**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

# APPELLANT'S REPLY BRIEF

James A. Sonne
STANFORD LAW SCHOOL
RELIGIOUS LIBERTY CLINIC
559 Nathan Abbott Way
Stanford, CA 94305
Telephone: (650) 723-1422
Facsimile: (650) 723-4426
jsonne@law.stanford.edu

Alan J. Reinach
Jonathon Cherne
CHURCH STATE COUNCIL
2686 Townsgate Road
Westlake Village, CA 91361
Telephone: (805) 413-7394
Facsimile: (805) 778-8843

*Attorneys for Appellant*
Mimi Weiss

## TABLE OF CONTENTS

**Page**

# TABLE OF AUTHORITIES

**Page(s)**

**CASES**

**STATUTES**



**OTHER AUTHORITIES**

## INTRODUCTION

At bottom, this appeal raises only two narrow procedural questions; namely, whether the district court erred in finding Mimi Weiss could not state a claim that: (1) TPMG violated Title VII or FEHA in firing her after rescinding an approved religious accommodation to its COVID-19 vaccine mandate on the ground she could not allege notice to TPMG of her religious conflict; or (2) TPMG violated state law by insisting Weiss—a remote employee—be vaccinated or disclose private information on the ground that public-health concerns justified TPMG's actions. Because the district erred on both fronts, this Court must reverse.

First, Weiss pled Title VII and FEHA claims by alleging she lost her job after notifying TPMG of a conflict between its vaccine mandate and her sincere beliefs as a Christian Jew and attendant understanding of biblical teachings on bodily autonomy and immunity. Indeed, Weiss notified TPMG of her religious conflict in a manner far above the controlling threshold in *Heller v. EBB Auto, Inc.*, 8 F.3d 1433 (9th Cir. 1993)—a case TPMG nowhere cites. *Heller* provides the employer must have "only enough information . . . to understand the *existence of a conflict* between the employee's religious practices and the employer's job

requirements." 8 F.3d at 1439 (emphasis added). Here, Weiss shared the conflict through her biblically based exemption request, which TPMG approved based on the dilemma it raised. What's more, Weiss added further details on her faith in reply to TPMG's follow-on inquiry, and again when seeking to appeal TPMG's revocation of her exemption.

In its answering brief, TPMG focuses nearly its entire argument on the reasonableness of its follow-on inquiry and Weiss's response; and, in so doing, the company conflates notice with sincerity—despite agreeing the former is the issue here. Answering Br., p. 26. Specifically, TPMG argues Weiss failed to notify it of a religious conflict because it had reason to doubt Weiss's beliefs given her initial description and what TPMG saw as inadequate cooperation with its follow-on inquiry. *Id.*, pp. 29-33.

But not only did Weiss repeatedly share her religious objections to TPMG's vaccine mandate, TPMG accepted them as raising a religious conflict by exempting her from the vaccine on her first request—without any indication it would revisit Weiss's beliefs, and at a time TPMG deemed the "height of the global COVID-19 pandemic." *Id.,* p. 1. Despite TPMG's about-face, its initial grant alone shows Weiss plausibly alleged notice. And whether TPMG was thereafter justified in doubting Weiss's

sincere religious conflict, any such doubts either concern the distinct and undisputed matter of sincerity or cannot be resolved on the pleadings.

Second, Weiss pled state privacy claims by alleging TPMG's vaccine mandate violated her rights in refusing medical treatment and bodily intrusion: California recognizes vaccine refusals as implicating a privacy interest; Weiss's remote status afforded a reasonable privacy expectation; and Weiss faced a serious invasion of privacy in being forced to choose between the vaccine, disclosing sensitive information, or losing her job.

TPMG nowhere disputes Weiss had a protected privacy interest in resisting the vaccine or disclosing information. Rather, it says public-health concerns defeat her expectations and diminish the seriousness of the invasion. *Id.*, pp. 44-54. But a plaintiff's privacy expectations and their serious invasion are "mixed questions of law and fact." *Hill v. Nat'l Collegiate Athletic Ass'n*, 865 P.2d 633, 657 (Cal. 1994). And although TPMG says privacy invasions for public health are presumptively valid, Weiss's remote employment renders inapplicable any such presumption and, in any event, prevents it from carrying the day on the pleadings.

## ARGUMENT

### I. THIS COURT SHOULD RESTORE WEISS'S TITLE VII AND FEHA CLAIMS.

#### A. Weiss sufficiently pled she notified TPMG of a conflict between her religious beliefs and its vaccine mandate.

##### 1. To satisfy notice, an employee need only inform her employer of the existence of a religious conflict.

A plaintiff pleads a failure-to-accommodate claim under Title VII or FEHA by plausibly alleging: (1) she holds a bona fide religious belief that conflicted with a job requirement; (2) she notified her employer of the belief and conflict; and (3) the employer took attendant adverse action. *Heller*, 8 F.3d at 1438. As TPMG acknowledges, only "Weiss's ability to fulfill the second element is at issue." Answering Br., p. 26.

Although TPMG ignores it, *Heller* is the controlling authority in this Circuit on "how much information an employee must provide to satisfy Title VII's notice requirement"; and similarly for FEHA. *Kaino v. Harney Cnty. Health Dist.*, No. 2:23-c-00643, 2024 WL 4298212, at *3 (D. Or. Sept. 26, 2024); *accord Cal. Fair Emp. & Housing Comm'n v. Gemini Aluminum Corp.*, 18 Cal. Rptr. 3d 906, 913 (Cal. Ct. App. 2004).

