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 OPENING BRIEF

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INTRODUCTION

This case concerns the termination of a remote worker whose employer refused her an available religious exemption to its COVID-19 vaccine mandate based on the employee's stated beliefs as a Christian Jew and her objection on privacy grounds to sharing certain medical information. Accordingly, the dispute raises important questions of religious freedom, employee privacy, and employer power under Title VII of the Civil Rights Act, California's Fair Employment and Housing Act ("FEHA"), and the California Constitution. But rather than allowing the plaintiff to pursue her claims further, the district court dismissed on the pleadings. Because that ruling misapplies the lenient pleading standard and makes premature findings of fact, this Court must reverse.

Mimi Weiss is an observant Christian Jew who worked for The Permanente Medical Group ("TPMG") for more than twenty years. Although her faith journey is a long one, Weiss recommitted to her Jewish roots and accepted Jesus Christ as the Messiah in early 2021 amid the challenges of the pandemic. From these commitments, Weiss believes, among other things, that teachings on bodily integrity and natural immunity from the Torah and New Testament—including

Deuteronomy and Corinthians—require her to treat her body as a "temple of the Holy Spirit" and, in turn, forbid injecting it with foreign substances that alter her immune system.

Later in 2021, TPMG began requiring employees to get a COVID-19 vaccine. Through a third-party agency to which it outsourced accommodations, TPMG first granted Weiss, who was then working remotely, an exemption based on her detailed account of religious concerns. But a month later, the agency changed its tune and insisted—with no explanation particular to her prior submission—that Weiss elaborate on her beliefs, explain whether she takes other medications, and, if so, how the COVID-19 vaccine differs. After Weiss further described her religious beliefs yet objected on privacy grounds to the medications inquiry, TPMG revoked her exemption for failing to meet the "standards necessary." She then sent upper management even more details on her religious beliefs, but TPMG refused to engage. It thereafter fired Weiss for refusing the vaccine rather than abandoning her faith.

Weiss sued. She alleged, among other claims and as most relevant here, (1) violations of Title VII and FEHA for TPMG's terminating her in the face of her need for religious accommodation; and (2) violations of her

rights to privacy under Article I, Section 1 of the California Constitution. Contrary to the lower court's ruling, Weiss stated actionable claims.

First, to plead a claim under Title VII or FEHA for the failure to accommodate a worker's religious beliefs, a plaintiff need only allege that she suffered an adverse action because of a disclosed or suspected conflict between a job requirement and her sincerely held religious beliefs. *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 775 (2015); Cal. Gov't Code § 12940(*l*)(1). Further, this Court has stressed, "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).

Although the lower court accepted the sincerity of Weiss's beliefs and their religious nature, it nonetheless dismissed her Title VII and FEHA claims. In short, the court found that Weiss's stated understanding of biblical teachings about the body gave insufficient notice to TPMG of a conflict with its vaccine mandate. But this approach violates longstanding precedent against parsing or second-guessing a plaintiff's understanding of her faith—an understanding for which Weiss was willing to lose her job, and one that TPMG had already accepted as causing a conflict with the vaccine in granting her the initial exemption.

See Thomas v. Rev. Bd. of Ind. Emp. Sec. Div., 450 U.S. 707, 715 (1981). Worse yet, the court's ruling was, in effect, a finding of fact at a stage of litigation where a plaintiff's burden is especially light. It's no wonder that the district court's dismissal likewise conflicts with reversals in vaccine-mandate cases on similar facts from other circuits across the country.

Second, a plaintiff pleads a claim for a violation of privacy rights under the California Constitution where she alleges that: (1) she had a protected privacy interest in bodily autonomy or information; (2) she had a reasonable expectation of privacy; and (3) the defendant's actions were a serious invasion of privacy. *Hill v. Nat'l Collegiate Athletic Ass'n*, 865 P.2d 633, 654-55 (Cal. 1994). Notably, California courts recognize as an autonomy interest the right to refuse a vaccine, while the right to informational privacy protects against disclosure of medical information. And courts have further held that deciding whether a plaintiff had a reasonable expectation of privacy or the defendant seriously invaded it are mixed questions of law and fact unsuitable to a motion to dismiss.

In rejecting her privacy claims, the district court nowhere disputed that Weiss alleged a protected autonomy interest in which she had a reasonable expectation of privacy. It found, however, that TPMG's

actions were justified by public health. But not only did the court misapply government-entity case law to the private-employment context, its evaluation of the public-health implications of exempting Weiss—a fully remote worker with no outside contact who sought an accommodation that the company and its affiliates gave to thousands of other workers, including employees in the patient-care setting—are likewise improper at the pleadings stage.[1]

This Court should reverse and remand for the case to proceed. Alternatively, it should reverse and remand to allow Weiss to cure any supposed pleading defect by amendment.

JURISDICTIONAL STATEMENT

Weiss sued TPMG in the United States District Court for the Northern District of California, alleging claims under Title VII, 42 U.S.C. § 2000e-2; FEHA, Cal. Gov't Code § 12940; and Article I, Section 1 of the California Constitution. The district court had original jurisdiction over

[1] The district court further rejected Weiss's informational privacy claim because the privacy count in her complaint does not cite it. But not only did that count incorporate, and the complaint elsewhere state, facts sufficient to support an informational claim, Weiss stands ready to amend that claim were the Court to deem it necessary.

the federal claims under 28 U.S.C. §§ 1331 and 1343, and supplemental jurisdiction over the state-law claims under 28 U.S.C. § 1367.

The district court granted TPMG's motion to dismiss and entered a final judgment in its favor on September 30, 2024. ER-4. Weiss filed a timely notice of appeal on October 25, 2024. ER-68-70. This Court therefore has jurisdiction over this appeal under 28 U.S.C. § 1291.

STATUTORY AND CONSTITUTIONAL AUTHORITIES

All relevant statutory and constitutional authorities are set out in the Addendum to this brief.

STATEMENT OF ISSUES PRESENTED

1. Whether the district court erred in dismissing Weiss's religious-accommodation claims on the ground that she failed to plausibly allege that she notified TPMG of a conflict between her sincere religious beliefs as a Christian Jew on bodily integrity and natural immunity and TPMG's mandate that she be injected with the COVID-19 vaccine or be fired.

2. Whether the district court erred in dismissing Weiss's claim for violation of her right to autonomy privacy on the ground that public-health concerns justified TPMG's refusal to grant Weiss an available exemption to its COVID-19 vaccine mandate in her remote-work position.

3. Whether the district court erred in dismissing Weiss's claim for violation of her right to informational privacy on the ground that her right-to-privacy legal count, which incorporated the underlying facts that were pled before it, failed to cite that category of privacy.

4. Whether the district court erred in refusing to permit Weiss to further amend her complaint, including on claims for violations of her right to privacy that she alleged in a complaint only once.

STATEMENT OF THE CASE[2]

A. Mimi Weiss is an observant Christian Jew who believes in perfection of the body as a "temple of the Holy Spirit."

Mimi Weiss is a Christian Jew whose faith informs every facet of her life. ER-30, 41. As such, she draws on both Jewish teachings and Christian principles. *See* ER-41-44.

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[2] This Court accepts as true and construes in the light most favorable to the plaintiff all well-pled factual allegations in the complaint. *Karasek v. Regents of Univ. of Cal.*, 956 F.3d 1093, 1104 (9th Cir. 2020). Accordingly, the bulk of the facts described herein, which are taken from the operative complaint (ER-35-57), must be accepted as true.

Moreover, to the extent this brief cites materials beyond the four corners of the operative complaint, these may be considered where the complaint relies on them and there is no question as to their authenticity. *See Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006). This includes the documents reflecting Weiss's accommodation request at ER-18-34.

In 2016, Weiss's religious journey took a significant turn after she attended a presentation by a Messianic Jew on the relationship between diet, health, and faith. ER-41. Inspired, Weiss stopped eating meat, adopted a mostly raw diet, and sought to avoid chemicals and foreign substances. *See* ER-41-42.

Amidst the isolation of the pandemic, Weiss struggled with deep feelings of loneliness and depression. ER-44. But she found solace in her faith, turning to God for comfort. *Id.* During this period, Weiss strengthened all the more her connection to her Jewish heritage, and in early 2021, she had a further conversion and "accepted Jesus Christ as the Messiah." *Id.*

Accordingly, Weiss believes both as a Jew in the "natural healing powers bestowed upon the human body" by God and as a Christian that her body is a "temple[] of the Holy Spirit" that dwells in her as a gift. ER-42. In her view, Weiss is "commanded by God in both the Torah and New Testament not to interfere with God's perfection." ER-30; *see also* ER-42. Weiss's faith as a Christian Jew therefore forbids her from introducing non-curative foreign materials into her body, as that would "represent a defilement of [her] body, blood, and soul." *Id.*

B. In 2021, Weiss is also a veteran administrative employee of TPMG who works there on a fully remote basis.

Weiss worked for more than twenty years for The Permanente Medical Group ("TPMG"). ER-39. TPMG is a regional entity of Kaiser Permanente ("Kaiser"), one of the nation's largest healthcare providers. ER-49.

