

FOR PUBLICATION

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

MIMI WEISS,

Plaintiff - Appellant,

v.

THE PERMANENTE MEDICAL
GROUP, INC.,

Defendant - Appellee.

No. 24-6609

D.C. No.
3:23-cv-03490-RS

OPINION

Appeal from the United States District Court
for the Northern District of California
Richard G. Seeborg, District Judge, Presiding

Argued and Submitted October 21, 2025
San Francisco, California

Filed July 24, 2026

Before: Richard A. Paez, Carlos T. Bea, and Danielle J.
Forrest, Circuit Judges.

Opinion by Judge Forrest

SUMMARY*

Employment Discrimination

The panel reversed the district court’s dismissal for failure to state a claim of an employment discrimination action brought by Mimi Weiss under Title VII and California law against The Permanente Medical Group, Inc. (“TPMG”), and remanded.

TPMG initially granted Weiss a religious exemption from its COVID-19 vaccine mandate for its employees. It later required Weiss to provide additional information so it could evaluate whether her beliefs were sincere. When she did not fully respond to the supplemental inquiry, TPMG revoked Weiss’s exemption and terminated her because she failed to get vaccinated.

To state a prima facie case of failure to accommodate her religion under Title VII and California’s Fair Employment and Housing Act, the plaintiff must show that (1) she had a bona fide religious belief, the practice of which conflicted with an employment duty; (2) she informed her employer of the belief and conflict; and (3) the employer threatened her with or subjected her to discriminatory treatment, including discharge, because of her inability to fulfill the job requirements.

The district court granted TPMG’s motion to dismiss on the ground that Weiss failed to satisfy the second element of the prima facie case—she did not adequately allege that she

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

gave TPMG sufficient notice of the conflict between her beliefs and its vaccine mandate.

Addressing the notice requirement, the panel held that the employee must provide only enough information about her religious needs to permit the employer to understand the existence of an actual conflict between those needs and the employer's expectations. Applying this standard, the panel concluded that Weiss satisfied the second element of a prima facie case for purposes of the pleading stage because she plausibly alleged that she informed TPMG of her belief and its conflict with the vaccine mandate.

The panel addressed a privacy claim in an accompanying memorandum disposition and dissent.

COUNSEL

Adèle A. Keim (argued), Eric C. Rassbach, Amanda G. Dixon, and Phillip J. Allevato, Becket Fund for Religious Liberty, Washington, D.C.; Andrew Nahom, Certified Law Student; James A. Sonne and Megan R. Donley, Supervising Attorneys; Religious Liberty Clinic, Stanford Law School, Stanford, California; Alan J. Reinach and Jonathon Cherne, Church State Council, Westlake Village, California; for Plaintiff-Appellant.

Christian J. Rowley (argued), Galen P. Sallomi, and Sean T. Strauss, Seyfarth Shaw LLP, San Francisco, California, for Defendant-Appellee.

OPINION

FORREST, Circuit Judge:

Mimi Weiss is a Christian Jew who was denied a religious exemption from the COVID-19 vaccine mandate imposed by her employer, The Permanente Medical Group (TPMG). TPMG initially granted Weiss her requested exemption, but after learning that some employees had submitted insincere religious-exemption requests, it required Weiss to provide additional information so it could evaluate whether her beliefs were sincere. When Weiss did not fully respond to TPMG’s supplemental inquiry, TPMG revoked her exemption and terminated her because she failed to get vaccinated. Weiss sued under Title VII of the Civil Rights Act of 1964 (Title VII), California’s Fair Employment and Housing Act (FEHA), and the California Constitution. TPMG moved to dismiss her federal and state statutory claims, arguing that Weiss had not alleged that she adequately notified TPMG of the conflict between her beliefs and its vaccine mandate.¹ The district court granted TPMG’s motion as to each claim. We reverse and remand.

BACKGROUND

As this appeal arises from a motion to dismiss, we accept the facts stated in Weiss’s operative complaint and the

¹ TPMG also moved to dismiss Weiss’s privacy claim raised under the California Constitution, arguing that she could neither establish that TPMG had violated her privacy rights by implementing a vaccine mandate nor overcome TPMG’s countervailing interest in combatting the spread of COVID-19. We address this state constitutional issue in an accompanying memorandum disposition.

documents incorporated therein. *See Northstar Fin. Advisors Inc. v. Schwab Invs.*, 779 F.3d 1036, 1042 (9th Cir. 2015).

A. TPMG's Vaccine Mandate

TPMG initiated a mandatory COVID-19 vaccination policy (Mandate) in August 2021. The Mandate required all TPMG employees to either provide proof of full vaccination status or acquire a valid exemption by September 30, 2021. If an employee failed to comply with the Mandate by the September 30 deadline, the employee would be put on unpaid leave for 60 days. If the employee failed to comply with the Mandate within this 60-day window, the employee would be terminated.

