No. _____

In the Supreme Court of the United States

CYNTHIA BRACCIA; IRINA ABRAMOV; DAWN ALOIS; JOY ALTRUI; ANGELA BASTONE-PERGOLA; DIANE BONO; KATHERINE CARNEY; KAREN FERRANDO; CARMELA FIORICA; EILEEN HAGAN; SARAH HASENEY; MARYANN HOJNOWSKI; DENNISE JOHNSON; KAREN LA ROSA; NADIRA MAHABIR; VERONICA NEWTON; KATLYN PASTOR; REBECCA RAMIREZ; JULIA SHAW; ROSE TAYLOR; MIA TORRES; MARISOL VENTRICE; AND MICHELE WOODWARD-LAWTON, *Petitioners,*

v.

NORTHWELL HEALTH SYSTEMS

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Second Circuit

PETITION FOR A WRIT OF CERTIORARI

GENE C. SCHAERR
Counsel of Record
ERIK S. JAFFE
HANNAH C. SMITH
JOSHUA J. PRINCE
MIRANDA CHERKAS SHERRILL
SCHAERR | JAFFE LLP
1717 K Street NW, Suite 900
Washington, DC 20006
(202) 787-1060
gschaerr@schaerr-jaffe.com
Counsel for Petitioners

QUESTIONS PRESENTED

Title VII of the Civil Rights Act of 1964 requires employers to accommodate their religious employees if they can do so without undue hardship. 42 U.S.C. §2000e(j). Petitioners here sued their employer after they unsuccessfully sought religious accommodations to its vaccine mandate. But the Second Circuit held that, because New York would punish any accommodation otherwise required by federal law, such punishment would be a per se undue hardship on the employer, precluding an otherwise non-burdensome accommodation.

But the Supremacy Clause preempts state laws that frustrate federal law. U.S. Const. art. VI, cl. 2; *Kansas* v. *Garcia*, 589 U.S. 191, 202 (2020). State law that conflicts with federal law thus is not "a *defense* to liability under federal law." *Barber ex rel. Barber* v. *Colorado Dep't of Revenue*, 562 F.3d 1222, 1233 (10th Cir. 2009) (citation omitted).

The questions presented are:

1. Whether an employer faces a per se Title VII undue hardship if granting an otherwise federally required religious accommodation would conflict with state law purporting to punish such accommodation.

2. Whether, if so, Title VII preempts state laws that purport to prohibit employers from granting federally required religious accommodations.

PARTIES TO THE PROCEEDING AND RULE 29.6 CORPORATE DISCLOSURE STATEMENT

Petitioners Cynthia Braccia, Irina Abramov, Dawn Alois, Joy Altrui, Angela Bastone-Pergola, Diane Bono, Katherine Carney, Karen Ferrando, Carmela Fiorica, Eileen Hagan, Sarah Haseney, Maryann Hojnowski, Dennise Johnson, Karen La Rosa, Nadira Mahabir, Veronica Newton, Katlyn Pastor, Rebecca Ramirez, Julia Shaw, Rose Taylor, Mia Torres, Marisol Ventrice, and Michele Woodward-Lawton were appellants in the Second Circuit and plaintiffs in the district court.

Maureen Alchermes, Evgeniya Batalla, Jennifer Browne, Andrea Depalma, Katherine Kougentakis, Nilberk Kurt, and Debra Lanahan were appellants in the Second Circuit and plaintiffs in the district court.

Respondent Northwell Health Systems was the appellee in the Second Circuit and the defendant in the district court.

Petitioners are individual persons, and no corporate disclosure is required.

RELATED PROCEEDINGS

This case is directly related to the following proceedings in the Eastern District of New York and the United States Court of Appeals for the Second Circuit:

- *Braccia*[1] v. *Northwell Health Sys.*, No. 24-2665 (2d Cir.) (summary order affirming dismissal entered September 10, 2025 (App.A)); and
- *Braccia*[2] v. *Northwell Health Sys.*, No. 2:22-cv-06687-OEM-LGD (E.D.N.Y.) (memorandum and order dismissing claims entered September 24, 2024 (App.B)).

[1] Both the Second Circuit and the Eastern District of New York erroneously recorded Petitioner Cynthia "Braccia" as Cynthia "Braccica" on the docket.

[2] See note 1.