While at TPMG, Weiss served in several administrative roles. ER-39. Starting in 2020, she worked as a Senior Managerial Consultant, where she managed a portfolio of health-engagement consulting projects in Northern California. *Id.* Throughout her employment, Weiss received exemplary performance reviews. *Id.* She loved her career. ER-47.

At the time of the present dispute, Weiss's position was fully remote. ER-40. Accordingly, Weiss had no in-person contact with staff, patients, or anyone else through her job duties. *Id.*

C. In August 2021, TPMG mandates that all employees must get a COVID-19 vaccine. The company allows for religious exemptions but outsources the review process.

In August 2021, TPMG issued a COVID-19 vaccine mandate for all of its employees—and without regard to whether the employee worked on-site or remotely. ER-40. By the mandate's terms, employees had until

the end of the following month to either obtain a COVID-19 vaccine, secure an approved exemption, or face termination. *Id.*

Religious exemptions were among the types of exemptions that TPMG recognized for purposes of relief from the COVID-19 vaccine. *See* ER-41; *see also* ER-18-20. During the relevant time, TPMG and the other entities that made up Kaiser granted religious exemptions from the vaccine to more than 10,000 employees across a variety of job categories—including in the hospital setting. ER-36.

Notably, in reviewing requests for religious exemptions, TPMG did not handle the process directly but outsourced it to a third party—Shaw HR Consulting. ER-36, 43. Accordingly, TPMG insulated itself from dealing with religious-exemption requests, and employees were told no one at TPMG could discuss the matter with them. ER-43. Given its outside status, the number of requests, and TPMG's command that exemptions had to be secured within a few weeks, however, Shaw HR lacked the ability to assess each situation and could do little more than conduct keyword searches, issue stock follow-up questions, and decide the matter of a conflict on generic criteria. *See id.*

D. Weiss makes an exemption request, detailing her beliefs on vaccines as a Christian Jew and citing the Bible.

Within days of TPMG's issuance of the vaccine mandate, Weiss submitted a request for the religious exemption the company offered. ER-41. In her request, Weiss articulated her religious beliefs as a Christian Jew, citing passages from the Torah and New Testament that inform her conviction against injecting foreign materials that could alter her God-given immune system:

> 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 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 [sic] need to inject a man-made substance in an effort to "improve" my God given abilities.

ER-42; *see also* ER-18-20.

Elsewhere on the accommodation request form, Weiss was asked whether she had previously declined a vaccine and, if not, how the COVID-19 vaccine is different. ER-20, 44. Weiss replied that she had not before declined a vaccine, but further shared her recent deepening religious commitments and conversion:

> 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.

ER-44.

E. TPMG approves Weiss's exemption, with no condition she would need to provide further information on her religious beliefs.

On August 30, 2021, TPMG notified Weiss that her exemption request was "**APPROVED**." ER-23 (emphasis in original); *see also* ER-41. And while the notice went on to say that "[t]his approval is provisional" and "valid until further notice," nowhere did the notice suggest any further inquiry into the sincerity of Weiss's beliefs, their religious nature, or their conflict with the vaccine. ER-23.

F. A few weeks later, TPMG demands, in a form notice that shares no concerns particular to her, that Weiss provide further information on her beliefs and medical history.

On September 21, 2021, TPMG notified employees it would be conducting an additional review of exemption requests. ER-41; *see also* ER-24-27. TPMG cited concerns about boilerplate language from the internet and "chat groups in which Kaiser Permanente employees have been exchanging strategies for avoiding the vaccine mandate and distributing language and phrases that seem to be designed to create the appearance of a legitimate religious exemption instead of actually being based on a sincerely held religious belief." ER-25-26.

On October 21, 2021, TPMG wrote to Weiss that "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." ER-32, 44. At no point, however, did TPMG explain how it thought Weiss's prior submission was lacking, and nowhere did it accuse her of submitting contrived boilerplate language.

Nor did TPMG clarify in its follow-up inquiry the detail required of Weiss in answering the additional questions. Rather, TPMG asked only

that responses be "in your own words" and "[i]f 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." ER-32. And although TPMG asked Weiss to answer within five days, it indicated that in the event of a failure to "provide complete information," the company would not necessarily deny the exemption but only that it would decide "based on the information [it] ha[d] obtained to date" and "may" deny the request. *Id.*

G. Weiss objects on privacy grounds to questions about her medical history, but both reiterates and supplements her religious reasons for needing a vaccine exemption.

Turning to the additional questions, TPMG asked three questions about Weiss's religious faith and two about her medical history. ER-30-31, 44. The three religion questions and answers are as follows:

> Q: "What else besides the COVID-19 vaccine do you refuse to put in your body as a result of your religious belief?"
>
> A: "Any chemicals/substances that would be unclean as guidance from my Creator."
>
> Q: "Have you put this belief into practice in any other areas of your life?"
>
> A: "Yes, my religious beliefs inform all meaning and purpose in my life."

> Q: "Why does your religious belief prevent you from receiving the COVID-19 vaccination but not from taking other medications?"
>
> A: "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."

ER-30-31.

As for the medical questions, TPMG first asked, "Do you currently take or have you ever taken medications of any kind (over the counter or prescription) as an adult?" while adding it was not asking for the name or reason for such medications. *Id.* TPMG then asked, "When is the last time you took such medicine? Is the COVID-19 vaccine different from these medicines? If so, how?" ER-31. To this line of questions, however, Weiss objected that her "medical information and history is protected, and private" and, therefore, she "will not answer questions about medicines that [she] may or may not have taken." ER-30-31.

In closing its follow-up inquiry, TPMG asked Weiss to resubmit her accommodation request in her "own words without using template or stock language from the internet or other sources." ER-31. TPMG then invited Weiss to share "additional information [she] would like to submit

in support of [her] request for exemption." *Id.* And although she did not write an answer to the first question in the form's immediate space below, Weiss accepted the invitation to provide more information by thanking TPMG for accommodating her and saying "kindly I would like to reiterate" from the prior—and approved—detailed submission that "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." ER-30. Weiss added that she was "unclear of the legal relevance (Title VII)" of TPMG's additional questions to her "already approved religious exemption," but offered brief answers in a "desire to be considerate." *Id.*

H. Without explanation, TPMG revokes Weiss's exemption.

TPMG revoked Weiss's religious exemption on November 30, 2021. ER-41, 45. In its notice, TPMG stated, "it has been determined that your request does not meet the standards necessary for granting an exemption from obtaining any COVID-19 vaccine." ER-45. TPMG, however, did not clarify what the "standards necessary" were or in what way Weiss failed to meet them. *Id.* TPMG also never said it lacked sufficient information about her religious objection to process her religious-exemption request.

I. TPMG refuses an interactive process or path to appeal.

After TPMG revoked her exemption, Weiss contacted her manager who directed her to the department director. ER-46. Weiss asked about an appeal, but the director said she knew of no such process. *Id.* The director added that TPMG had outsourced things to Shaw HR, and that the latter's decisions were the company's final word. *Id.*; *see also* ER-43.

Weiss also reached out to two Associate Executive Directors at TPMG to explain her situation and ask for help. ER-46. In these communications, Weiss provided yet another detailed explanation of her religious objections to the vaccine. *Id.*[3]

Despite Weiss's multiple efforts to contact TPMG, the company refused to engage in any in-person, telephone, or video-conference

[3] While Weiss believes she has submitted more than enough facts in her operative complaint to survive a motion to dimiss, were amendment deemed necessary, Weiss could elaborate on the paragraph in her complaint that incorporates her communications with the Associate Executive Directors. There, she explained that "[t]his is truly the most difficult situation I've ever encountered as it creates direct opposition to the love of my work with KP and the very fabric of my being." She added, "[m]y faith in God and religious beliefs are intrinsic to who I am . . . I do love KP and my work, however, the 'choice' KP is presenting does not exist." *See generally Marder*, 450 F.3d at 448 (allowing consideration of material on which a complaint necessarily relied).

discussion with her about her religious exemption request or provide her the opportunity to appeal the decision. *Id.*

Had TPMG engaged Weiss, she would have added, at the very least, "that her decision to reject the vaccine was an answer to prayer, and she was confident and joyful in God's leading in her life. She would have told them she did not dare disobey the will of God." ER-45.

J. TPMG fires Weiss for refusing the COVID-19 vaccine.

TPMG fired Weiss on January 10, 2022, effective immediately, for failing to get a vaccine. ER-47. The termination caused Weiss emotional, physical, and financial hardship, and, unable to find new employment, she has since relocated to Florida. *Id.*

K. Weiss sues, but the district court dismisses her claims.

Weiss filed suit on July 13, 2023. ER-72. In a first amended complaint, she alleged, among other claims not relevant here, that TPMG violated Title VII and FEHA in firing her rather than accommodating her religious objections to its vaccine mandate. ER-5. TPMG answered and then filed a motion for judgment on the pleadings, which the district court granted with leave to amend. ER-58-67, 79. In the operative Second Amended Complaint, Weiss sought to cure and further challenged as violations of her right to privacy under Article I, Section 1 of the

California Constitution TPMG's vaccine mandate and inquiry into her medical and religious history. ER-47-56.