B. Weiss's Religious Exemption Request

TPMG hired Weiss in August 2000, and she worked most recently as a Managerial Senior Consultant. This was a fully remote position in TPMG's health-engagement consulting department. Weiss adopted religious practices associated with Messianic Judaism in 2016, and she recommitted to her faith during the COVID-19 pandemic.

Shortly after TPMG imposed its Mandate, Weiss requested a religious exemption. She explained that her "religious beliefs as a Christian Jew do not allow [her] to receive a Covid-19 vaccine." She listed passages from Deuteronomy and 1 Corinthians and explained that the "COVID-19 vaccines go directly against [her] belief[s]." In particular, Weiss explained that because Jewish law required her to "maintain h[er] body and blood uncontaminated" and prohibited "needle wounds except for direct curative benefit," she "consider[ed] these . . . vaccines to represent a defilement of [her] body, blood[,] and soul."

On August 30, TPMG approved Weiss's request for a religious exemption from its vaccine requirement. TPMG informed Weiss that the approval was "provisional" and "subject to change based on frequently changing conditions, such as COVID-19 infection levels, and changes in public health guidance, legal requirements, and [TPMG] policies and practices."

Three weeks later, TPMG notified Weiss that, due to its findings and concerns about a pattern of insincere religious-exemption requests among its employees, it would be conducting additional review of all previously approved exemptions. The following month, TPMG told Weiss that more "information [wa]s needed . . . to further evaluate whether [she] ha[d] a sincerely held religious belief, practice, or observance that prevent[ed] [her] from receiving any COVID-19 vaccine." TPMG sent Weiss several supplemental questions, including:

- What else besides the COVID-19 vaccine do you refuse to put in your body as a result of your religious belief?
- Have you put this belief into practice in any other areas of your life?
- Do you currently take or have you ever taken medications of any kind (over the counter or prescription) as an adult? . . . If you answered yes: "When is the last time you took such medicine? Is the COVID-19 vaccine different from these medicines? If so, how?" Why does your religious belief prevent you from

receiving the COVID-19 vaccination but not from taking other medications?

TPMG informed Weiss that if she “d[id] not provide complete information,” it would decide her “exemption request based on the information [it] ha[d] obtained to date.” Weiss answered only some of TPMG’s supplemental questions. In response to the inquiry about whether she had taken other medications, Weiss asserted that because her “medical information and history is protected” and “private,” she “w[ould] not answer questions about medicines that [she] may or may not have taken.”

After receiving Weiss’s responses to its supplemental questions, TPMG revoked Weiss’s provisional religious exemption and placed her on unpaid leave the following week. Weiss contacted several TPMG supervisors, seeking an explanation for the denial or information about an appeal process. In these communications, Weiss reaffirmed her beliefs, her objections to the vaccines, and her frustration with the denial decision. None of the TPMG managers that Weiss contacted responded to her inquiries.

Weiss did not receive a COVID-19 vaccine, and she was terminated for failing to comply with TPMG’s Mandate.

C. The Lawsuit

Weiss sued TPMG, alleging, among other things, that it failed to accommodate her religious beliefs in violation of Title VII and FEHA and failed to prevent religious discrimination and harassment under FEHA. The district court granted TPMG judgment on the pleadings based on Weiss’s First Amended Complaint. *Weiss v. Permanente Med. Grp., Inc.* (*Weiss I*), 738 F. Supp. 3d 1217, 1220 (N.D. Cal. 2024).

In assessing “the adequacy of Weiss’s notice to TPMG regarding the conflict between her religious beliefs and the [Mandate],” the district court concluded that the “generic explanations” in her initial exemption request “amounted to the kind of ‘blanket privilege’ that would have resulted in a ‘limitless excuse for avoiding all unwanted obligations’” and “provided little basis for TPMG to evaluate the extent of her religious beliefs’ potential conflict with the [Mandate].” *Id.* at 1223 (quoting *Finkbeiner v. Geisinger Clinic*, 623 F. Supp. 3d 458, 465–66 (M.D. Pa. 2022), *aff’d in part, rev’d in part*, No. 24-2844, 2026 WL 195416 (3d Cir. Jan. 26, 2026)). The district court also concluded that Weiss’s answers to TPMG’s supplemental questions were similarly inadequate. *Id.* at 1223–25. The district court reasoned that, between her two exemption submissions, Weiss “failed to aver plausibly that she adequately informed TPMG of the conflict between her religious beliefs and the [Mandate].” *Id.* at 1225. But the district court granted Weiss leave to amend, despite commenting that “it would appear that amendment would be futile.” *Id.*

Weiss filed a Second Amended Complaint, again asserting claims under Title VII and FEHA and adding a claim that TPMG violated her right to informational privacy and bodily autonomy under the California Constitution. TPMG moved to dismiss this complaint for failure to state a claim upon which relief could be granted. *Weiss v. Permanente Med. Grp., Inc. (Weiss II)*, 751 F. Supp. 3d 991, 994 (N.D. Cal. 2024). The district court granted TPMG’s motion. With respect to the Title VII and FEHA claims, the district court concluded that Weiss failed to address the problems noted in its prior order. *See id.* at 994, 998. On her state constitutional claim, the district court determined that Weiss could neither establish an informational-privacy

claim nor rebut TPMG's countervailing interest in protecting public health. *Id.* at 996–97. Weiss timely appealed.