And under *Heller*, the employer requires "only enough information about an employee's religious needs to permit [it] to understand the

existence of a conflict between the employee's religious practices and the employer's job requirements." 8 F.3d at 1439. As *Heller* urged, "[a]ny greater notice requirement would permit an employer to delve into the religious practices of an employee" in violation of First Amendment principles. 8 F.3d at 1439; *see also Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 715 (1981) (warning judges not to "dissect religious beliefs"); *Bube v. Aspirus Hosp., Inc.*, 108 F.4th 1017, 1020 (7th Cir. 2024) (applying *Thomas* warning to vaccine case at pleadings stage).

Indeed, "the burden to allege a conflict with religious beliefs is fairly minimal." *Bolden-Hardge v. Off. of Cal. State Controller*, 63 F.4th 1215, 1223 (9th Cir. 2023). For example, telling an employer "I am not able to work on Saturday because of my religious obligation is sufficient." *Heller*, 8 F.3d at 1439 (internal quotation marks omitted); *see also Damiano v. Grants Pass Sch. Dist.*, --- F. 4th ---, 2025 WL 1691984, *27 (9th Cir. June 17, 2025) (stressing that scriptural references are unnecessary).

Other circuits mirror this straightforward approach—including in the vaccine context. *See Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1008 (7th Cir. 2024) (holding as sufficient prayer and biblical teaching that "[m]y body is a temple of the Holy Spirit and to present my body as a

living sacrifice, Holy and acceptable to God"); *Ringhofer v. Mayo Clinic, Ambulance*, 102 F.4th 894, 902 (8th Cir. 2024) (reversing dismissal where plaintiff expressed beliefs that "her body is a temple" and testing was akin to "idolatry").

As the Seventh Circuit put it when emphasizing the low bar for providing notice of a religious conflict, "Title VII is a remedial statute that we construe liberally in favor of employee protection." *Adeyeye v. Heartland Sweeteners, LLC*, 721 F.3d 444, 450 (7th Cir. 2013). Indeed, the Supreme Court has held a plaintiff establishes a prima facie case where the employer merely suspected a religious conflict. *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 774 & n.3 (2015).

**2. Weiss sufficiently pled she notified TPMG of her religious conflict with its vaccine mandate.**

The question here is whether Weiss plausibly alleged TPMG had enough information to know of a conflict between her faith and its vaccine mandate. *See Heller*, 8 F.3d at 1439. Weiss's complaint, which cited her repeated disclosures to TPMG about her biblically based beliefs against non-curative needle wounds and bodily invasions of substances that would alter her God-given immunity—information that caused the company to initially accommodate her—more than met this standard.

Within days of TPMG announcing its mandate, Weiss submitted a religious-exemption request on a form the company provided for that purpose. ER-40-41. There, she shared that "[m]y religious beliefs as a Christian Jew do not allow me to receive a Covid-19 vaccine," and added how teachings from the Torah and New Testament informed her religious beliefs in preserving bodily integrity and a natural immune system. ER-19. She also explained, in response to a question about why she had not previously declined vaccines, that her faith had deepened over the past 18 months amid "extreme isolation and depression." ER-20.

Then, having reviewed Weiss's submission in full, TPMG declared that "[b]ased on the information you provided," Weiss's request for "Religion-based exemption" was "**APPROVED**." ER-22-23. Although TMPG noted this approval was "provisional," its conditions concerned only future developments in the public-health situation, law, or its policies—not any doubts as to its understanding of the conflict between Weiss's faith and its vaccine mandate. ER-23.

A month later—and without explaining how it thought her prior submission was lacking—TPMG asked Weiss additional questions. ER-32-34. In response, Weiss reaffirmed that, as a Christian Jew, her faith

did not allow her to "alter the perfection of [her] God-given immune system." ER-30-31. TPMG in turn revoked her exemption—after months of accommodating her faith. ER-45. Then, Weiss wrote company officials to seek reconsideration, explaining further her religious objections to the vaccine mandate. ER-46. To no avail.[1]

Whether individually or collectively, Weiss more than plausibly alleged notice to TPMG of the conflict between her religious beliefs and its vaccine mandate by citing her initial granted request, responses to the its follow-on inquiry, and post-revocation plea for reconsideration. *See, e.g.*, *Thornton v. Ipsen Biopharmaceuticals, Inc.*, 126 F.4th 76, 83 (1st Cir. 2025) (reversing dismissal based on beliefs not to "defile one's body"); *Barnett v. Inova Health Care Servs.*, 125 F.4th 465, 471 (4th Cir. 2025) (accepting beliefs on body as "temple of God"); *Lucky v. Landmark Med. of Mich., P.C.*, 103 F.4th 1241, 1243 (6th Cir. 2024) (respecting "body [a]s a temple" belief); *see also Ashcroft v. So. Cal. Permanente Medical Grp.*, No. 24-cv-0035, 2025 WL 1159883, at **1, 6-7 (S.D. Cal. Apr. 21, 2025)

[1] TPMG challenges Weiss's allegation that flaws in its process stemmed partly from outsourcing to Shaw HR Consulting. *See* Opening Br., p. 17; Answering Br., p. 28 n.14. But Weiss's allegation about Shaw is based on what her department director told her. ER-46. At a minimum, TPMG officials never spoke with Weiss before revoking her exemption. *Id.*

(rejecting motion to dismiss on bodily-integrity grounds in accord with "the appellate courts' general vector").[2]

### B. TPMG's challenges to Weiss's pled disclosure of a religious conflict are belied by the record and law.

#### 1. TPMG cannot dodge at the pleadings stage its initial acceptance of Weiss's religious conflict and/or her follow-on responses and disclosures.

In its brief, TPMG says: (1) its initial exemption of Weiss does not support plausible notice of the conflict; (2) Weiss's reply to its follow-on inquiry renders her notice insufficient; and (3) her post-revocation outreach is irrelevant. But TPMG's arguments defy this Court's notice standard and fail to show Weiss's claims are implausible.