On September 30, 2024, the district court granted TPMG's motion to dismiss the Second Amended Complaint without leave to amend—including on the privacy claims it had raised for the first time. ER-4-12.

Regarding Weiss's failure-to-accommodate claims, the district court accepted the sincerity and religious nature of her objections to the COVID-19 vaccine. *See* ER-61-62 (rejecting TMPG's argument that "Weiss fails to aver a viable religious belief"). But the court found that, in its view, Weiss "failed to aver plausibly that she adequately informed TPMG of the conflict between her religious beliefs and the Policy." ER-65 (incorporated by ER-11-12). Specifically, the court found that Weiss's initial request—which TPMG had granted—was "unclear, generic, and vague" and "provided little basis for TPMG to evaluate the extent of her religious beliefs' potential conflict with [its vaccine] Policy." ER-11 (quoting ER-65). Moreover, the court noted that TPMG saw the need to clarify through its follow-up inquiry and Weiss failed to provide that clarity. *Id.*

On Weiss's privacy claims, the court first found that she failed to establish a right to informational privacy. ER-10. In support, the court cited the Second Amended Complaint's privacy "cause of action" section but not the facts preceding it. *See id.* Turning then to Weiss's right to autonomy privacy, the court did not contest that the vaccine mandate implicated that right. *See id.* But the court found Weiss failed to distinguish public-health cases "involving public institutions" and therefore "failed both to allege a serious invasion of her right to bodily autonomy and to rebut TPMG's countervailing interest in protecting public health." *Id.*

This appeal follows.

SUMMARY OF THE ARGUMENT

This Court reviews the dismissal of a complaint under Rule 12(b)(6) de novo and affirms such dismissal only when "the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." *Hartmann v. Cal. Dep't of Corr. & Rehab.*, 707 F.3d 1114, 1121-22 (9th Cir. 2013) (internal quotation marks omitted). Since Weiss alleged that TPMG fired her because of a disclosed conflict between her sincere religious beliefs and its vaccine mandate, Weiss pled claims under

Title VII and FEHA for religious discrimination and non-accommodation. Moreover, Weiss pled claims for violation of her state-law rights to autonomy and informational privacy, where she alleged that TPMG insisted on the pain of termination that she be injected with the vaccine and conditioned any exception thereto on her disclosure of personal medical and religious information. This Court should reverse.

First, a plaintiff makes a claim under Title VII and FEHA where she alleges that she suffered an adverse action because of a disclosed conflict between her religious beliefs and a job requirement. Here, Weiss pled that TPMG fired her for violating its COVID-19 vaccine mandate to which she had objected based on her biblical and revealed beliefs as a Christian Jew—which deepened in profound and pivotal ways amid the pandemic—that require her to treat her body as a "temple of the Holy Spirit" and forbid substances that would alter her God-given immunity, including the vaccine. This is more than enough to survive dismissal, particularly where "the burden to allege a conflict with religious beliefs is fairly minimal" and TPMG in fact previously accommodated Weiss based on her stated objections. *Bolden-Hardge*, 63 F.4th at 1223.

To the district court, Weiss's explanation of the religious conflict was inadequate because, in its view, her current, comprehensive, and biblically cited beliefs in maintaining her body as a "temple of the Holy Spirit" against injecting foreign substances, including the COVID-19 vaccine, failed to give TPMG enough information to trigger its legal duty to accommodate. But not only does this improperly parse and second-guess Weiss's understanding of her faith in violation of precedent from this and the Supreme Court—and at the pleadings stage, no less—it conflicts with the holdings of other circuits in similar cases.

Second, to make out a claim under the state constitution's privacy provision—which is famously broad—a plaintiff must allege a privacy interest in bodily autonomy or information in which she had a reasonable expectation of privacy that the defendant seriously invaded. *Hill*, 865 P.2d at 654-55. Here, Weiss's interests in refusing the vaccine and guarding her personal history are protected by law. Plus, not only did Weiss allege reasonable privacy expectations in medical decisions and information, and that TPMG unduly pressured her on these matters, determinations of a reasonable expectation of privacy and their invasion are mixed questions of law and fact unsuitable to a motion to dismiss.

The district court rejected Weiss's privacy claims because, in its view, public-health concerns both rendered TPMG's invasion of her privacy not serious enough and justified its actions. But the court's approach depends on improper fact-finding at the pleadings stage; indeed, the defendant's supposed interests are a defense, not part of the plaintiff's claim. Moreover, not only does California privacy law make a distinction between public and private scenarios, the district court's application of public-health case law is inapt to the matter of exempting Weiss—a fully remote worker who sought an accommodation that the company gave to other workers, including in the patient-care setting.

Finally, were this Court to conclude that the complaint is defective in alleging any of Weiss's claims—including the privacy claims, which she raised only once—it should at least reverse and remand to permit her the chance to cure any defect.

STANDARD OF REVIEW

This Court reviews de novo a district court's dismissal of an action for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Starr v. Baca*, 652 F.3d 1202, 1205 (9th Cir. 2011). In this de novo review, the Court "accept[s] the complaint's well-pleaded factual allegations as

true, and construe[s] all inferences in the plaintiff's favor." *Ariz. Students' Ass'n v. Ariz. Bd. of Regents*, 824 F.3d 858, 864 (9th Cir. 2016).

Dismissal for failure to state a claim is disfavored. *Gilligan v. Jamco Dev. Corp.*, 108 F.3d 246, 249 (9th Cir. 1997). Rather, a dismissal is affirmed "only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." *Hartmann*, 707 F.3d at 1122 (internal quotation marks omitted). That is, this Court determines whether the complaint pled sufficient facts to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

A plaintiff does not have to allege specific facts establishing a prima facie case of discrimination in her complaint. In *Swierkiewicz v. Sorema*, the Supreme Court announced this rule, clarifying that the prima facie case is "an evidentiary standard, not a pleading requirement." 534 U.S. 506, 510 (2002). Given that "the prima facie case operates as a flexible evidentiary standard, it should not be transposed into a rigid pleading standard for discrimination cases." *Id.* at 512.

Finally, this Court reviews a district court's decision to deny leave to amend for abuse of discretion. *Lopez v. Smith*, 203 F.3d 1122, 1130

(9th Cir. 2000). Notably, however, "[d]ismissal without leave to amend is improper unless it is clear, upon de novo review, that the complaint could not be saved by any amendment." *Polich v. Burlington N., Inc.*, 942 F.2d 1467, 1472 (9th Cir. 1991). After all, Rule 15(a) "provides that a trial court shall grant leave to amend freely 'when justice so requires,' [and t]he Supreme Court has stated that 'this mandate is to be heeded.'" *Lopez*, 203 F.3d at 1130 (first quoting Fed. R. Civ. P. 15(a); and then quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

ARGUMENT

I. THIS COURT SHOULD RESTORE WEISS'S CLAIMS AGAINST TPMG FOR RELIGIOUS DISCRIMINATION AND NON-ACCOMMODATION UNDER TITLE VII AND FEHA.

A. Absent undue hardship, Title VII and FEHA outlaw as a form of discrimination an employer's termination of an employee in need of religious accommodation.

Title VII and FEHA forbid religious discrimination in employment. 42 U.S.C. § 2000e-2(a)(1); Cal. Gov't Code § 12940. To that end, each law further requires employers to accommodate a worker's religious beliefs unless the employer can prove that doing so would impose an undue hardship on its business. *Bolden-Hardge*, 63 F.4th at 1222.

In analyzing an employee's claim against her employer under Title VII or FEHA for failing to accommodate her religious beliefs, courts use

a burden-shifting framework. *Id.* First, the employee must establish a prima facie case of failure to accommodate. *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1438 (9th Cir. 1993). Second, and almost always after the pleadings stage, once the employee makes out a prima facie case the burden shifts to the employer to show "it initiated good faith efforts to accommodate reasonably the employee's religious practices or that it could not [do so] without undue hardship." *Tiano v. Dillard Dept. Stores, Inc.*, 139 F.3d 679, 681 (9th Cir. 1998); *see also Opuku-Boateng v. California*, 95 F.3d 1461, 1467 (9th Cir. 1996) (describing burden-shifting); Cal. Gov't Code § 12940(*l*)(1) (same for FEHA).[4]

At the pleadings stage, a plaintiff can make out a prima facie case by plausibly alleging that: (1) she holds a bona fide religious belief that conflicted with an employment requirement; (2) she notified her employer of the belief and conflict; and (3) the employer took adverse

[4] Although Title VII and FEHA are phrased differently, the "objectives and overriding public policy purposes of the two acts are identical." *Beyda v. City of L.A.*, 76 Cal. Rptr. 2d 547, 550 (Cal. Ct. App. 1998). Where analogous, therefore, courts apply the same framework to claims under either statute. *Bolden-Hardge*, 63 F.4th at 1223 n.3.

action because of her inability to fulfill the job requirement. *Heller*, 8 F.3d at 1438; *Twombly*, 550 U.S. at 570.