DISCUSSION

“We review *de novo* an order granting a motion to dismiss for failure to state a claim.” *Bolden-Hardge v. Off. of Cal. State Controller*, 63 F.4th 1215, 1220 (9th Cir. 2023). “[W]e accept ‘as true all well-pleaded allegations of fact in the complaint’ and construe them in the light most favorable to the non-moving party.” *Karasek v. Regents of Univ. of Cal.*, 956 F.3d 1093, 1104 (9th Cir. 2020) (citation omitted).

Title VII prohibits employers from firing employees because of the employees' religion.² 42 U.S.C. § 2000e-2(a)(1). FEHA likewise forbids employers from discriminating against employees based on their religion. Cal. Gov't Code § 12940(a). “Both statutes require employers to accommodate [employees'] religious beliefs unless doing so would impose an undue hardship.” *Bolden-Hardge*, 63 F.4th at 1222.

We analyze Title VII and FEHA failure-to-accommodate-religion claims under a burden-shifting framework. *Detwiler v. Mid-Columbia Med. Ctr.*, 156 F.4th 886, 893 (9th Cir. 2025). The employee “must first plead a *prima facie* case of failure to accommodate her religion.” *Id.* If she makes this showing, “the employer must show it was nonetheless justified in refusing to accommodate” the employee's beliefs. *Id.* To state a *prima facie* case, the plaintiff must show that “(1) she had a bona fide religious

² Congress defined “religion” to include “all aspects of religious observance and practice, as well as belief.” 42 U.S.C. § 2000e(j); see *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 771–72 (2015).

belief, the practice of which conflicted with an employment duty; (2) she informed her employer of the belief and conflict; and (3) the employer threatened her with or subjected her to discriminatory treatment, including discharge, because of her inability to fulfill the job requirements.” *Id.* (citation modified) (quoting *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1438 (9th Cir. 1993)).

In this case, TPMG moved to dismiss Weiss’s claims, arguing only that she had not sufficiently alleged the second element of the *prima facie* case—that she gave TPMG sufficient notice of the conflict between her religious beliefs and the Mandate. And it was on that basis that the district court resolved the case. Thus, we likewise limit our inquiry to the “notice requirement.” *Heller*, 8 F.3d at 1439.

In *Heller*, we explained that a “sensible approach” to notice in this context is to require the employee to provide “only enough information about [her] religious needs to permit the employer to understand the existence of a conflict.” *Id.*; see *Lawson v. Washington*, 296 F.3d 799, 804 (9th Cir. 2002) (“Pursuant to *Heller*, an employee need only inform his employer about his religious needs for the employer to understand the conflict between the employer’s expectations and the employee’s religious practices.”). “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.” *Heller*, 8 F.3d at 1439.³ To be sure, “conclusory

³ The Supreme Court’s decision in *Abercrombie & Fitch Stores, Inc.* suggests that our conception of the notice requirement may be too formalistic because the determinative issue is the employer’s *motive*, not what the employer knows about an employee’s beliefs and how it knows

assertions” of conflict with religious beliefs are insufficient to satisfy the notice requirement, and an employee must provide enough information to put the employer on notice of an “actual conflict.” *Bolden-Hardge*, 63 F.4th at 1223.

At issue in *Heller* was an employee’s request for time off to attend his wife’s Jewish conversion ceremony. 8 F.3d at 1437. The employee “explained his situation” to his supervisor and asked for two hours off, which was initially granted. *Id.* But a more-senior supervisor retracted the approved time off, and the employee was informed that if he missed work, he would be fired. *Id.* The employee was terminated after he refused to miss his wife’s ceremony, and he sued his employer under Title VII. *Id.* In seeking dismissal of the lawsuit, the employer argued, in part, that the employee did not provide adequate notice of the conflict because he “never explained the nature of the ceremony.” *Id.* at 1439. We rejected the employer’s argument, concluding that it had sufficient notice of the employee’s religious conflict because it knew that the employee was Jewish, that his wife was studying for conversion, and that he requested time off to attend her conversion ceremony. *Id.* We made clear that an inquiry into whether the employee’s religion *required* him to attend the ceremony was beyond the scope of the notice requirement. *Id.*

it. *See* 575 U.S. at 773 (“An employer may not make an [employee]’s religious practice, confirmed or otherwise, a factor in employment decisions.”). But we need not resolve this tension in this case because here, it is clear that TPMG’s understanding of Weiss’s beliefs was based only on her religious-exemption request and her answers to TPMG’s supplemental questionnaire. Thus, we leave for another day the effect of *Abercrombie*, if any, on our requirement that an employee “inform[] his employer of [his] belief and conflict.” *Heller*, 8 F.3d at 1438.