---

[2] TPMG argues that a spate of appellate reversals in vaccine-mandate cases—*Bube*, 108 F.4th 1017; *Passarella*, 108 F.4th 1005; *Ringhofer*, 102 F.4th 894; *Lucky*, 103 F.4th 1241; *Barnett*, 125 F.4th 465; *Thornton*, 124 F.4th 76—are inapposite since the district court did not deem Weiss's beliefs secular or require her to cite "a specific [religious] tenet," nor did TPMG "deny Weiss's request outright." Answering Br., pp. 39-42. But even if the lower court did not expressly frame Weiss's beliefs as secular or require specific religious precepts, it overstepped in finding her beliefs about God-given immunity and needle wounds were "unclear, generic, and vague." ER-65; *Passarella*, 108 F.4th at 1011 ("[C]ourts should not expect, much less require, exemption requests to sound like they were written by someone with legal training."). Moreover, TPMG's refusal to "deny Weiss's request outright" does not show inadequate notice. Quite the opposite: TPMG's initial approval demonstrates it understood Weiss's religious conflict—to the point of allowing her to go unvaccinated.

First, TPMG says its initial grant of Weiss's exemption request does not support notice of a conflict because it was "provisional," and it was "[]reasonable for [the company] to ask further questions." Answering Br., p. 31. But as Weiss's opening brief notes, TPMG approved her request without any indication it would revisit her establishment of a religious conflict—and at a time TPMG deemed the "height of the global COVID-19 pandemic." Opening Br., pp. 12; ER-23; Answering Br., p. 1.[3]

Moreover, TPMG's contention it was justified in asking further questions after its "provisional" grant is beside the point. Answering Br., pp. 31-32. Indeed, it is self-evident Weiss plausibly alleged TPMG had enough information about "the existence of a conflict between [Weiss's] religious practices and [its vaccine] requirement[]" where it had already reviewed and approved her request. *Heller*, 8 F.3d at 1439; *see Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (on plausibility). In contrast, TPMG's position that it lacked notice of Weiss's request after granting it is akin

[3] By implication, TPMG seeks to diminish its initial exemption of Weiss based on the volume of requests it received at that time. *See* Answering Br., p. 15 n.7. This argument, however, presents a fact-dependent matter unsuitable for resolution on the pleadings.

to a state granting a learner's permit, with all attendant risks, but then denying knowledge of the driver's requisite qualifications to hit the road.[4]

Second, TPMG insists Weiss's answers to its follow-on inquiry failed to plausibly establish notice of a conflict based on what it calls "unilateral[]" and "generic[]" reliance on "guidance 'from my Creator,'" and that accepting her objection would sanction a "blanket privilege" against unwanted obligations. Answering Br., pp. 33-35.

But Weiss's answers were offered as notice of a religious conflict with the vaccine, and no other job requirement. Plus, *Heller*'s warning against judicial theological inquiries, coupled with Title VII's further condition of sincerity—and opportunity for the employer to establish undue hardship in affirmative defense—provide the balance in achieving the statute's liberal objectives while avoiding any supposed "blanket privilege." *See Heller*, 8 F.3d at 1439; *Bolden-Hardge*, 63 F.4th at 1223.

[4] TPMG argues *Adeyeye* supports its position that Weiss did not plead notice since the company was justified in conducting a further inquiry about "the nature of [Weiss's] request." Answering Br., p. 32 (quoting *Adeyeye*, 721 F.3d at 451). But the *Adeyeye* employee's request only indirectly referenced religion. 721 F.3d at 450-51. Even more importantly given our posture, the Seventh Circuit addressed the matter on summary judgment, and in fact reversed such judgment for the employer on the issue of sufficient notice of a religious conflict. *Id*.

What's more, TPMG relies on inapposite cases where courts found plaintiffs were motivated by "concerns of vaccine safety," not religion. *Ellison v. Inova Health Care Servs.*, 692 F. Supp. 3d 548, 558-559 (E.D. Va. 2023); *see also Finkbeiner v. Geisinger Clinic*, 623 F. Supp. 3d 458, 466 (M.D. Pa. 2022). In contrast, Weiss's concerns arose from biblically rooted religious beliefs about non-curative needle wounds and "alter[ing] the perfection of [her] God-given immune system." ER-31, 44; *see Kather v. Asante Health Sys.*, No. 1:22-cv-01842, 2023 WL 4865533, at *4 (D. Or. July 28, 2023) (distinguishing "religious belief[s]" about "'interfer[ing] with . . . the human immune system which God created'" from "medical judgment[s] of the vaccine's efficacy or safety"); *Kneisler v. Legacy Health*, No. 3:24-cv-01011, 2024 WL 5186643, at *3 (D. Or. Dec. 20, 2024) (same).

In any event, Weiss's answers in the follow-on inquiry were not limited to guidance "from [her] Creator" but also incorporated her initial submission and teachings from the Torah and New Testament—details TPMG ignores when dismissing Weiss's submissions as "unclear, vague, and generic." ER-30-31; Answering Br., pp. 34-35. In evaluating notice—particularly on the pleadings—Weiss's disclosures must be considered as a whole, not in silos; indeed, TPMG's follow-up form itself indicated that,

should the company find an employee's answers there insufficient, TPMG would decide "based on the information [it] ha[d] obtained to date." ER-32; *see Adeyeye*, 721 F.3d at 451 ("[W]hen read with the first letter in mind, [the second letter] also conveyed a religious request with sufficient clarity to preclude summary judgment on the issue.").

Third, TPMG asserts this Court should ignore Weiss's outreach to supervisors after the revocation of her exemption because that outreach was not part of its exemption evaluation nor were its contents detailed in the complaint. Answering Br., pp. 27-28. But the exemption process's specifics and TPMG's knowledge of Weiss's communications are factual matters unsuited to a motion to dismiss. *See Cappuccio v. Calif. State Univ.*, No. 8:23-cv-2026, 2025 WL 1115745, at *8 (C.D. Cal. Mar. 28, 2025) (denying defendant summary judgment under *Heller*, finding "notice delivered after [it] decided to dismiss [p]laintiff but before [d]efendant had actually done so" not legally insufficient).