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INTRODUCTION

Some states hostile to religious accommodations under Title VII have sought to manufacture an "undue burden" for employers by forbidding them from offering certain accommodations under pain of penalty. Those states have been enabled by the First, Second, Third, and Ninth Circuits, which deem state laws that purport to punish otherwise required Title VII religious accommodations a sufficient burden on employers to negate the requirement for such accommodations. But that not only misreads Title VII. It also ignores the Supremacy Clause, which requires that, if a state law conflicts with or frustrates the goals of a federal law, federal law controls. See *Kansas* v. *Garcia*, 589 U.S. 191, 202 (2020). Given the widespread importance of this issue, Petitioners ask the Court to resolve it in a way that vindicates both the text and purposes of Title VII's accommodation provision.

Here, the Second Circuit held that New York's COVID-19 vaccine mandate for healthcare workers—which forbade religious accommodations regardless of burden—excused employers from any obligation to provide religious accommodations under federal law. App.3a, 7a-8a. This holding both ignores the Supremacy Clause's clear command and flouts this Court's holding in *Groff* v. *DeJoy* that employers must accommodate religious employees if they can do so without suffering an undue hardship or "substantial" burden. 600 U.S. 447, 468 (2023).

As reflected in this Court's request for the Solicitor General's views in *Doe* v. *Hochul*, No. 24-

1015—a case presenting the same questions—the issues presented here are exceptionally important. See Dkt. Order, *id.* (U.S. Dec. 8, 2025); Pet. at i-ii, *id.* (U.S. Mar. 20, 2025). If Title VII's religious-accommodation requirement preempts state laws that entirely *forbid* religious accommodations, those laws cannot constitute a burden on employers otherwise obligated to provide religious accommodations under Title VII.

This Court's intervention is necessary now. Across the country, Title VII's religious-accommodation requirement is being frustrated by state laws that oppose such accommodations, and by acquiescing courts. These courts have carved out this bespoke exception to federal preemption for religious accommodations despite correctly recognizing that federal rights preempt contrary state laws in other cases involving foundational federal civil-rights protections.

Only this Court can correct the Second Circuit's (and other circuits') fundamental inversion of preemption rules. Courts must apply the same preemption standard to religious rights that they apply to other protected characteristics. Indeed, religiously discriminatory "exceptions" to ordinary preemption doctrine raise their own constitutional problems under the First Amendment. To ensure that states cannot legislate their own get-out-of-Title-VII-free cards and discriminate against religion in the process, this Court should grant the petition and reverse the decision below.

OPINIONS BELOW

The summary order of the United States Court of Appeals for the Second Circuit is not published but is available at 2025 WL 2610704 and reproduced at Appendix A, App.1a-11a.

The district court's memorandum and order granting the motion to dismiss is not published but is available at 2024 WL 4276171 and reproduced at Appendix B, App.12a-41a.

JURISDICTION

The Second Circuit's opinion issued on September 10, 2025. App.1a. Justice Sotomayor granted Petitioners' timely request for a 60-day extension to file this petition up to February 9, 2026. No. 25A624. This Court has jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The text of the Supremacy Clause of the United States Constitution is reproduced in Appendix D, App.44a. Title VII and other relevant provisions of the Civil Rights Act of 1964 are reproduced in the Appendices: 42 U.S.C. §2000e(j) is reproduced in Appendix E, App.45a; 42 U.S.C. §2000e-2(a)(1) is reproduced in Appendix F, App.46a; 42 U.S.C. §2000e-7 is reproduced in Appendix G, App.47a; and 42 U.S.C. §2000h-4 is reproduced in Appendix H, App.48a.

STATEMENT

A. Legal Background

1. Federal law is the "supreme Law of the Land" regardless of any contrary state law. U.S. Const. art. VI, cl. 2. Since the beginning of the Republic, this Court has applied that standard to vindicate federal authority against encroaching state action. For example, after Maryland sought to tax the Second Bank of the United States, this Court recognized that Maryland's law could not remain in effect because it would allow a State to thwart the full effect of a congressional enactment. See *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 425, 430-432 (1819) (Marshall, C.J.). As Chief Justice John Marshall explained, "states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by congress to carry into execution the powers vested in the general government." *Id.* at 436.