Notably, a plaintiff's religious beliefs need only be sincere to be protected; courts may not examine their truth or reasonableness, or whether the employee rightly understood or articulated her faith. *See Thomas*, 450 U.S. at 716 (stressing limits of judicial review of religious conflicts). As the Supreme Court urged in *Thomas*, "it is not for us to say" whether the line drawn by a religious claimant is an "unreasonable one"; rather, courts consider only whether it arises from an "honest conviction." *Id.* at 715-16. Moreover, judges should not "dissect religious beliefs" on the ground that the claimant failed to "articulate[] [them] with the clarity and precision that a more sophisticated person might employ." *Id.* at 715.

B. To plead a failure-to-accommodate case, a plaintiff must only plausibly allege that she notified her employer of a conflict between her faith and a job requirement.

For a plaintiff to satisfy the second prima facie case element that she notified her employer of a conflict—the only ground on which the district court dismissed Weiss's Title VII and FEHA claims—an employee need only provide "enough information about [her] religious needs 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. "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. If courts may not make such an inquiry, then neither should employers." *Id.* (citations omitted). As this Court recently instructed, the burden at the pleadings stage "to allege a conflict with religious beliefs is fairly minimal." *Bolden-Hardge*, 63 F.4th at 1223.

Under FEHA, California courts also follow *Heller* in placing a minimal "information" burden on the employee about her beliefs. In *California Fair Employment & Housing Commission v. Gemini Aluminum Corp.*, the Court of Appeal explained, "[n]otice to the employer does not require a complex explanation. The employee needs only to cite a religious connection." 18 Cal. Rptr. 3d 906, 913 (Cal. Ct. App. 2004) (citing *Heller*, 8 F.3d at 1439).

Heller's liberal notice-of-conflict requirement mirrors other circuits. As the Seventh Circuit urged in *Adeyeye v. Heartland Sweeteners, LLC*, "Title VII is a remedial statute that we construe liberally in favor of employee protection." 721 F.3d 444, 450 (7th Cir. 2013). Accordingly, the

court there observed that an employee must only "call[] the religious observance or practice to [her] employer's attention," and that it "would certainly be clear enough" for her to "say in so many words, 'I need to take unpaid leave to comply with a religious duty.'" *Id.* at 449-50.

Similarly relying on the low notice threshold, the Eighth Circuit held in *Ollis v. HearthStone Homes, Inc.*, that an employee expressing his disagreement with his company's values at meetings and telling the owner that he declined to participate in "Mind Body Energy work" was enough to provide notice of conflict. 495 F.3d 570, 575 (8th Cir. 2007).

C. Stressing the low standard for pleading that the plaintiff indicated a conflict with her faith, courts refuse or reverse dismissals in the COVID-19 vaccine-mandate context.

Heeding the Supreme Court's warning in *Thomas* against judicial parsing of the reasonableness or precision of a person's claim that her religious beliefs are burdened, courts across the country have delicately handled—and accepted—failure-to-accommodate claims in the COVID-19 vaccine-mandate context, particularly at the pleadings stage. *E.g.*, *Bube v. Aspirus Hosp., Inc.*, 108 F.4th 1017, 1020-21 (7th Cir. 2024) (reversing dismissal in vaccine-mandate case and stressing that "[o]ur

treatment of [plaintiffs'] exemption requests is consistent with the caution demanded when it comes to religious belief and exercise").

In the past year alone, many such failure-to-accommodate claims have come to the circuit courts in the wake of lower-court dismissals or have been accepted by the district courts in the first instance. In reviewing cases in this context, three lessons emerge: (1) a plaintiff need only plausibly connect her faith with an objection to the vaccine; (2) circuit and lower courts recognize vaccine objections based on religious beliefs about bodily integrity and natural immunity; and (3) courts that have rejected objections inaptly or erroneously frame them as non-religious, or improperly second-guess them.

First, at the nascent pleadings stage a plaintiff must only plausibly connect her religious beliefs to her objection to mandatory vaccination. When a plaintiff "adequately identif[ies] religious views [she] believe[s] to conflict with taking the Covid-19 vaccine" or "plausibly connect[s] [her] refusal to receive the vaccine with [her] religious beliefs," her pleading is sufficient. *Ringhofer v. Mayo Clinic, Ambulance*, 102 F.4th 894, 901 (8th Cir. 2024); *see also Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1009, 1012 (7th Cir. 2024) (reversing dismissal and holding sufficient plaintiffs'

connecting their vaccine objection to Christian beliefs on sanctity of human body); *Lucky v. Landmark Med. of Mich., P.C.*, 103 F.4th 1241, 1243-44 (6th Cir. 2024) (reversing dismissal and holding plaintiff need only allege "facts supporting an inference that her refusal to be vaccinated for Covid was an 'aspect' of her 'religious observance' or 'practice' or 'belief.'" (quoting 42 U.S.C. § 2000e(j))).

In summarizing the application of the lenient pleading standard in the vaccine-mandate context, the Seventh Circuit recently emphasized that "[s]crutinizing the composition of these requests—especially at the pleadings stage—runs counter to not only the broad language of Title VII but also the Supreme Court's repeated warnings that the law requires a hands-off approach when it comes to defining and discerning the core limits of religious exercise." *Bube*, 108 F.4th at 1020. Or, as another panel of that circuit put it, "courts should not expect, much less require, exemption requests to sound like they were written by someone with legal training." *Passarella*, 108 F.4th at 1011.

Second, circuit and lower courts readily recognize vaccine objections based on religious beliefs about bodily integrity and natural

immunity as well-pled. Recent examples from the First, Fourth, Sixth, and Seventh Circuits include:

- Plaintiff pled that "the tenets of her religion prohibited her from defiling her perfectly created body, and that her prayers and guidance from the Holy Spirit informed her beliefs that receiving the COVID-19 vaccine would violate that tenet of her faith"; and that "prayer is one of the ways in which she 'follow[s] God's word'—including the commandment to not defile one's body." *Thornton v. Ipsen Biopharmaceuticals, Inc.*, No. 23-1951, 2025 WL 211517, at *5 (1st Cir. Jan. 16, 2025) (alteration in original).

- Plaintiff pled that "it would be sinful for her to consume or engage with a product such as the vaccination after having been instructed by God to abstain from it"; that her "religious reasons for declining the covid vaccinations, . . . were based on her 'study and understanding of the Bible and personally directed by the true and living God'"; and "receiving the vaccine would be sinning against her body, which is a temple of God, and against God himself." *Barnett v. Inova Health Care Servs.*, 125 F.4th 465, 468 (4th Cir. 2025).

- Plaintiff pled that she is a "'non-denominational Christian' who believes she 'should not have any vaccination enter her body such that her body would be defiled, because her body is a temple,'" and that, in accord with taking all decisions to prayer—"especially those regarding vaccination and other medical decisions"—"God spoke to [her] in her prayers and directed her that it would be wrong to receive the COVID-19 vaccine." *Lucky*, 103 F.4th at 1243 (alteration in original).

- Plaintiff pled that "I am asserting my rights as a Christian to be exempt from taking this vaccine"; because the vaccine was "developed in a rush" and "I don't trust the information and long-term effects[,] . . . I believe this is not right for me

> to put this vaccine into my body"; "I have prayed about this and have asked GOD for guidance, and believe that HE is with me on this decision"; and "The Bible says: My body is a temple of the Holy Spirit and to present my body as a living sacrifice, Holy and acceptable to God." *Passarella*, 108 F.4th at 1008.

Reflecting the respect expressed by these other circuits for objections based on religious concerns about bodily autonomy and natural immunity, district courts in this circuit have approved complaints similarly as follows:

- In *Kaino v. Harney County Health District*, the plaintiff—who identified herself as a "devout Christian," but did not indicate that in her exemption request—stated, "[m]y faith lies in God as my healer, which has blessed me with natural immunity" and "[t]o receive the vaccine would be a lack of my faith and accepting the immoral practice used in it's [sic] development"; and plaintiff did not respond to her employer's follow-up questions about her objection. No. 2:23-cv-00643, 2024 WL 4298212, slip op. at *1-4 (D. Or. Sept. 26, 2024).

- In *Kidd v. University Medical Center of Southern Nevada*, the plaintiff first submitted an accommodation request to her employer stating that "her religious beliefs prevent[ed] [her] from being vaccinated against COVID-19," but did not provide any content about her beliefs; plaintiff later told her employer she was "a Pagan and that her 'Pagan beliefs . . . preclude her from taking the COVID-19 vaccination'"; and while her employer then provided plaintiff with a form to provide more information about her beliefs, she never completed it. No. 2:22-cv-01990, 2024 WL 4046249, slip op. at *1-5 (D. Nev. July 2, 2024) (alterations in original).

- In *Kather v. Asante Health System*, a plaintiff alleged that "receiving a COVID-19 vaccine would conflict with his 'sincerely held religious belief not to interfere with the function of the human immune system which God created,'" and he added his "opposition to injecting into his body anything that 'originates from fetal cell lines.'" No. 1:22-cv-01842, 2023 WL 4865533, at *4 (D. Or. July 28, 2023). In upholding the complaint, the court stressed that the objection was "at least partially based on a religious fear that a COVID-19 vaccine would alter his God-given body chemistry in a manner that offends his understanding of God's intent for the human genetic code." *Id.*

Third, although other courts have rejected religious-objection allegations related to bodily integrity and natural immunity in certain cases, their approach either has been rooted in inapt or erroneous concerns over veiled non-religious objections or has improperly second-guessed the plaintiff's religious beliefs. *See Bolden-Hardge*, 63 F.4th at 1223 ("Still, the burden to allege a conflict with religious beliefs is fairly minimal.").