Applying these well-established principles to the present case, we have little difficulty concluding that Weiss satisfied Title VII's notice requirement. Weiss plausibly alleged that she provided notice of her religious conflict with the Mandate in her initial request for a religious exemption. She identified herself to TPMG management as "a Christian Jew" and described specific religious doctrines that she asserted prohibited her from receiving the COVID-19 vaccine. These doctrines included the Torah's prohibition against "accepting foreign material into our bodies," Deuteronomy's counsel against "needle wounds except for direct curative benefit," and the professed requirement under Jewish law to "maintain [one's] body and blood uncontaminated." She also stated that receiving a COVID-19 vaccine would be contrary to her belief that she should not "introduce foreign substances into [her] body temple that change how [her] Creator designed it."

TPMG argues that Weiss's initial exemption request failed to demonstrate a conflict between her religious beliefs and the Mandate because she had received other vaccines and did not explain why COVID-19 vaccines are different from the prior vaccines that she received. According to TPMG, because Weiss's initial request "established a basis to seek additional information," it "did not inform TPMG of a sincerely held religious belief conflicting with the Policy," and Weiss failed to cure this deficiency in her incomplete responses to TPMG's supplementary questions. We disagree.

Weiss acknowledged that she had previously received vaccinations, and she explained that her present concern arose not because the COVID-19 vaccine was different, but because her religious commitment had changed. Additionally, TPMG's initial approval of Weiss's request

for a religious exemption demonstrates that TPMG understood she was asserting a religious conflict with the company's Mandate. *See Baker v. Home Depot*, 445 F.3d 541, 547 (2d Cir. 2006). The approval notice acknowledged that Weiss was requesting "a [r]eligion-based exemption" and stated that an exemption had been approved "[b]ased on the information [Weiss] provided" on TPMG's religious-exemption request form. The approval notice further stated that, if Weiss's "views change[d], and she no longer ha[d] a sincerely held religious belief, practice, or observance that prevent[ed] [her] from receiving any COVID-19 vaccine," she had to comply with the Mandate. There is no suggestion that TPMG ever questioned that Weiss was asserting a *religious* objection to the Mandate. Thus, Weiss plausibly alleged that she provided sufficient information for TPMG to "understand the existence of a conflict" between her beliefs and its Mandate. *Heller*, 8 F.3d at 1439; *see Lawson*, 296 F.3d at 804.

The record does indicate that TPMG doubted the *sincerity* of Weiss's claimed religious conflict. TPMG's request for supplemental information explained that, in reviewing employees' religious-exemption requests, "it has come to our attention that many employees have submitted similar or nearly identical exemption requests containing language that was taken verbatim from various free and paid template forms available on the internet." Based on this and other findings, TPMG further scrutinized Weiss's request and asked for additional information about her religious beliefs and practices. The nature of TPMG's supplemental questions—inquiries about whether Weiss refused to take other substances based on her religious beliefs, why her religious beliefs prevented her from taking the COVID-19 vaccine, and whether she put her beliefs about the sanctity

of her body into practice in other areas of her life—probe the sincerity of her professed beliefs about how she is to treat her body, not whether her professed beliefs were religious in nature.

The sincerity of the employee’s professed beliefs and whether the employee adequately notified her employer that she has a religious conflict with an employment requirement are separate inquiries. *See Heller*, 8 F.3d at 1438. TPMG’s arguments blur the distinction. So did the district court when it concluded that “Weiss’s initial exemption request consisted of only general objections to the COVID-19 vaccine,” which justified TPMG’s supplemental inquiry “to help it ascertain whether Weiss’s exemption request constituted a religious belief or an isolated teaching.” *Weiss I*, 738 F. Supp. 3d at 1222–24; *see also Weiss II*, 751 F. Supp. 3d at 998 (adopting the reasoning of the prior order).