In arguing Weiss's post-revocation communications are off limits, TPMG cites *Ahmann v. Washington State Department of Transportation*, No. 2:23-cv-140, 2025 WL 790631 (E.D. Wash. Mar. 12, 2025), and *Chinnery v. Kaiser Foundation Health Plan of the Mid-Atlantic States,*

*Inc.* No. 1:23-cv-1110, 2024 WL 3152348 (E.D. Va. June 24, 2024). Answering Br., p. 27 n.13. But unlike here, *Ahmann* was decided on summary judgment after the employee had the opportunity to explore in discovery whether information given to her supervisors could be imputed to the employer. 2025 WL 790631, at **6-7. And unlike here, the *Chinnery* plaintiff sought to include details beyond what she told her employer. 2024 WL 3152348, at *5 n.7; ER-46; Opening Br., p. 17 n.3.

**2. This Court should reject as improper and erroneous TPMG's attempted pivot from notice to sincerity.**

While purporting to dispute only whether Weiss met Title VII's notice prong, TPMG nonetheless tries to conflate notice with sincerity by arguing Weiss failed to notify it of a religious conflict because her initial request "established behavior inconsistent with her professed beliefs" in a manner warranting its follow-on inquiry. Answering Br., pp. 26-33. But whether TPMG was justified to question Weiss's sincerity based on her submissions is not relevant to the question of notice; and even if it was, TPMG's sincerity attacks cannot carry the day at the pleadings stage.

First, to allege notice, the employee need not have given a detailed or even consistent explanation. Rather, *Heller* requires only "enough information" to permit the employer to understand "the existence of a

conflict" between the plaintiff's religious beliefs and the job requirement. *Heller,* 8 F.3d at 1439; *accord Gemini,* 18 Cal. Rptr. 3d at 913.

Ignoring *Heller*, TPMG invokes the non-binding EEOC Compliance Manual. *See* Answering Br., pp. 29-30, 32, 36 (citing U.S. Equal Emp. Opportunity Comm'n, *EEOC Compliance Manual* [Compl. Man.] (2021)). Specifically, it relies in its argument on two Manual sub-sections: the first concerns "the meaning of 'sincerely held'" and explains that evidence of behavior "in a manner markedly inconsistent with the professed belief" is a "factor" which may weigh against sincerity; the second cautions that "an employee who fails to cooperate with an employer's reasonable requestion for verification of the sincerity or religious nature of a professed belief risks losing any subsequent claim." Compl. Man. §§ 12-I(A)(2) ("Sincerely Held"), 12-IV(A)(2) ("Discussion of Request").

Strikingly, however, neither observation has anything to do with notice. Rather, the Manual addresses Title VII's notice standard in a distinct sub-section that, unsurprisingly, cites *Heller*. *See id.* § 12-IV(A)(1) ("Notice of the Conflict Between Religion and Work"). And even then, where a request "lack[s] sufficient detail for the employer to make a final decision," the agency makes clear it can be "sufficient to constitute

a religious accommodation request." *Id.* § 12-IV(A)(2), ex. 32.

Accordingly, courts have found that the EEOC's guidance does not "alter[] the notice requirement in *Heller* . . . at the *prima facie* step." *Kidd v. Univ. Med. Ctr. of S. Nevada*, No. 2:22-cv-01990, 2024 WL 4046249, at *5 (D. Nev. July 2, 2024); *accord Kaino*, 2024 WL 4298212, at *4. And though TPMG attacks *Kidd* and *Kaino* as "outlier[s]," it cites no authority that the EEOC guidance heightens *Heller*'s notice standard. Answering Br., p. 38. Instead, TPMG's cited cases were not decided under *Heller* or on the pleadings, and they observe merely that the employers there could inquire into whether the plaintiff had a sincere religious belief. *Adeyeye*, 721 F.3d at 451; *Dockery v. Maryville Acad.,* 379 F. Supp. 3d 704, 718-19 (N.D. Ill. 2019); *Bushouse v. Local Union 2209, United Auto., Aerospace & Agric. Implement Workers of Am.*, 164 F. Supp. 2d 1066, 1075 (N.D. Ind. 2001); *EEOC v. Papin Enters., Inc.*, No. 6:07-cv-01548, 2009 WL 2256023, at *4 n.11 (M.D. Fla. July 28, 2009). None establish that an employer's inquiry to verify an employee's religious sincerity defeats pleading notice under *Heller*.[5]

[5] Nor does TPMG establish the relevance of sincerity to notice with district court cases it offers in a separate footnote. *See* Answering Br., p. 37 n.18. Rather, its cases either (1) did not dismiss on grounds similar to

Second, even if EEOC's sincerity guidance were somehow germane, Weiss's exemption request did not cast doubt on her sincerity—much less on the pleadings. *See Bazinet v. Beth Israel Lahey Health, Inc.*, 113 F.4th 9, 17 (1st Cir. 2024) (noting religious sincerity "is a proper subject for