In *McDowell v. Bayhealth Medical Center, Inc.*, the Third Circuit upheld the dismissal of a vaccine objection based on the plaintiffs' stated beliefs about bodily integrity and natural immunity. 2024 WL 4799870,

at *1-3 (3rd Cir. Nov. 15, 2024) (unpublished).[5] But the panel majority inaptly—and erroneously—classified the plaintiffs' beliefs as "personal, secular, or medical" rather than "religious" in asserting that "taking the vaccine would violate scripture because they believe the vaccine is unsafe, toxic, or harmful." *Id.* at *2. More saliently, the dissent rightly noted that the majority's refusal to credit the plaintiffs' stated connections to religion violated the "minimal pleading burden" stressed by the other circuits. *Id.* at *2; *id.* at *5 (Matey, J., dissenting).

In that same vein, lower-court decisions that have rejected asserted religious objections related to bodily integrity and natural immunity have also either inaptly or mistakenly framed those beliefs in non-religious terms, or unduly scrutinized the plaintiffs' religious beliefs on the pleadings. *See*, *e.g.*, *Ashcroft v. S. Cal. Permanente Med. Grp.*, --- F. Supp. 3d ---, 2025 WL 268387, at *5 (S.D. Cal. Jan. 22, 2025) (rejecting as insufficient the plaintiff's stated beliefs about "concerns that the vaccine is a 'harmful substance,' that 'modifies [or alters] the design of

[5] The panel in *McDowell* indicated, "[t]his disposition is not an opinion of the full court and pursuant to I.O.P. 5.7 does not constitute binding precedent." 2024 WL 4799870.

[her] immune system'" (alterations in original)); *Peters v. Legacy Health*, No. 3:24-cv-01039, 2024 WL 5159197, slip op. at *1-4 (D. Or. Dec. 17, 2024) (treating as non-religious the plaintiff's objection to "tak[ing] an experimental 'vaccine' that has not yet been proven to be safe").[6]

Notwithstanding this third category of decisions, the Supreme Court's warning in *Thomas* against judicial parsing of religious conflicts and this Court's insistence that the plaintiff's burden to plead such a conflict is "fairly minimal" require broad respect—especially at the motion-to-dismiss stage—for religious requests for vaccine exemptions. *Thomas*, 450 U.S. at 715; *Bolden-Hardge*, 63 F.4th at 1223; *accord Thornton*, 2025 WL 211517 at *5; *Bube*, 108 F.4th at 1020; *Passarella*, 108 F.4th at 1011; *Lucky*, 103 F.4th at 1243; *Ringhofer*, 102 F.4th at 901; *see also Swierkiewicz*, 534 U.S. at 512 (rejecting transposition of prima facie elements into a "rigid pleading standard").

[6] Notably, the courts in both *Ashcroft* and *Peters* gave leave to amend. *Ashcroft*, 2025 WL 268387, at *5; *Peters*, 2024 WL 5159197, at *5.

D. Weiss plausibly alleged that TPMG fired her in violation of Title VII and FEHA based on a known conflict between her religious beliefs and the company's vaccine mandate.

1. Weiss pled a prima facie case, showing that her religious beliefs conflicted with TPMG's vaccine mandate.

Once again, a plaintiff makes out a prima facie case under Title VII or FEHA where she plausibly alleges: (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 adverse action because of her inability to fulfill the requirement. *Heller*, 8 F.3d at 1438; *Bolden-Hardge*, 63 F.4th at 1222-23.

Here, the district court rightly determined that Weiss adequately alleged that she holds a bona fide religious belief against the vaccine, and there is no question she suffered adverse action in being fired over refusing it. *See* ER-61-62. The only disputed question, therefore, is whether Weiss plausibly alleged that she "informed [her] employer of the belief and conflict." *Heller*, 8 F.3d at 1438. Plainly she did.

As detailed above, the *Heller* notice element requires only that an employee provided "enough information about [her] religious needs 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 (emphasis added). Here, Weiss more than plausibly alleged that she notified TPMG about the conflict between her religious beliefs and its COVID-19 vaccine mandate.

In Weiss's initial request for a religious exemption—which TPMG "**APPROVED**" without any condition that she provide further information on her beliefs—Weiss stated, "My religious beliefs as a Christian Jew do not allow me to receive a Covid-19 vaccine." ER-23, 41-42. Weiss then connected her objection to the vaccine with her Jewish beliefs about the sanctity of the body. She stated her belief that "[t]he 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." ER-42. Weiss elaborated, "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." *Id.*

Further cementing notice of her religious conflict with the vaccine mandate, Weiss linked her objection with the Christian dimension of her faith that she had more recently embraced in converting to believe in

Jesus as the Messiah. ER-44. Weiss quoted 1 Corinthians 6:19, "Do you not know that your bodies are temples of the Holy Spirit, who is in you, whom you have received from God?" ER-42. Weiss then explained, "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." *Id.* Again, invoking the sanctity of the body, Weiss stated that "God created my body temple with an immune system, the mechanism to ward off disease." *Id.*

Finally, Weiss replied during TPMG's follow-up inquiry that "my religious beliefs do not allow me to alter the perfection of my God-given immune system"; that her religious beliefs forbid putting into her body "[a]ny chemicals/substances that would be unclean as guidance from my Creator"; that "[y]es" she has "put this belief into practice in [] other areas of [her] life," adding that "my religious beliefs inform all meaning and purpose in my life"; and that, as she shared in more detail in her initial request, "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." ER-30-31.

Weiss's expressed, thoughtful, and scripturally supported beliefs amply survive a motion to dismiss as they more than "plausibly connect [her] refusal to receive the vaccine with [her] religious beliefs." *Ringhofer*, 102 F.4th at 901. Indeed, Weiss explained her religious conflict with the vaccine in no uncertain terms—including on TPMG's religious-accommodation form, where her explanation was received and approved in the first instance.

As detailed above, circuit courts across the country have reversed dismissals involving similar beliefs. *See Thornton*, 2025 WL 211517, at *5 (reversing dismissal based on pled beliefs not to "defile one's body"); *Barnett*, 125 F.4th at 471 (accepting pled biblical and revealed beliefs on sinning against the body as a "temple of God"); *Passarella*, 108 F.4th at 1008 (holding as sufficient citation to 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"); *Lucky*, 103 F.4th at 1243 (respecting pled beliefs on prayer and defiling the "body [a]s a temple").

This Court should do likewise.

E. The district court erroneously penalized Weiss for supposed inadequate answers to TPMG's scrutiny of her faith after the company had already exempted her.

In dismissing Weiss's failure-to-accommodate claims, the district court found that since, in its view, Weiss failed to adequately answer TPMG's follow-up questions to her initial exemption request, she did not provide sufficient notice of the conflict between her religious beliefs and the vaccine. ER-11-12. The court concluded that Weiss did not sufficiently plead *Heller*'s second requirement, requiring an employee to notify her employer of the belief and conflict. *Id.* The court is wrong, and its dismissal should be reversed for this further reason alone.

For starters, *Heller* requires that an employee provide "only enough information" on her religious needs to permit the employer to understand the "existence of a conflict" between her beliefs and the job requirement. 8 F.3d at 1439; *see also Gemini*, 18 Cal. Rptr. 3d at 913 ("Notice to the employer does not require a complex explanation."). What's more, nowhere does *Heller* require an employee to clarify or provide further information about her religious beliefs to make out a prima facie case. *See Kidd*, 2024 WL 4046249, at *5 (observing that "[n]either COVID nor the EEOC's guidance" on further inquiry into the nature or sincerity of

belief "alters the notice requirement in *Heller* . . . at the prima facie step"); *accord Kaino*, 2024 WL 4298212, at *4. Finally, and most saliently for present purposes, at the pleadings stage the plaintiff must merely plausibly allege she provided her employer "only enough information." *Heller*, 8 F.3d at 1439; *see Twombly*, 550 U.S. at 570.

Once again, the information Weiss shared with TPMG was more than enough to "plausibly connect [her] refusal to receive the vaccine with [her] religious beliefs." *Ringhofer*, 102 F.4th at 901. Indeed, TPMG had approved her request for a vaccine exemption based on that information and without any condition as to its continued sufficiency. ER-23, 41-42. But even if it were appropriate for TPMG to insist on more information in a follow-up inquiry—a conclusion Weiss disputes—that determination involves not the employee's prima facie case but rather the employer's reasonable-accommodation burden that follows. *Kaino*, 2024 WL 4298212, at *3-4 (observing that an "analysis of the reasonableness of plaintiff's refusal to respond to defendant's additional request for information should be undertaken only *after* plaintiff has met her *prima facie* burden"); *Kidd*, 2024 WL 4046249, at *5 (same).