The district court reasoned that treating the information in Weiss’s initial request as sufficient to provide notice of a religious conflict “would have resulted in a ‘limitless excuse for avoiding all unwanted obligations’” because it “provided little basis for TPMG to evaluate the extent of her religious beliefs’ potential conflict.” *Weiss I*, 738 F. Supp. 3d at 1223 (quoting *Finkbeiner*, 623 F. Supp. 3d at 465–66). From this, the district court held that Weiss “failed to aver plausibly that she adequately informed TPMG of the conflict between her religious beliefs and [the] Policy.” *Id.* at 1225. The notice requirement cannot be used as an end run around the “delicate inquiry,” *Detwiler*, 156 F.4th at 893, and a court’s “narrow function,” *Bolden-Hardge*, 63 F.4th at 1223 (quoting *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 725 (2014)), in assessing the sincerity and reasonableness of an employee’s asserted religious belief. The notice

requirement measures only the sufficiency of the employer's information about the employee's religious beliefs or practices, not the validity of those beliefs and practices. *See Heller*, 8 F.3d at 1439. Nor does the notice requirement invite employers or courts to consider whether an employee's "religion mandates the employee's adherence" to the beliefs or practices asserted.⁴ *Id.*

Because Weiss plausibly alleged that she informed TPMG of her "belief and conflict" with the Mandate, she has established the second element of the prima facie case for purposes of the pleading stage. *Id.* at 1438. The district court's conclusion otherwise was error.

REVERSED and REMANDED.

⁴ Weiss alleged that she had "no other objection to receiving the Covid-19 vaccination other than her religious faith." Thus, even if the sincerity of her beliefs were at issue, the concern addressed in *Detwiler* about the mingling of religious and secular motivations is not implicated here. *See Detwiler*, 156 F.4th at 894–95.

NOT FOR PUBLICATION

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UNITED STATES COURT OF APPEALS

JUL 24 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
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MIMI WEISS,

Plaintiff - Appellant,

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THE PERMANENTE MEDICAL GROUP,
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Defendant - Appellee.

No. 24-6609

D.C. No.

3:23-cv-03490-RS

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Richard G. Seeborg, District Judge, Presiding

Argued and Submitted October 21, 2025
San Francisco, California

Before: PAEZ, BEA, and FORREST, Circuit Judges.
Dissent by Judge PAEZ.

The district court granted The Permanente Medical Group's (TPMG) motion to dismiss Mimi Weiss's privacy claim asserted under the California Constitution on the grounds that she could neither establish that TPMG had violated her privacy rights by implementing a COVID-19 vaccine mandate (Mandate) nor overcome

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

TPMG’s countervailing interests in combatting the spread of COVID-19.¹ To state a *prima facie* claim for invasion of privacy under the California Constitution, a plaintiff “must establish . . . (1) a legally protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by defendant constituting a serious invasion of privacy.” *See Hill v. Nat’l Collegiate Athletic Ass’n*, 865 P.2d 633, 657 (Cal. 1994). Whether the plaintiff has a legally protected privacy interest is a question of law.² *Id.* But generally, whether there is “a reasonable expectation of privacy in the circumstances and whether defendant’s conduct constitutes a serious invasion of privacy are mixed questions of law and fact.” *Id.* These issues “may be adjudicated as a matter of law” only where “the undisputed material facts show no reasonable expectation of privacy or an insubstantial impact on privacy interests.” *Id.*

¹ The remaining issues presented in this appeal are addressed in our accompanying published opinion.

² Legally recognized privacy interests generally fall into two categories: “(1) interests in precluding dissemination or misuse of sensitive and confidential information (‘informational privacy’); and (2) interests in making intimate personal decisions or conducting personal activities without observation, intrusion, or interference (‘autonomy privacy’).” *Hill*, 865 P.2d at 654. The district court determined that Weiss’s operative complaint “identified a right to personal autonomy” but not “an informational privacy right.” *Weiss v. Permanente Med. Grp., Inc.*, 751 F. Supp. 3d 991, 997 (N.D. Cal. 2024). Weiss argues this was error because Federal Rule of Civil Procedure 10 makes the use of separate counts permissive and she plausibly alleged facts supporting an informational-privacy claim. Because we conclude that the district court incorrectly dismissed Weiss’s constitutional claim based on her bodily-autonomy interest, we decline to address her informational-privacy interest.

“A defendant may prevail . . . by negating any of the three elements” or by establishing “that the invasion of privacy is justified because it substantively furthers one or more countervailing interests.” *Id.* The plaintiff can rebut any asserted countervailing interest “by showing there are feasible and effective alternatives to defendant’s conduct which have a lesser impact on privacy interests.” *Id.* “The existence of a sufficient countervailing interest or an alternative course of conduct present threshold questions of law for the court.” *Id.* But, unless the “material facts are undisputed,” “the relative strength of countervailing interests and the feasibility of alternatives present mixed questions of law and fact.” *Id.*

1. ***Prima Facie Case.*** California recognizes “that a competent adult has the right to refuse medical treatment.” *In re Qawi*, 81 P.3d 224, 230 (Cal. 2004) (quoting *Conservatorship of Wendland*, 28 P.3d 151, 158 (Cal. 2001)). The reasonableness of a privacy interest depends on the circumstances. *Hill*, 865 P.2d at 655. California has recognized that the factors influencing whether a privacy expectation is reasonable include “advance notice”; “customs, practices, . . . physical settings,” including the “particular employment setting”; “community norms”; and “opportunities to consent.” *Id.* at 655, 667.