---

this case; (2) relied on the plaintiff's failure to establish a bona fide religious conflict with the vaccine mandate at all; (3) involved plaintiffs who gave little to no detail on their beliefs to the employer; or (4) relied on the district court's flawed conclusion here as a floor. *See Harrah v. Lutheran Fam. Servs. of Va., Inc.*, No. 7:23-cv-789, 2025 WL 957523, at *5 (W.D. Va. Mar. 31, 2025) (granting leave to amend for plaintiff to add beliefs against "a vaccine developed using aborted fetal cell lines" or "inexorably alter[ing] his body which was divinely made by God," and the employer previously presumed his beliefs religious); *Medrano v. Kaiser Permanente*, No. 8:23-cv-02501, 2024 WL 3383704, at **3-5 (C.D. Cal. July 10, 2024) (granting motion to dismiss, finding plaintiff's objections not based on bona fide religious beliefs); *Cruz v. Kaiser Found. Hosps.*, No. 1:23-cv-00630, 2025 WL 951099, at **4-6 (D. Haw. Mar. 28, 2025) (same); *Craven v. Shriners Hosps. for Child.*, No. 3:22-cv-01619, 2024 WL 21557, at *2 (D. Or. Jan. 2, 2024) (granting motion to dismiss because plaintiff's allegations were "conclusory" and "[p]laintiff's objection to the COVID-19 vaccine was secular, not religious"); *Tomov v. Micron Tech. Inc.*, No. 1:24-cv-00960, 2024 WL 4806489, at *4 (E.D. Va. Nov. 15, 2024) (plaintiff "stated nothing about his beliefs apart from blanketly asserting [he could not take vaccines] 'because of [his] religion'"); *Mullen v. AstraZeneca Pharms.*, LP, No. 23-cv-3903, 2023 WL 8651411, at *3 (E.D. Pa. Dec. 14, 2023) (plaintiff told employer only that "God will and has protected [him] in the area of covid"); *Andazola v. Permanente*, No. 23-cv-10904, 2024 WL 4581518, at *2 (C.D. Cal. Oct. 23, 2024) (relying on finding that pleadings presented "worse case [than] . . . *Weiss*"). And in one case TPMG cites, the court later "reverse[d] its previous findings" that the plaintiff failed to establish a bona fide religious belief and denied a second motion to dismiss. *Ashcroft*, 2025 WL 1159883, at *6.

discovery"). To show otherwise, TPMG leans on Weiss's submission that she had "never previously declined a vaccine." Answering Br., pp. 29-30. It also argues Weiss "did not provide an answer responsive" to the form's question about why the COVID-19 vaccine was different. *Id.*

But Weiss never indicated she had taken a vaccine in violation of her religious beliefs. "[A]lthough prior inconsistent conduct is relevant to the question of sincerity, an individual's beliefs—or degree of adherence—may change over time." Compl. Man. § 12-I(A)(2). Thus, "newly adopted or inconsistently observed religious practice may nevertheless be sincerely held." *Id.*; *see EEOC v. Ilona of Hungary, Inc.*, 108 F.3d 1569, 1575 (7th Cir. 1997) (holding Yom Kippur leave request sincere even though employee never before sought it); *Cooper v. Oak Rubber Co.*, 15 F.3d 1375, 1379 (6th Cir. 1994) (holding need to observe Sabbath sincere even though employee worked on it once before).

In response to TPMG's probing about why the COVID-19 vaccine was different to her, Weiss clarified it was not. ER-20. Rather, Weiss explained that "during the last 18 months," she had "recommitted to [her] Jewish roots" and "accepted Jesus Christ as the Messiah." *Id.* Read in context with her other answers, Weiss more than plausibly shared that

her beliefs about needle wounds and altering her God-given immunity conflicted with TPMG's vaccine mandate. *See* ER-19-20.[6]

This Court should restore Weiss's failure-to-accommodate claims and, in turn, her failure-to-prevent-discrimination claim.

## II. THIS COURT SHOULD RESTORE THE PRIVACY CLAIMS.

### A. Weiss's privacy claims involve mixed questions of law and fact unsuited for resolution on the pleadings.

In California, a plaintiff states a privacy claim by pleading (1) a legally protected privacy interest, (2) a reasonable expectation of privacy, and (3) a serious invasion of that privacy interest. *Hill*, 865 P.2d at 657. For its part, a defendant can counter by negating one of these elements or proving an affirmative defense that its action "substantively furthers one or more countervailing interests." *Id.* Yet even then, the plaintiff can

[6] TPMG footnotes two other empty sincerity accusations. First, it doubts Weiss for not asserting "objection to medications, generally," yet rejecting substances that "would alter her God-given immunity." Answering Br., p. 30 n.15. But not all medications alter immunity, and regardless, courts do not interrogate the reasonableness of a plaintiff's religious beliefs. *Bolden-Hardge*, 63 F.4th at 1223. Second, TPMG says Weiss's "exemption request closely mirrored phrasing from [internet] sources." Answering Br., p. 30 n.16. But not only does this go beyond the pleadings, the district court explained use of online sources "does not provide a basis to question the sincerity of [Weiss's] belief." ER-65; *accord Bazinet*, 113 F.4th at 17.

rebut any such defense "by showing there are feasible and effective alternatives." *Id.*

Beyond *Twombly*'s plausibility standard, state-law privacy claims involving "mixed questions of law and fact" cannot be decided on the pleadings, unless there is no dispute of any material fact. *Hill*, 865 P.2d. at 657. Pertinently, a plaintiff's reasonable expectation of privacy and its serious invasion are "mixed questions of law and fact." *Id.* And when it comes to affirmative defenses, although the "existence" of a defendant's countervailing interest may be decided as a question of law, "[t]he relative strength of countervailing interests and the feasibility of alternatives present mixed questions of law and fact." *Id.*

TPMG nowhere challenges these standards in its brief. It does, however, say there is a presumption of constitutional validity for privacy invasions relating to public health and the "general thrust of California law" is vaccine mandates do not violate privacy rights. Answering Br., p. 44 (citation omitted). But the presumption it cites from *Love v. State Department of Education*, 240 Cal. Rptr. 3d 861, 871 (Cal. Ct. App. 2018), concerned government action. Regardless and as detailed below, no such

presumption can carry the day on the pleadings here given Weiss's remote employment and TPMG's exemption of thousands.