As the Seventh Circuit has emphasized, "Title VII has not been interpreted to require adherence to a rigid script to satisfy the notice requirement . . . . Quite the contrary: Title VII is a remedial statute that we construe liberally in favor of employee protection." *Adeyeye*, 721 F.3d at 450. By penalizing Weiss for failing to adequately respond to TPMG's follow-up questions, without the company ever having talked with her about her responses and after it acknowledged it had notice of the conflict with her faith by granting her the prior exemption, the district court misplaced the burden on Weiss—and on the pleadings, no less.

This Court should reverse for this reason as well.[7]

F. This Court should likewise restore Weiss's claim against TPMG for its failure to prevent discrimination.

FEHA requires an employer to take all reasonable steps necessary to prevent discrimination. Cal. Gov't Code § 12940(k). "[An] employer's duty to prevent . . . discrimination is affirmative and mandatory." *Achal v. Gate Gourmet, Inc.*, 114 F. Supp. 3d 781, 804 (N.D. Cal. 2015).

[7] If for some reason Weiss must allege further that she adequately told TPMG of the conflict between her religion and the vaccine requirement, she stands ready to do so by amendment. *See Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003) (emphasizing leave to amend should be given with "extreme liberality" (quoting *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001))).

Weiss's claim for failure to prevent discrimination hinges on her failure-to-accommodate claims. *Smith v. W.W. Grainger, Inc.*, No. EDCV 18-1405, 2019 WL 1670942, at *8 (C.D. Cal. Feb. 5, 2019). Since Weiss pled—for the reasons above—that TPMG discriminated against and fired her on account of her religious beliefs, this Court should likewise restore Weiss's failure-to-prevent-discrimination claim.

II. THIS COURT SHOULD RESTORE WEISS'S STATE-LAW CLAIMS AGAINST TPMG FOR VIOLATING HER RIGHT TO BODILY AUTONOMY AND INFORMATIONAL PRIVACY.

A. The California Constitution enshrines a right to privacy for bodily autonomy and informational privacy, the violations of which are rarely resolved on the pleadings.

The California Constitution declares as an "inalienable right[]" the right to "pursu[e] and obtain[] . . . privacy." Cal. Const. art. I, § 1. And the California Supreme Court has recognized this article creates a right of action against private entities. *Hill*, 865 P.2d at 644.

As the state high court further outlined in *Hill*, a plaintiff must plead three things to establish a right-to-privacy claim:

> 1. A legally protected privacy interest, which generally falls into one of two classifications: (a) "interests in precluding the dissemination or misuse of sensitive and confidential information ('informational privacy')"; or (b) "interests in making intimate personal decisions or conducting personal activities without observation, intrusion, or interference ('autonomy privacy')";

2. A reasonable expectation of privacy, which is defined as "an objective entitlement founded on broadly based and widely accepted community norms"; and

3. A serious invasion of the privacy interest, which is defined as "an egregious breach of the social norms underlying the privacy right."

Id. at 654-55. Indeed, pleading these elements "satisf[ies] the threshold inquiry for a cognizable privacy claim." *Mathews v. Becerra*, 455 P.3d 277, 294 (Cal. 2019); *see also Borrello v. Respironics Cal., LLC*, No. 23-cv-580, 2024 WL 1496215, slip op. at *8 (S.D. Cal. Apr. 5, 2024) (listing three *Hill* elements as those "necessary to maintain a cause of action" (internal quotation marks omitted)). Defenses are a distinct issue. *See Hill*, 865 P.2d at 654-55 (listing elements of a cause of action separately from defenses).

The presence of a legally protected privacy interest is "a question of law to be decided by the court." *Id.* at 657. It can therefore be resolved at the pleadings stage. *See LA Cnty. Free Found. v. Cnty. of L.A.*, No. 2:22-cv-00787, 2022 WL 18278624, at *4 (C.D. Cal. June 1, 2022) (resolving "pure question[] of law" that refusing a COVID-19 vaccine mandate is a protected privacy interest on motion to dismiss).

But the reasonableness of a plaintiff's expectation of privacy, as well as the severity of the defendant's invasion of her privacy, are "mixed

questions of law and fact." *Hill*, 865 P.2d at 657. Accordingly, they are unsuited to resolution as a matter of law unless "the undisputed material facts show no reasonable expectation of privacy or an insubstantial impact on privacy interests." *Id.*; *see also LA Cnty. Free Found.*, 2022 WL 18278624, at *4 (describing inability in vaccine context for courts to decide seriousness of invasion of privacy on the pleadings); *Borrello*, 2024 WL 1496215 at *9 (invoking similar conclusion from unpublished state-court decision in *Firefighters4Freedom v. City of L.A.*, No. B320569, 2023 WL 4101325, at *17 (Cal. Ct. App. June 21, 2023)).[8]

B. Weiss adequately pled that TPMG's vaccine mandate violated her state-law privacy right to bodily autonomy.

1. Weiss pled a protected privacy interest in refusing medical treatment and intrusions of bodily integrity.

California honors as a protected autonomy privacy interest a person's right to "reject, or refuse to consent to, intrusions of [her] bodily integrity," including "the right to refuse medical treatment." *In re Qawi*, 81 P.3d 224, 230-31 (Cal. 2004) (internal quotation marks omitted); *see*

[8] California rules prohibit citation of unpublished opinions in state court. Cal. R. Ct. 8.1115(a). We understand this Court's rules provide no such bar, and the district court in *Borrello* cited *Firefighters4Freedom* in its discussion of California's privacy right and COVID-19 vaccine mandates. *See Borrello*, 2024 WL 1496215 at *9.

Love v. State Dep't of Educ., 240 Cal. Rptr. 3d 861, 871 (Cal. Ct. App. 2018) ("[T]he right to retain personal control over the integrity of one's body is protected under the right to privacy."); *see also Conservatorship of Wendland*, 28 P.3d 151, 159 (Cal. 2001) (calling right to refuse medical treatment "basic and fundamental") (internal quotation marks omitted)).

Although the district court was silent on the issue, courts recognize unwillingness to submit to employer-imposed vaccine mandates as a legally protected privacy interest under the state constitution. *See*, *e.g.*, *Borrello*, 2024 WL 1496215, at *8 (finding "no dispute" that interest in refusing COVID-19 vaccine is a "legally protected privacy interest" under first *Hill* prong); *LA Cnty. Free Found.*, 2022 WL 18278624, at *4; *Firefighters4Freedom*, 2023 WL 4101325, at *16; *see also Love*, 240 Cal. Rptr. 3d at 871 (requiring state to justify vaccine mandate).

In her complaint, Weiss alleged that TPMG forced her to receive a vaccine or face termination, and she notified the company of her faith-based desire to make her own medical decisions and safeguard her bodily integrity. ER-40, 42. After denying Weiss's request for an exemption, TPMG fired her for not receiving the vaccine. ER-47. Weiss pled TPMG's mandate violated her "right to make medical decisions" and "trampled on

[her] right to . . . bodily autonomy, [a] well established and recognized right[] under California decisional law." ER-48, 50.

Weiss's complaint satisfies the first *Hill* prong.

2. Weiss pled a reasonable expectation of privacy and a serious invasion of her privacy. Regardless, these questions are unsuited to the motion-to-dismiss stage.

a. Weiss pled a reasonable expectation of privacy in medical decision-making—particularly given her remote position.

California has long recognized a reasonable expectation of privacy over medical decision-making in the employer-employee relationship. As the Court of Appeal observed in *Pettus v. Cole*, employees do not forfeit their right to medical self-determination by taking on a job:

> As to [the plaintiff's] autonomy privacy interests, we are aware of no law or policy which suggests that a person forfeits his or her right of medical self-determination by entering into an employment relationship . . . . Indeed, it would be unprecedented for this court to hold that an employer may dictate to an employee the course of medical treatment he or she must follow, under pain of termination, with respect to a nonoccupational illness or injury. It is, thus, eminently reasonable for employees to expect that their employers will respect—i.e., not attempt to coerce or otherwise interfere with—their decisions about their own health care[.]

57 Cal. Rptr. 2d 46, 84-85 (Cal. Ct. App. 1996).

The California Supreme Court in *Hill* allowed for adjustments to an employee's expectations based on an "employer's special interests and

the employee's reasonable expectations prevailing in a particular employment setting," though its discussion makes clear that such an analysis is contextual and fact-dependent. 865 P.2d at 667 & n.20.

As with the presence of a privacy interest, the district court did not address the issue of Weiss's reasonable expectation of privacy. In any event, Weiss pled that she did "not forfeit that right by virtue of being employed." ER-48 (citing *Pettus*, 57 Cal. Rptr. 2d at 84). Many TPMG employees received an exemption. ER-36, 51. Moreover, Weiss alleged that in her fully remote position, "[s]he had no in-person contact with patients, other employees or any other people while conducting her job duties," and that "[TPMG] failed and refused to consider the privacy rights of remote employees in establishing and implementing its vaccine mandate." ER-40, 50.

Given the general recognition in law of a reasonable expectation of privacy in medical decision-making for employees, the fact of Weiss's fully remote "particular employment setting," and that the matter is at the pleadings stage, Weiss satisfies the second *Hill* prong.

b. Weiss pled a serious invasion of her bodily integrity when TPMG forced her to receive a vaccine or lose her job.