TPMG disputes that Weiss had a reasonable expectation of bodily autonomy in not getting vaccinated because vaccine mandates have long been recognized as “reasonable restraint[s] on autonomy privacy rights,” particularly in the wake of a

pandemic. But Weiss alleged that she was a fully remote employee who presented “no risk she would spread COVID-19 to patients or employees.” She also alleged that TPMG “failed and refused to consider the privacy rights of remote employees in establishing and implementing its vaccine mandate,” that TPMG’s Mandate did not account for the temporal limits on the effectiveness of the vaccine or natural immunity obtained following infection, and that TPMG promoted a vaccine mandate “contrary to what the known science would support.”

TPMG disputes these allegations, contending that its Mandate “follow[ed] contemporary conventional wisdom” and “was intended to protect the health and safety of [its] employees, patients . . . , and the larger community.” But beyond pointing to California’s historically deferential approach to mandatory vaccination, TPMG does not explain how its stated goal was served by requiring employees who had no contact with patients, the public, or other employees in performing their work functions to be vaccinated. On this record, we conclude that the facts and circumstances related to the reasonableness of Weiss’s privacy expectation in her medical decision-making are disputed and therefore are not properly resolved at this stage. *See id.* at 657.

Weiss further argues that she sufficiently pled that the Mandate was a serious invasion of her right to privacy because it “forced her to choose between accepting vaccination and losing her job.” To be actionable, a privacy invasion must be

sufficiently serious as to “constitute an egregious breach of the social norms underlying the privacy right,” requiring some consideration of “the extent and gravity of the invasion.” *Id.* at 655. The California Supreme Court has clarified that this element is meant “to screen out intrusions of privacy that are de minimis or insignificant.” *Loder v. City of Glendale*, 927 P.2d 1200, 1231 n.22 (Cal. 1997).

Weiss has alleged a sufficiently significant intrusion into her privacy interests by stating that her employment was conditioned on taking a vaccine that she objected to, that TPMG asked intrusive questions about her religious and medical history, and that TPMG did not seriously consider her religious objections. Again, TPMG disputes these allegations and asserts that, as made evident by the contemporaneous state and federal COVID-19 vaccine mandates, mandatory vaccination policies are not an actionable privacy intrusion.³ It also again points to California’s permissive approach to vaccine mandates and the lack of consensus as to whether such a policy constitutes a serious invasion of privacy. Regardless of whether the Mandate is

³ Weiss also alleged that TPMG “was fully informed that the Covid-19 vaccines it required its employees to receive had obtained only emergency use authorization,” and that TPMG “knew that the [authorization] statute d[id] not permit compulsion.” In response, TPMG cites to facts from *Curtis v. PeaceHealth*, No. 3:23-cv-05741-RJB, 2024 WL 248719, at *4 (W.D. Wash. Jan. 23, 2024), as evidence that the Pfizer-BioNTech vaccine had received full FDA approval before the Mandate went into place. Setting aside that, at this stage, we decline to consider the facts recited in other judicial opinions for their truth, *see Cal. ex rel. RoNo, LLC v. Altus Fin. S.A.*, 344 F.3d 920, 931 n.8 (9th Cir. 2003), TPMG’s arguments demonstrate that the parties continue to dispute the facts underlying the seriousness of Weiss’s alleged invasion.

ultimately a permissible intrusion into an employee’s personal autonomy, Weiss has plausibly alleged an intrusion that is more than “de minimis or insignificant.” *Loder*, 927 P.2d at 1231 n.22. And “the extent and gravity” of the intrusion is a mixed question of law and fact that is not properly resolved at the pleading stage. *Hill*, 865 P.2d at 655.

For these reasons, we conclude that Weiss has alleged sufficient facts to state a prima facie invasion-of-privacy claim.

2. *Countervailing-Interests Defense.* TPMG asserts that its interests in protecting the health of its workforce, its patients, and the public generally justified its Mandate and outweighed Weiss’s individual privacy interests. TPMG is correct that “[p]rivacy concerns are not absolute; they must be balanced against other important interests.” *Id.* The “relative importance” of an asserted countervailing interest is its “proximity to the central functions of a particular public or private enterprise.” *Id.* at 656. But “feasible and effective alternatives” can undermine a claim of countervailing interests. *Id.* at 657. When considering alternatives, “the court does not decide whether every measure is *necessary*, merely whether the policy is *reasonable*.” *Sheehan v. San Francisco 49ers, Ltd.*, 201 P.3d 472, 480 (2009). The existence of countervailing interests is a question of law, but their relative strength is a mixed question of law and fact. *Hill*, 865 P.2d at 657.