### B. Weiss plausibly pled TPMG's vaccine mandate violated her state-law right to bodily autonomy.

#### 1. TPMG does not challenge that Weiss had a legally protected privacy interest in declining vaccination.

Weiss pled a well-established privacy interest in alleging that TPMG's vaccine mandate and subsequent denial of her religious exemption violated her right to make medical decisions. *See Borrello v. Respironics Cal., LLC*, No. 23-cv-580, 2024 WL 1496215, at *8 (S.D. Cal. Apr. 5, 2024) (finding that refusing a COVID-19 vaccine is a legally protected privacy interest under *Hill*). And neither the district court nor TPMG contest otherwise. ER-9-10; Answering Br., pp. 43-44.

#### 2. Weiss pled a reasonable expectation of privacy as a fully remote worker.

Again, absent undisputed facts the Court cannot decide the matter of reasonable expectation of privacy on the pleadings. *Hill*, 865 P.2d at 657. Regardless, Weiss sufficiently pled that as a remote administrative employee she had a reasonable expectation of privacy over medical decision-making and bodily autonomy that was not forfeited by accepting her job. ER-47-50; *Pettus v. Cole*, 57 Cal. Rptr. 2d 46, 84-85 (Cal. Ct. App.

1996). In its brief, TPMG argues Weiss cannot plead a reasonable expectation of privacy when it comes to vaccination as a condition of employment. Answering Br., pp. 44-47. Not so.

Quoting *Sexton v. Apple Studios LLC*, 331 Cal. Rptr. 3d 337, 353 (Cal. Ct. App. 2025), TPMG first argues Weiss cannot prevail because its mandate was "objectively reasonable under the circumstances, especially in light of the compelling social interests involved." Answering Br., p. 44. But not only was *Sexton* decided on evidentiary showings, its analysis was rooted in the particulars there of an in-person "group work setting" of television acting. 331 Cal. Rptr. 3d at 354. Indeed, TPMG omits the start of the sentence from its just-quoted *Sexton* excerpt, which says "A plaintiff's expectation of privacy *in a specific context* must be objectively reasonable under the circumstances . . . ." *Id.* at 353 (emphasis added); *see also id.* (observing "[c]ustoms, practices, and physical settings surrounding particular activities may create or inhibit reasonable expectations of privacy"). As *Hill* explains, a plaintiff's expectation will depend on the "particular employment setting." 865 P.2d at 667. For vaccine purposes, Weiss's remote role is a far cry from *Sexton*'s "all actors working on set" circumstances. 331 Cal. Rptr. 3d at 342.

TPMG next argues that "[f]or more than 130 years, California courts have recognized mandatory vaccination is a reasonable restraint on autonomy privacy rights" and adds that the "'general thrust of California law is that reasonable compulsory vaccination schemes do not violate California's privacy right.'" Answering Br., pp. 45-46 (quoting *LA Cnty. Free Found. v. Cnty. of Los Angeles*, No. 22-cv-00787, 2022 WL 18278624, at *4 (C.D. Cal. June 1, 2022)). But five of the six cases it cites involved either children at school—*Abeel v. Clark*, 24 P. 383 (Cal. 1890); *French v. Davidson*, 77 P. 663 (Cal. 1904); *Love*, 240 Cal. Rptr. 3d 861; *Brown v. Smith*, 235 Cal. Rptr. 3d 218 (Cal. Ct. App. 2018)—or in-person work—*Sexton*, 331 Cal. Rptr. 3d 337. And in the sixth, the court allowed the privacy claim. *LA Cnty. Free Found.*, 2022 WL 18278624, at *4.

TPMG finally contends that *Pettus*, which recognized employee expectations of privacy over medical decision-making, is inapplicable. Specifically, TPMG argues its vaccine mandate, with a religious-accommodation mechanism, is distinguishable from the unconditional inpatient alcohol treatment in *Pettus*. Answering Br., p. 46. But *Pettus* recognized the principle that employees retain a reasonable expectation of privacy in medical self-determination. 57 Cal. Rptr. 2d at 84. And

TPMG's attempt to distinguish *Pettus* on the grounds the employee there had no choice makes no distinction at all. By denying accommodation, TPMG forced Weiss into the very dilemma Pettus faced: accept an employer mandate against your medical wishes or be fired.

**3. Weiss pled a serious invasion of privacy in TPMG forcing her to choose between her job and vaccination.**

Whether a serious invasion of privacy has occurred also presents a mixed question of law and fact unsuited for a motion to dismiss. *Hill*, 865 P.2d. at 657. Regardless, this prong in the *Hill* test is "intended simply to screen out intrusions of privacy that are de minimis or insignificant." *Loder v. City of Glendale*, 927 P.2d 1200, 1231 n.22 (Cal. 1997). And being forced to receive a vaccine on pain of job loss plausibly intrudes upon an "intimate personal decision" beyond "de minimus interference." *Borrello,* 2024 WL 1496215, at *9. Given this predicament, Weiss sufficiently pled that TPMG's vaccine mandate was a serious invasion of her privacy.

In response, TPMG first cites authority from this Court that the invasion must be so "highly offensive" as to "constitute an egregious breach of the social norms." Answering Br., p. 48 (quoting *In re Facebook, Inc., Internet Tracking Litig.*, 956 F.3d 589, 601 (9th Cir. 2020) (citation omitted)). But TPMG again cherry-picks its authority's analysis, where

*In re Facebook* went on to allow the claim there based on the Court's insistence that a finding on whether a defendant's actions meet the "highly offensive" test requires a "holistic consideration of factors" unsuited to a motion to dismiss. 956 F.3d at 606.