Turning to whether Weiss pled that TPMG's vaccine mandate was a serious invasion of her state-law privacy right to bodily autonomy, "this element is intended simply to screen out intrusions on privacy that are de minimis or insignificant." *Loder v. City of Glendale*, 927 P.2d 1200, 1231 n.22 (Cal. 1997). And courts have accepted as well-pled that an employer's COVID-19 vaccine mandate is not an insignificant or "de minimus interference in an intimate personal decision." *See, e.g.*, *Borrello*, 2024 WL 1496215, at *9 (citing *LA Cnty. Free Found.*, 2022 WL 18278624, at *4; and *Firefighters4Freedom*, 2023 WL 4101325, at *17).

Weiss pled that "[TPMG] trampled on [her] right to privacy and bodily autonomy." ER-50. She alleged that TPMG forced her to choose between accepting vaccination and losing her job, despite her faith-based medical objections to needle wounds, foreign substances, and modifications to her immune system. ER-42. Because mandating a COVID-19 vaccine is not an insignificant or de minimis interference in an intimate personal decision, Weiss's complaint pled a serious invasion of her privacy and satisfies the third *Hill* prong.

In finding to the contrary, the district court cited *Thor v. Superior Court*, 855 P.2d 375 (Cal. 1993), to argue that 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.'" ER-10 (quoting *Thor*, 855 P.2d at 384). But the court in *Thor* did not distinguish vaccines for purposes of deciding if they are a "serious invasion of privacy" under *Hill*, much less on a motion to dismiss. Rather, it mentioned vaccines—and in a passing citation to *Jacobson v. Massachusetts*, 197 U.S. 11 (1905)—only in assessing whether public health justifies the invasion. *See Thor*, 855 P.2d at 384.[9]

c. In any event, the district court should not have decided on the pleadings the reasonableness of Weiss's expectation of privacy or the seriousness of TPMG's invasion of it.

Regardless of whether Weiss sufficiently alleged that TPMG's vaccine mandate constituted a serious invasion of her reasonable

[9] Furthermore, *Thor* predated *Hill* and involved a common-law challenge, not the privacy clause of the state constitution that provides stronger privacy protection, and for which *Hill* thereafter set the analytical test. *See Wendland*, 28 P.2d at 159 (describing *Thor* as setting the common-law floor for privacy rights from which *Hill* expanded for such rights under the state constitution).

expectation of privacy—she did, for the reasons explained above—this Court should reverse the district court's contrary ruling because the inquiry involves "mixed questions of law and fact" unsuited to resolution on the pleadings. *Hill*, 865 P.2d at 657.

In *Hill*, the California Supreme Court held that a court could reject a privacy claim as a matter of law only if "the undisputed material facts show no reasonable expectation of privacy or an insubstantial impact on privacy interests." *Id.* Accordingly, courts have declined to resolve the reasonableness of an employee's expectation of privacy and the seriousness of an employer's invasion at the motion-to-dismiss stage in challenges to COVID-19 vaccine mandates. *See, e.g.*, *Borrello*, 2024 WL 1496215, at *9 (citing *LA Cnty. Free Found.*, 2022 WL 18278624, at *4; and *Firefighters4Freedom*, 2023 WL 4101325, at *17); *cf. Strawn v. Morris, Polich & Purdy, LLP*, 242 Cal. Rptr. 3d 216, 228 (Cal. Ct. App. 2019) (reaching same conclusion outside COVID-19 vaccine context).

This Court should rule likewise.[10]

[10] Although the court in *Borrello* noted that "[c]ourts that have reviewed vaccine mandates on motions to dismiss are divided in their conclusions," the cases where the defendant prevailed at that stage involved "rational basis review" of government mandates rather than adherence to *Hill*. 2024 WL 1496215, at *9 (citing *Burcham v. City of L.A.*, 562 F. Supp. 3d

3. The district court improperly and erroneously weighed the strength of TPMG's interests at the pleadings stage.

Pleading the *Hill* elements "satisf[ies] the threshold inquiry for a cognizable privacy claim." *Mathews*, 455 P.3d at 294; *see also Hill*, 865 P.2d at 652-55 (listing three elements of a cause of action). To prevail in a right-to-privacy case, therefore, the defendant must either negate one of these elements or "prov[e], as an affirmative defense, that the invasion of privacy is justified because it substantively furthers one or more countervailing interests." *Hill*, 865 P.2d at 657.

The district court short-circuited the process by dismissing Weiss's autonomy privacy claim on the ground that she failed "to rebut TPMG's countervailing interest in protecting public health." ER-10. Such a determination is both inappropriate and impossible at this stage. There

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694, 705 (C.D. Cal. 2022); *Wolfe v. Logan*, No. 2:22-cv-06463, 2023 WL 2239062, at *6 (C.D. Cal. Jan. 25, 2023); and *Love*, 240 Cal. Rptr. 3d at 871). The proper review here is not rational basis, but whether the court can assess as a matter of law the "employer's special interests and the employee's reasonable expectations prevailing in a particular employment setting," and whether the intrusion was serious in that fact-dependent context—hardly matters appropriate to resolution on the pleadings. *Hill*, 865 P.2d at 667; *cf. LA Cnty. Free Found.*, 2022 WL 18278624, at *4 ("Defendant does not explain why it is appropriate to apply [a federal rational basis standard] to a constitutional right that sweeps more broadly than the federal prohibition against irrational laws.").

are no facts in the record to assess whether or to what extent TPMG possessed a countervailing interest in the circumstances, much less whether forcing Weiss to receive a vaccine "substantively furthers" any such supposed interest. This Court must reverse for this reason as well.

While the existence of a countervailing interest can be a question of law, the "relative strength of countervailing interests and the feasibility of alternatives present mixed questions of law and fact." *Hill*, 865 P.2d at 657. Thus, even assuming TPMG could establish a countervailing justification for its mandate, the strength of that interest is a fact-intensive inquiry unsuitable for determination on a motion to dismiss. *See LA Cnty. Free Found.*, 2022 WL 18278624, at *4 (declining in COVID-19 vaccine-mandate context to resolve strength of countervailing interests on a motion to dismiss); *see also Mathews*, 455 P.3d at 297 ("We have recognized the value of such factual development in other cases involving the state constitutional right to privacy, which were decided on the basis of fully litigated records."); *id.* ("Our balancing analysis [in *Hill*] relied extensively on evidence developed in the record."); *Sheehan v. S.F. 49ers, Ltd.*, 201 P.3d 472, 475 (Cal. 2009) (holding that presumed security interest in stadium pat-down procedure cannot be decided on demurrer).

Furthermore, although the question is inappropriately considered at this stage, any generalized interest in public health TPMG might later establish cannot justify its invasion of Weiss's right to bodily autonomy. At a minimum, Weiss's status as a remote worker without any public contact, together with the granting of vaccine exemptions to thousands of other employees—including in the hospital setting—precludes dismissal on the pleadings.

The district court found that TPMG had a countervailing interest in "promoting public health." ER-9-10. But not only does the court's finding improperly depend on facts outside the complaint, there is no "presumption . . . of constitutional validity" wherever an interest in "public health" is invoked—including in the private workplace. ER-10 (quoting *Love*, 240 Cal. Rptr. 3d at 871).[11]

[11] Private employers cannot invoke "public health" as a free pass to violate employee privacy. The *Love* court observed a presumption of validity only where the state asserts a public-health interest. 240 Cal. Rptr. 3d at 871 (citing *Coshow v. City of Escondido*, 34 Cal. Rptr. 3d 19, 33 (Cal. Ct. App. 2005)). *But see LA Cnty. Free Found.*, 2022 WL 18278624, at *4 (*Coshow* innappropriate for state-law privacy claims). Indeed, courts have declined to dismiss state-law challenges to COVID-19 vaccine mandates imposed by private employers and even those imposed by the state—i.e., where the public interest is at its zenith.

California courts have recognized that the state has an interest in promoting public health via vaccine mandates in certain contexts. *See, e.g.*, *Abeel v. Clark*, 24 P. 383 (Cal. 1890) (public school); *see also Wolfe*, 2023 WL 2239062 (election poll workers); *Burcham*, 562 F. Supp. 3d 694 (police department). But a state's interest in protecting public health in those areas is worlds apart from TPMG's insistence that Weiss—a private employee in a fully remote position with no contact with other employees or patients, and where the company otherwise makes exceptions—be vaccinated. And, in any event, courts have held that private-employer-imposed and even state-imposed vaccine mandates are subject to right-to-privacy challenges. *LA Cnty. Free Found.*, 2022 WL 18278624, at *4 (refusing to reject challenge without further fact-finding under *Hill*); *see also Borrello*, 2024 WL 1496215, at *9.

The district court remarked, "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." ER-10. But *Hill* says, "[j]udicial assessment of the relative

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Borrello, 2024 WL 1496215 (private); *LA Cnty. Free Found.*, 2022 WL 18278624 (state).

strength and importance of privacy norms and countervailing interests may differ in cases of private, as opposed to government, action." 865 P.2d at 656. While observing that state violations could be more suspect than private ones, the court urged that "generalized differences between public and private action may affect privacy rights differently in different contexts." *Id.* at 656-57.[12] Regardless, the matter is ill-suited for resolution on the pleadings.