Weiss is correct that it is improper to weigh the relative importance of the

parties' interests at this stage. Weiss's status as a remote employee prevents finding—as a matter of law—that TPMG's asserted health interests, which are undoubtedly central to being a healthcare provider, outweigh Weiss's legally protected interest in managing her own medical decisions. *See id.* The possibility of a feasible and effective alternative is also raised by Weiss's allegation that TPMG granted religious exemptions to more than 10,000 workers, including many who provided in-person medical services. We express no opinion on the ultimate balancing of the parties' interests. We conclude only that TPMG is not entitled to prevail on its affirmative defense to Weiss's invasion-of-privacy claim as a matter of law on a motion to dismiss. *Id.*

REVERSED and REMANDED.

Weiss v. The Permanente Medical Group, Inc., No. 24-6609

FILED

PAEZ, Circuit Judge, dissenting:

JUL 24 2026

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

I respectfully dissent.

The majority concludes that material disputed facts prevent dismissal of Weiss’s state law privacy claim at the motion to dismiss stage. However, in my view, the relevant facts are either undisputed or immaterial to an antecedent legal question: Whether a private health care provider’s policy requiring employees to either obtain a COVID-19 vaccination or qualify for a religious or medical exemption constitutes a “serious invasion of privacy” under the California Constitution. *Hill v. Nat’l Collegiate Athletic Ass’n*, 865 P.2d 633, 657 (Cal. 1994). This issue lacks “controlling precedent” under California law and “could determine the outcome” of this case. Cal. R. Ct. 8.548(a). As a matter of “[c]omity and federalism,” I would certify this issue to the California Supreme Court. *Munson v. Del Taco, Inc.*, 522 F.3d 997, 999 (9th Cir. 2008). Instead, the majority holds that Weiss’s complaint plausibly alleges that TPMG’s vaccine policy constitutes an “egregious breach of the social norms underlying the privacy right.” *Hill*, 865 P.2d at 655. I am doubtful the California Supreme Court would agree.

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To state a claim for invasion of privacy under the California Constitution, Cal. Const., art. I, § 1, a complaint must plausibly allege “(1) a legally protected

privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by defendant constituting a serious invasion of privacy.” *Hill*, 865 P.2d at 657. A defendant may prevail by negating one of these elements or by justifying the invasion of privacy as serving countervailing interests. *Id.* Where “the undisputed material facts” do not amount to a reasonable expectation or a serious invasion of privacy, the complaint may be dismissed as a matter of law. *Id.*

“Actionable invasions of privacy must be sufficiently serious in their nature, scope, and actual or potential impact to constitute an egregious breach of the social norms underlying the privacy right.”¹ *Id.* at 655. Applying the reasoning of prior California Supreme Court and Courts of Appeal decisions, I predict the California Supreme Court would hold that TMPG’s COVID-19 vaccination policy does not constitute a serious invasion of privacy under the California Constitution.

The Complaint fails to plausibly allege an “egregious breach of the social norms underlying the privacy right.” *Id.* *Hill* recognized that “[c]omplete privacy does not exist in this world except in a desert, and anyone who is not a hermit must expect and endure the ordinary incidents of the community life of which he is a

¹ I note that a fractured California Supreme Court in *Loder v. City of Glendale*, 927 P.2d 1200, 1231 n.22 (Cal. 1997) described this requirement as serving to “screen out intrusions of privacy that are de minimis or insignificant.” But since *Loder*, the California Supreme Court has continued to require a showing of an “egregious” breach to give rise to an actionable invasion of privacy. *See, e.g., Mathews v. Becerra*, 455 P.3d 277, 293 (Cal. 2019).

part.” *Id.* (quoting Rest. 2d Torts, § 652D, com. C). California precedent treats vaccination requirements as one such permissible “incident[] of the community life.” *Id.* “[T]he right to be free from nonconsensual invasions of bodily integrity is not absolute,” and the California Supreme Court has recognized that a “simple vaccination [requirement is] permissible to protect public health,” consistent with *Jacobson v. Massachusetts*, 197 U.S. 11 (1905). *See Thor v. Superior Court*, 855 P.2d 375, 383–84 (Cal. 1993). Likewise, reasoning that “compulsory immunization has long been recognized as the gold standard for preventing the spread of contagious diseases,” California Courts of Appeal have held that in “the area of health and health care legislation, there is a presumption” that a vaccination requirement is “no violation of privacy” under the California Constitution. *Love v. State Dep’t of Educ.*, 240 Cal. Rptr. 3d 861, 871 (Cal. Ct. App. 2018) (quoting *Coshov v. City of Escondido*, 34 Cal. Rptr. 3d 19, 33 (Cal. Ct. App. 2005) and *Brown v. Smith*, 235 Cal. Rptr. 3d 218, 226 (Cal. Ct. App. 2018)).²

The California Supreme Court would, in my view, recognize the constitutional law principle undergirding these decisions: “[W]hile the [California] Constitution protects against invasions of individual rights, it is not a suicide pact.”