In practice, this means that the Supremacy Clause "invalidates state laws that 'interfere with, or are contrary to,' federal law." *Hillsborough County* v. *Automated Med. Lab'ys, Inc.*, 471 U.S. 707, 712 (1985) (quoting *Gibbons* v. *Ogden*, 22 U.S. (9 Wheat.) 1, 211 (1824) (Marshall, C.J.)). The Constitution tasks federal courts with determining whether state law "stands as an obstacle to the accomplishment and execution" of federal law. *Jones* v. *Rath Packing Co.*, 430 U.S. 519, 526 (1977) (quoting *Hines* v. *Davidowitz*, 312 U.S. 52, 67 (1941)). If a state law is such an obstacle, "the federal law takes precedence and the

state law is preempted." *Kansas* v. *Garcia*, 589 U.S. 191, 202 (2020) (cleaned up).

2. The federal law at issue in this case is Title VII of the Civil Rights Act of 1964. Title VII prohibits employers from discriminating against an individual "because of such individual's * * * religion[.]" 42 U.S.C. §2000e-2(a)(1). And because, at times, employers may be insensitive or hostile to an employee's religious practices, Congress requires employees to "reasonably accommodate an employee's practice of religion" in the workplace. *Groff* v. *DeJoy*, 600 U.S. 447, 473 (2023).

Title VII's accommodation requirement, of course, is not unlimited. Congress qualified the requirement by allowing an employer to avoid accommodations that would cause "undue hardship on the conduct of the employer's business." 42 U.S.C. §2000e(j). For many years, courts believed employers needed only show "more than a de minimis cost" to establish an undue hardship. See *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63, 84 (1977). But this Court recently clarified that the standard—as the statutory text indicates—is much higher: The "undue hardship" test asks whether an accommodation would cause a "substantial" burden in the context of an employer's overall business. *Groff*, 600 U.S. at 468.

Further, Title VII expressly overrides contrary state laws, by "exempt[ing] or reliev[ing]" an employer from the consequences of any state law that "purports to require or permit the doing of any act which would be an unlawful employment practice under [Title VII]." 42 U.S.C. §2000e-7. Indeed, Congress made plain that Title VII invalidates state laws that are

"inconsistent with any of the purposes of [the Civil Rights] Act, or any provision thereof." *Id.* §2000h-4.

B. Factual Background[3]

Which brings us to the facts of this case: In 2021, the Governor of New York announced that all healthcare workers were required to receive COVID-19 vaccinations to continue working at a healthcare facility in the state. App.78a. New York's Public Health and Health Planning Council issued an Order for Summary Action to carry out the announcement. *Ibid.*; see also App.J (App.53a-59a). Originally, and consistent with Title VII's requirements, this order allowed for reasonable religious accommodations. App.78a-79a. But almost immediately, and notwithstanding these foundational principles of Title VII and the Supremacy Clause, the Council changed course and prohibited all religious exemptions. App.62a (citing N.Y. Comp. Codes R. & Regs. tit. 10, §2.61 ("Section 2.61"), App.I (App.49a-52a)).[4]

When Section 2.61 went into effect, Petitioners were employed by Respondent Northwell Health Systems. App.64a-77a. Respondent informed its employees that they were required to be fully vaccinated to remain employed. App.79a. But each petitioner held a sincere religious belief that

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[3] Because the petition "arises from a motion to dismiss," the facts in the Amended Complaint are presented and must be accepted as true. *Anza* v. *Ideal Steel Supply Corp.*, 547 U.S. 451, 453 (2006).

[4] In New York, "[a] duly promulgated regulation * * * has the force of law." *Allstate Ins. Co.* v. *Rivera*, 911 N.E.2d 817, 820 (N.Y. 2009) (citation omitted).

prevented them from receiving the COVID-19 vaccines available at that time. App.81a-82a. Despite granting religious accommodations in the past, Respondent refused to consider any reasonable religious accommodation. Respondent argued that granting religious accommodations as required under Title VII would constitute a per se undue hardship because it would require Respondent to violate Section 2.61. *Ibid.* After summarily rejecting Petitioners' religious-accommodation requests, Respondent terminated Petitioners' employment. App.87a.

C. Procedural History

After exhausting their administrative remedies, Petitioners sued, asserting claims against Respondent for failure to reasonably accommodate their religious beliefs under Title VII. App.63a. The district court granted Respondent's motion to dismiss based on the supposed undue hardship imposed by state law forbidding even otherwise-required accommodations. App.29a-32a. The Second Circuit summarily affirmed for the same reason. App.7a-8a. Throughout this case, Respondent's only claim to undue hardship is its need to comply with Section 2.61 to avoid being fined for noncompliance. *Ibid.*

REASONS FOR GRANTING THE PETITION

The Second Circuit and other circuits have wrongly allowed employers to circumvent Title VII religious accommodations when state law prohibits religious accommodations that would otherwise be required by Title VII. But under the Supremacy Clause, Title VII protections apply notwithstanding conflicting state law. Only this Court can prevent

these holdings from erroneously allowing an unconstitutional exception to the Supremacy Clause and from permitting unlawful burdens on religion. It should grant the petition.