TMPG next argues its actions could not be a serious invasion of privacy in light of parallel government mandates. Answering Br., p. 48. But TPMG ignores that none of the four mandates it cites in its brief were imposed on remote workers. *See* Answering Br., pp. 5-10. Regardless, to engage in this comparative analysis on the pleadings would still be inappropriate. *See Hill*, 865 P.2d. at 657.[7]

As a third line of argument, TPMG says Weiss's remote status is irrelevant to whether its actions constituted a serious invasion of privacy

[7] In its brief (pages 5-10) and an addendum outside the pleadings, TPMG cites: (1) California's *State Public Health Officer Order*, https://perma.cc/MED6-NG5H (Aug. 5, 2021); (2) U.S. Department of Health and Human Services materials—*Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination*, 86 Fed. Reg. 212, 61555 (Nov. 5, 2021); *External FAQ: CMS Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule*, https://perma.cc/D7M8-AF5N (Jan. 20, 2022); and (3) OSHA's *COVID-19 Vaccination and Testing: Emergency Temporary Standard*, 86 Fed. Reg. 212, 61402 (Nov. 5, 2021). But the first two applied only to workers in healthcare facilities, not the fully remote—AAAB 005-006, 163, 238—and the third did not apply to remote workers and allowed a test-and-mask option—AAAB 009, 026.

and that the Court of Appeal's approval in *Love* of mandatory vaccination against a privacy challenge carries the day. Answering Br., p. 49. But *Love* upheld the government mandate there against a privacy claim because of the state's interest in disease spread at school. 240 Cal. Rptr. 3d at 871. *Love* did not concern a private employer's mandate to a remote worker, much less the "social norms" there—including where, as here, the employer accommodated thousands of others. *See In re Facebook*, 956 F.3d at 606 (requiring "holistic consideration"); *Hill*, 865 P.2d at 657 (holding serious invasion is mixed question of law and fact).

Lastly, TMPG argues that cases Weiss relies on in her opening brief—*Borrello*, 2024 WL 1496215; *Firefighters4Freedom v. City of Los Angeles*, No. B320569, 2023 WL 4101325 (Cal. Ct. App. June 21, 2023); *LA Cnty. Free Found.*, 2022 WL 18278624—are distinguishable. In short, it contends the *Borrello* plaintiff was pro se; *Firefighters4Freedom* is unpublished and relied on state pleading standards; and *LA County Free Foundation* defied *Love*. Answering Br., pp. 50-51.

But the *Borrello* court's nod to the plaintiff's pro se status was not only followed immediately by insistence this did not absolve him from pleading a claim's elements, the court's refusal to dismiss based on the

seriousness of a privacy invasion of the mandatory vaccine there nowhere depended on the plaintiff being pro se. 2024 WL 1496215, at **6, 9. Moreover, although *Firefighters4Freedom* is an unpublished decision under state pleading standards, the court's refusal there to dismiss the seriousness of an invasion of privacy based on a lack of evidence at the pleading stage is notable. 2023 WL 4101325, at *17. Finally, the court in *LA County Free Foundation* did not defy *Love*. Rather, it merely doubted if the Court of Appeal's rational-basis approach there was faithful to the Supreme Court's *Hill* test and, in any event, rightly described *Love* as upholding a "compulsory vaccination scheme for schoolchildren." 2022 WL 18278624, at *4. Again, that is not the situation here.

**4. TPMG's countervailing interest involves mixed questions of law and fact that cannot be decided on the pleadings.**

As noted above, while the existence of a defendant's countervailing interest in invading privacy may be decided as a question of law, "[t]he relative strength of countervailing interests and the feasibility of alternatives present mixed questions of law and fact." *Hill*, 865 P.2d at 657. As described in Weiss's opening brief, therefore, the district court's dismissal must be reversed given its reliance on premature weighing of TPMG's "countervailing interest in protecting public health." ER-9-10;

*Firefighters4Freedom*, 2023 WL 4101325, at **17-18 (declining to dismiss based on strength of countervailing interest); *accord Sheehan v. San Francisco 49ers, Ltd.,* 201 P.3d 472, 475 (Cal. 2009). Regardless, the fact that TPMG accommodated thousands nullifies its argument that public health prohibited accommodating Weiss as a matter of law. *See* ER-40.

In its brief, TPMG first says courts "often conduct" an analysis of a defendant's countervailing interests, "especially when the interests are clear." Answering Br., pp. 51-52. In support, it cites *Schmidt v. City of Pasadena*, No. 2:21-cv-08769, 2024 WL 1640913 (C.D. Cal. Mar. 21, 2024), and *Burcham v. City of Los Angeles*, 562 F. Supp. 3d 694 (C.D. Cal. 2022). But *Schmidt* concerned only a police employee's right to informational privacy over his already self-disclosed vaccination status in the context of a mask-and-test alternative. 2024 WL 1640913, at **3-5, 25. And *Burcham* concerned an ordinance for police officers responsible for public safety who otherwise agreed to invasive drug testing. 562 F. Supp. 3d at 704-05, n.3. Neither case involved a remote worker at a private company.

TPMG next argues it "disputes the notion that 'a leading American health care provider' (ER 036, ¶ 3) cannot utilize public health as a

rationale for adopting a facially neutral employment policy requiring vaccination when its employees and physicians were on the frontlines treating COVID-positive patients during a global pandemic." Answering Br., p. 52-53. In support, it cites *United KP Freedom Alliance v. Kaiser Permanente*, No. 3:21-cv-07894, 2021 WL 5370951 (N.D. Cal. No. 18, 2021). And although TPMG offers no legal support, it further says Weiss's remote status "does not change" things. Answering Br., pp. 53-54.