² Assuming the cases invoked by Weiss suggest tension between relevant California Court of Appeal authorities, the fact that “courts have resolved [these issues] differently” and there is therefore “no clear controlling California precedent” further justifies certification. *K.C. v. Las Vegas Metro. Police Dep’t*, 163 F.4th 701, 705 (9th Cir. 2026); *Munson*, 522 F.3d at 1000.

Kennedy v. Mendoza-Martinez, 372 U.S. 144, 160 (1963). Tellingly, “no case hold[s] mandatory vaccination statutes violate a person’s right to bodily autonomy.” *Love*, 240 Cal. Rptr. 3d at 869.

That the prior cases were largely litigated in the context of mandatory vaccine laws arguably aids TMPG’s position. The California Supreme Court in *Hill* “recogniz[ed] that involvement of a governmental entity,” as opposed to a private entity, “affect[s] the degree of the intrusion imposed.” *Loder*, 927 P.2d at 1231 n.21. “[T]he pervasive presence of coercive government power in basic areas of human life typically poses greater dangers to the freedoms of the citizenry than actions by private persons.” *Hill*, 865 P.2d at 656. Conversely, “an individual generally has greater choice and alternatives in dealing with private actors” like employers, “than when dealing with the government.” *Id.* That is, a private employer’s vaccination policy is less “egregious” than a governmental vaccine mandate, which is itself entitled to the “presumption” that “no violation of privacy has occurred.” *Love*, 240 Cal. Rptr. 3d at 871. Thus, a private health care provider’s vaccine policy containing religious and medical exemptions, issued contemporaneous to state and federal vaccine mandates, likely does not reflect an egregious breach under the California Constitution.

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The majority holds that material disputed facts prevent dismissal as a matter

of law. I respectfully disagree. The majority identifies no disputed facts material to this analysis. Rather, the material facts are undisputed. TPMG does not contest that Weiss's employment was conditioned on her vaccination or qualification for an exemption, or that Weiss was asked questions about her religious and medical history. Those facts that are disputed are not material.³ The majority notes that the Complaint alleges TPMG asked unduly intrusive questions and insufficiently considered Weiss's objections. While these facts may be relevant to an informational privacy claim (which the majority does not address) or to the reasonableness of Weiss's expectation of privacy "under the circumstances," they do not bear on whether a vaccine requirement constitutes a serious invasion of bodily autonomy. *Hill*, 865 P.2d at 664.

³ The Complaint also alleges that the vaccine had "obtained only emergency use authorization." TPMG responds that the Pfizer-BioNTech vaccine received full approval by the Food and Drug Administration ("FDA") before Weiss's exemption request and before TPMG's compliance deadline. Respectfully, we should have taken judicial notice of the date of FDA approval. *See Intri-Plex Techs., Inc. v. Crest Grp., Inc.*, 499 F.3d 1048, 1052 (9th Cir. 2007) ("A court may take judicial notice of matters of public record without converting a motion to dismiss into a motion for summary judgment, as long as the facts noticed are not subject to reasonable dispute." (internal quotation marks and citations omitted)). The date of full FDA approval is not "subject to reasonable dispute" because it "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned"—the FDA. *See* Fed. R. Ev. 201(b)(2); FDA, *FDA Approves First COVID-19 Vaccine* (Aug. 23, 2021), <https://www.fda.gov/news-events/press-announcements/fda-approves-first-covid-19-vaccine>. Thus, there is no material disputed fact regarding the date of approval.

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I will end where I started: certification. The “spirit of comity and federalism” and our “deference to the state court” on significant and unsettled questions of state law counsel in favor of certification. *Murray v. BEJ Minerals, LLC*, 924 F.3d 1070, 1072 (9th Cir. 2019) (en banc) (internal quotation marks omitted); *Kremen v. Cohen*, 325 F.3d 1035, 1037 (9th Cir. 2003). Whether a health care provider’s requirement that employees obtain either a COVID-19 vaccination or an exemption constitutes a serious invasion of privacy under the California Constitution is a question with “important public policy ramifications” and is “new, substantial, and of broad application.” *Murray*, 924 F.3d at 1072 (internal quotation marks omitted). Given the importance of this issue and that “no clear controlling California precedent exists,” I would certify the issue to the California Supreme Court. *Munson*, 522 F.3d at 1000.

For these reasons, I respectfully dissent.