 58 MOTION to Dismiss <i>Plaintiff's Second Amended Complaint</i>) filed by Mimi Weiss. (Attachments: # 1 Declaration of Jonathon Cherne, # 2 Proposed Order)(Reinach, Alan) (Filed on 9/4/2024) (Entered: 09/04/2024)
09/18/2024	66	REPLY (re 58 MOTION to Dismiss <i>Plaintiff's Second Amended Complaint</i>) filed by The Permanente Medical Group, Inc.. (Strauss, Sean) (Filed on 9/18/2024) (Entered: 09/18/2024)
09/19/2024	67	CLERK'S NOTICE SETTING AN IN PERSON SETTLEMENT CONFERENCE. Notice is hereby given that the Court sets an in-person settlement conference for December 9, 2024 at 10:00 a.m. in San Francisco, Courtroom G, 15th Floor before Magistrate Judge Lisa J. Cisneros. The parties are directed to review Judge Cisneros's Settlement Standing Order. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (bns, COURT STAFF) (Filed on 9/19/2024) (Entered: 09/19/2024)
09/19/2024	68	***DISREGARD, FILED IN ERROR.*** FOURTH CLERK'S NOTICE Re: Consent or Declination: Plaintiff shall file a consent or declination to proceed before a magistrate judge. Note that any party is free to withhold consent to proceed before a magistrate judge without adverse substantive consequences. The forms are available at: http://cand.uscourts.gov/civilforms . Counsel was also notified via email. Consent/Declination due by 10/3/2024. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (bns, COURT STAFF) (Filed on 9/19/2024) Modified on 9/19/2024 (bns, COURT STAFF). (Entered: 09/19/2024)
09/19/2024	69	CONSENT/DECLINATION to Proceed Before a US Magistrate Judge by Mimi Weiss.. (Cherne, Jonathon) (Filed on 9/19/2024) (Entered: 09/19/2024)
09/25/2024	70	CLERK'S NOTICE: MOTION TO DISMISS [#58] SCHEDULED FOR HEARING ON OCTOBER 3, 2024 AT 1:30 P.M. SHALL BE SUBMITTED WITHOUT ORAL ARGUMENT PURSUANT TO CIVIL LOCAL RULE 7-1(b). ACCORDINGLY, THE MOTION HEARING IS VACATED. <i>(This is a text-only entry generated by the court. There is no document associated with this entry.)</i> (cl, COURT STAFF) (Filed on 9/25/2024) (Entered: 09/25/2024)
09/30/2024	71	ORDER by Chief Judge Seeborg granting 58 Motion to Dismiss. (rslc3, COURT STAFF) (Filed on 9/30/2024) (Entered: 09/30/2024)

09/30/2024	72	JUDGMENT. Signed by Chief Judge Seeborg on September 30, 2024. (rslc3, COURT STAFF) (Filed on 9/30/2024) (Entered: 09/30/2024)
10/25/2024	73	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Mimi Weiss. Appeal of Order on Motion to Dismiss 71 , Judgment 72 (Appeal fee of \$605 receipt number ACANDC-19987870 paid.) (Reinach, Alan) (Filed on 10/25/2024) (USCA Case No. 24-6609) Modified on 10/30/2024 (slh, COURT STAFF). (Entered: 10/25/2024)
10/30/2024	74	USCA Case Number 24-6609 for 73 Notice of Appeal to the Ninth Circuit filed by Mimi Weiss. (slh, COURT STAFF) (Filed on 10/30/2024) (Entered: 10/30/2024)

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