No matter the merits of TPMG's policy in otherwise addressing public health, however, Weiss worked remotely and was not "on the frontlines treating COVID-positive patients." Answering Br., p. 52; ER-48-49. Moreover, the ruling in *United KP Freedom Alliance* was based on a preliminary-injunction record and concerns over communicable disease, not a solitary remote worker's complaint. 2021 WL 5370951, at **1-2. Plus, the seriousness of TPMG's interests cannot be considered in a vacuum, particularly where it granted thousands of exemptions to other employees—including those involved in patient care. ER-40.[8]

[8] TPMG spends the first part of its brief on the suffering caused by the COVID-19 pandemic and the government's response. *See* Answering Br., pp. 4-10. No matter the gravity of the situation, however, the distinct issues of Weiss's ability to plead a Title VII or FEHA claim over TPMG's

Lastly, TPMG says its position is justified since other courts have upheld COVID-19 vaccine mandates. Answering Br., p. 53. Yet the cases it cites do not concern pleadings-based dismissals of state-law privacy claims by remote workers for private employers, but substantive due-process claims against governmental actors, on a developed record, and no mention of remote status. *See Mass. Corr. Officers Federated Union v. Baker*, 567 F. Supp. 3d 315, 324-27 (D. Mass. 2021) (preliminary-injunction challenge to government mandate on due-process grounds by corrections officers)*; Bauer v. Summey*, 568 F. Supp. 3d 573, 589-96 (D.S.C. 2021) (preliminary-injunction challenge to government mandate on due-process grounds by public workers); *Maniscalco v. N.Y. City Dep't of Educ.*, 563 F. Supp. 3d 33, 38-41 (E.D.N.Y. 2021) (preliminary-injunction challenge on due-process grounds by public-school teachers to city mandate for in-person instruction); *America's Frontline Doctors v. Wilcox*, No. 5:21-cv-01243, 2021 WL 4546923, at **4-5 (C.D. Cal. July 30, 2021) (preliminary-injunction challenge under Fourteenth Amendment by students to public-university campus mandate).

---

revoking her religious accommodation under a policy it provided to that end or for violating her privacy rights as a remote worker remain.

### C. Weiss plausibly pled TPMG's vaccine mandate violated her state-law right to informational privacy.

As detailed in her opening brief, Weiss's "medical history and information . . . is protected under the right to privacy," both generally and in her "particular employment setting" as a remote worker with no contact with others. *Love*, 240 Cal. Rptr. 3d at 871; *Hill*, 865 P.2d at 667; Opening Br., pp. 59-60. And although the district court rejected Weiss's informational privacy claim as unpled, her privacy count incorporates facts to support it. She pled, *inter alia*, that TPMG's interrogation was an "arbitrary and impersonal inquisitorial process" that asked if she put "medications of any kind" into her body before disclosing this information to a third party. ER-36, 43-44. At the pleadings stage, this demand for "medical or religious information to obtain an exemption" cannot be deemed "de minimus interference in an intimate personal decision." *Borrello*, 2024 WL 1496215, at **8-9.

In its brief, TMPG cites *Gerrison v. Warner Brothers Entertainment Inc.*, 116 F. Supp. 3d 1104 (C.D. Cal. 2015), to say Weiss's informational claim remains unpled. At a minimum, however, the court in *Gerrison* allowed the plaintiff to amend her claim at least once. *Id.* at 1126, 1148. And since leave to amend is given with "extreme liberality," and Weiss

has yet to amend her privacy claim, if necessary she should at least be given that opportunity on remand. *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (citation omitted).

Alternatively, TPMG argues that Weiss had no reasonable expectation of informational privacy when seeking an exemption; its inquiry was not a serious invasion based on social norms; and public health justified its actions. Answering Br., pp. 55-57. But not only does a privacy expectation present a mixed question of law and fact—*Hill*, 865 P.2d at 657—Weiss's vaccine objection does not insulate TPMG's inquiry from scrutiny. *Love*, 240 Cal.Rptr.3d at 871 (affirming student's privacy interest in vaccine disclosure for enrollment). Likewise, the seriousness of insisting Weiss "disclose certain medical or religious information" to be accommodated—including comparisons to other employers and their approaches—is "essentially a factual question inappropriate at this stage." *Borrello*, 2024 WL 1496215, *9. Finally, not only is TPMG's purported countervailing interest similarly unsuitable for resolution on the pleadings—*Hill*, 865 P.2d at 657—the sole vaccine case it offers to the contrary involved compliance with applicable government orders, not

mere internal use. *See* Answering Br., at 57 (citing *Miller v. Farris*, No. 21-cv-09551, 2023 WL 4680370 (C.D. Cal. June 14, 2023)).

## CONCLUSION

Mimi Weiss adequately pled that TPMG violated Title VII, FEHA, and state privacy law. This Court should reverse.[9]

Date: June 26, 2025

Respectfully submitted,

STANFORD LAW SCHOOL
RELIGIOUS LIBERTY CLINIC

By: */s/ James A. Sonne*

*Attorneys for Appellant*
Mimi Weiss

[9] Special thanks to Stanford Clinic students Harrison Hurt, Emily Pan, Andrew Thompson, and Andrew Nahom for their help preparing this brief.

## CERTIFICATE OF COMPLIANCE

The foregoing **Appellant's Reply Brief** complies with the type-volume limitation of Cir. R. 32-1, because it contains no more than 7,000 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief contains a total of **6,999** words. This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6), and was prepared in 14-point Century Schoolbook, a proportionally spaced typeface, using Microsoft Word. Finally, the electronic brief was subject to a virus scan and no virus was detected prior to its submission.

Dated: June 26, 2025

*/s/ James A. Sonne*
James A. Sonne
*Attorney for Appellant*
Mimi Weiss

## CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I electronically filed the foregoing document, **Appellant's Reply Brief**, with the United States Court of Appeals for the Ninth Circuit, using the ACMS system. I further certify that all parties, through their counsel of record, are registered as ACMS filers and that they will be simultaneously served via Notice of Docketing Activity (NDA).

Dated: June 26, 2025

*/s/ James A. Sonne*
James A. Sonne
*Attorney for Appellant*
Mimi Weiss