In the vaccination context, the state has an interest in protecting public health. *See Love*, 240 Cal. Rptr. 3d at 871 (noting "[s]tate's interest in protecting the health and safety of its citizens"); *see also Burcham*, 562 F. Supp. 3d at 705 (observing that some courts afford deference where "the state asserts important interests in safeguarding health" (internal quotation marks omitted)); *Whitlow v. Cal. Dep't of Educ.*, 203 F. Supp. 3d 1079, 1089-90 (S.D. Cal. 2016) (stressing that "society has a

[12] The fact that a private employee has the option to quit her job to avoid a vaccine mandate does not negate her privacy interest. *See Firefighters4Freedom*, 2023 WL 4101325, at *16 ("That the athletes in *Hill* could have quit playing sports, and the fans in *Sheehan* could have stopped going to games, did not negate the privacy interests in those cases. Similarly, that City firefighters could quit their jobs instead of getting a COVID-19 vaccine does not eliminate the firefighters' privacy interest in their bodily integrity.").

compelling interest in fighting the spread of contagious diseases through mandatory vaccination of school-aged children").

No such interest can be shown here—much less on the pleadings. TPMG's interest in ensuring that Weiss, a remote worker with no contact with other employees or patients, receives a vaccine is far weaker than a state's interest in public health. ER-36, 40. Indeed, the fact that TPMG allowed unvaccinated employees to provide in-person health services, even to immunocompromised patients, alone guts an argument that vaccinating one more remote worker was necessary to protect a supposed countervailing interest. *Id.*

This Court should reverse the district court's dismissal of Weiss's claim for violation of her privacy right to bodily autonomy.

If for some reason the Court finds her autonomy privacy claim insufficient, Weiss asks she be afforded the opportunity to amend that claim—for the first time—on remand. As described above, Rule 15(a) "provides that a trial court shall grant leave to amend freely when justice so requires, [and t]he Supreme Court has stated that this mandate is to be heeded." *Lopez*, 203 F.3d at 1130 (internal quotation marks omitted). What's more, where the complaint can "be saved by *any* amendment,"

leave to amend should be granted. *Polich*, 942 F.2d at 1472 (emphasis added); *see also Eminence Cap.*, 316 F.3d at 1051 (emphasizing leave should be given with "extreme liberality").

C. Weiss adequately pled that TPMG's vaccine-exemption inquiry violated her right to informational privacy.

The district court rejected Weiss's informational privacy claim because, in its view, the claim was not captured by the complaint's privacy count. ER-10. But the complaint's right-to-privacy count incorporates, and the complaint elsewhere states, facts sufficient to support an informational privacy claim. *See* Fed. R. Civ. P. 8(a)(2) (requiring plaintiff to include "short and plain statement of the claim showing the pleader is entitled to relief"); Fed. R. Civ. P. 10 (making use of counts permissive); ER-36, 42-47 (detailing intrusive medical and religious questions imposed by TPMG and disclosed to a third party).

Weiss alleged that in response to her request for a religious exemption to its vaccine mandate, TPMG "subjected [her] . . . to an arbitrary and impersonal inquisitorial process." ER-36. The company pressed whether Weiss "had ever taken medications of any kind, and what other substances . . . she refused to put into her body." ER-44. Moreover, TPMG interrogated Weiss's religious beliefs, requiring she

provide the "specific religious doctrine or teaching that prevents [her] from receiving a vaccine." ER-42. Finally, TPMG's process disseminated and disclosed such information to a third party for evaluation. ER-36, 43.

Weiss's "medical history and information . . . is protected under the right to privacy." *Love*, 240 Cal. Rptr. 3d at 871. She retained a right to privacy in the employment context, and all the more because of her "particular employment setting"—where Weiss was a remote worker who would not come into contact with others. *Hill*, 865 P.2d at 667; *Pettus*, 57 Cal. Rptr. 2d at 54; ER-36, 40.

At the pleadings stage, TPMG's forced disclosure of "medical or religious information to obtain an exemption [to a COVID-19] vaccine mandate]" cannot be deemed "de minimus interference in an intimate personal decision." *Borrello*, 2024 WL 1496215, at *8-9 (rejecting motion to dismiss where plaintiff alleged his employer "demanded to control, collect and use [his] personal medical and religious information to decide his eligibility for continued employment").

In short, this Court should restore Weiss's informational privacy claim because she pled each *Hill* element. If for some reason, however, the Court finds her informational privacy claim insufficient, Weiss asks

for the opportunity to amend that claim—for the first time—on remand. *See Eminence Cap.*, 316 F.3d at 1051 (emphasizing leave to amend should be given with "extreme liberality").

CONCLUSION

Mimi Weiss adequately alleged that, in revoking her religious accommodation to its COVID-19 vaccine mandate and then firing her based on her refusal to abandon her faith to take the vaccine, TPMG violated Title VII, FEHA, and the California Constitution. This Court should therefore reverse the district court's dismissal of Weiss's complaint and allow her case to continue.

At a minimum, were this Court to disagree with Weiss that her pleadings are defective in any way, she respectfully asks for reversal and remand to allow her the chance to cure any such defect on amendment.[13]

[13] Special thanks to Stanford Law School Religious Liberty Clinic students Peri Joy Long and Luke Tan Trinka for their help preparing this brief.

Date: February 7, 2025

Respectfully submitted,

STANFORD LAW SCHOOL
RELIGIOUS LIBERTY CLINIC

By: */s/ James A. Sonne*

Attorneys for Appellant
Mimi Weiss

STATEMENT OF RELATED CASES
PURSUANT TO CIRCUIT RULE 28-2.6

The undersigned attorney states the following: I am unaware of any related cases currently pending in this Court.

Dated: February 7, 2025

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

CERTIFICATE OF COMPLIANCE

The foregoing **Appellant's Opening Brief** complies with the type-volume limitation of Cir. R. 32-1, because it contains no more than 14,000 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f). This brief contains a total of 12,798 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: February 7, 2025

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

ADDENDUM

INDEX TO ADDENDUM

PERTINENT STATUTORY AND CONSTITUTIONAL AUTHORITIES

Civil Rights Act of 1964 (Title VII), 42 U.S.C. § 2000 *et seq.*

42 U.S.C. § 2000e. Definitions

For the purposes of this subchapter--

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

* * *

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the

constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959, and further includes any governmental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act.

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

* * *

(l) The term "complaining party" means the Commission, the Attorney General, or a person who may bring an action or proceeding under this subchapter.

(m) The term "demonstrates" means meets the burdens of production and persuasion.

(n) The term "respondent" means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 2000e-16 of this title.

42 U.S.C. § 2000e-2. Unlawful employment practices

(a) Employer practices

It shall be an unlawful employment practice for an employer--

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

* * *

Cal. Gov't Code § 12940. Employers, labor organizations, employment agencies and other persons; unlawful employment practices; exceptions

It is an unlawful employment practice, unless based upon a bona fide occupational qualification, or, except where based upon applicable security regulations established by the United States or the State of California:

(a) For an employer, because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status of any person, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or to discriminate against the person in compensation or in terms, conditions, or privileges of employment.

* * *

(*l*)(1) For an employer or other entity covered by this part to refuse to hire or employ a person or to refuse to select a person for a training program leading to employment or to bar or to discharge a person from employment or from a training program leading to employment, or to discriminate against a person in compensation or in terms, conditions, or privileges of employment because of a conflict between the person's religious belief or observance and any employment requirement, unless the employer or other entity covered by this part demonstrates that it has explored any available reasonable alternative means of accommodating the religious belief or observance, including the possibilities of excusing the person from those duties that conflict with the person's religious belief or observance or permitting those duties to be performed at another time or by another person, but is unable to reasonably accommodate

the religious belief or observance without undue hardship, as defined in subdivision (u) of Section 12926, on the conduct of the business of the employer or other entity covered by this part. Religious belief or observance, as used in this section, includes, but is not limited to, observance of a Sabbath or other religious holy day or days, reasonable time necessary for travel prior and subsequent to a religious observance, and religious dress practice and religious grooming practice as described in subdivision (q) of Section 12926. This subdivision shall also apply to an apprenticeship training program, an unpaid internship, and any other program to provide unpaid experience for a person in the workplace or industry.

(2) An accommodation of an individual's religious dress practice or religious grooming practice is not reasonable if the accommodation requires segregation of the individual from other employees or the public.

(3) An accommodation is not required under this subdivision if it would result in a violation of this part or any other law prohibiting discrimination or protecting civil rights, including subdivision (b) of Section 51 of the Civil Code and Section 11135 of this code.

(4) For an employer or other entity covered by this part to, in addition to the employee protections provided pursuant to subdivision (h), retaliate or otherwise discriminate against a person for requesting accommodation under this subdivision, regardless of whether the request was granted.

* * *

Cal. Const. art. I, § 1

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

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, I electronically filed the foregoing document, **Appellant's Opening 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: February 7, 2025

/s/ James A. Sonne
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