I. Allowing State Laws to Supersede Title VII Religious-Accommodation Requirements Conflicts with Cases Holding Other Federal Laws Preempt Contrary State Law.

As then-Judge Gorsuch recognized, "compliance with discriminatory state laws" as evidence of "reasonableness" should not be a "shield[]." *Barber ex rel. Barber* v. *Colorado Dep't of Revenue*, 562 F.3d 1222, 1234 (10th Cir. 2009) (Gorsuch, J., concurring). But the Second Circuit and other courts allow state law to nullify federal Title VII *religious* protections while consistently recognizing that state laws yield to other federal statutory protections, such as other provisions of Title VII, the Age Discrimination in Employment Act, and the Americans with Disabilities Act.

A. Four Circuits have erroneously allowed state laws to eliminate Title VII's religious-accommodation requirement.

Despite the Supremacy Clause's clear mandate, several circuits have held that a state law prohibiting religious accommodations can serve as a per se undue hardship such that an employee's sincerely held and otherwise non-burdensome religious beliefs do not *ever* need to be accommodated.

For example, the Second Circuit has repeatedly held that "an accommodation that would require an employer to violate the law imposes an undue

hardship." *Russo* v. *Patchogue-Medford Sch. Dist.*, 129 F.4th 182, 186 (2d Cir. 2025) (per curiam) (citing *Groff* and relying on precedent that considered *federal* (not state) laws an undue burden under Title VII); see also *We the Patriots USA, Inc.* v. *Hochul*, 17 F.4th 266, 291-292 (2d Cir. 2021) (per curiam); *D'Cunha* v. *Northwell Health Sys.*, No. 23-476, 2023 WL 7986441, at *3 (2d Cir. Nov. 17, 2023).

Three other circuits have reached the same conclusion. In *Lowe* v. *Mills*, the First Circuit held requiring an employer to violate state law in order to comply with Title VII's religious-accommodation mandate would impose an undue hardship because "granting the requested accommodation would have exposed the Providers to a substantial risk of license suspension, as well as monetary penalties." 68 F.4th 706, 720-724 (1st Cir. 2023). The court rejected the argument that Title VII's preemption provision, 42 U.S.C. §2000e-7, exempts employers from state liability, by reasoning that employers "do not have enforcement authority" and "have no power to determine for the State that [state law] is invalid under Title VII." *Lowe,* 68 F.4th at 724. But these explanations are a nonstarter—employers do not need authority to tell the State its laws are invalid to use Title VII as a defense to state enforcement or to seek a declaratory judgment action to resolve conflicting demands on employers. Of course, the lack of employer power is all the more reason the Court must reassert the supremacy of Title VII as federal law.

Further, the First Circuit rejected that §2000e-7 applied to state laws forbidding *religious* accommodations—in the same way they preempt racial discrimination—because of Title VII's undue

hardship defense unique to religion. 68 F.4th at 725. But that reasoning likewise fails. When the only hardship employers face would be penalties from state enforcement for doing what Title VII would otherwise require, employers should be on the same footing to use Title VII as an affirmative defense to state enforcement whether for religion, race, sex, or any other protected class.

Similarly, in *United States* v. *Board of Education*, the Third Circuit held that employers are not required to provide Title VII religious accommodations to employees seeking to wear religious garb at work merely because doing so would lead to liability for violating state law. 911 F.2d 882, 890-891 (3d Cir. 1990). Rejecting the obvious rejoinder that liability under state law would be preempted by Title VII, the court offered the seeming non-sequitur that Title VII gives way to state laws because "undue hardship is a lower standard than compelling state interest." *Ibid.*

The Ninth Circuit takes a somewhat *Janus*-like approach to the issue. In *Bhatia* v. *Chevron U.S.A., Inc.*, the Ninth Circuit held that a private employer was excused from liability for failure to accommodate religion under Title VII when doing so "would risk liability for violating California [law.]" 734 F.2d 1382, 1384 (9th Cir. 1984) (per curiam); accord *Sutton* v. *Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 830-831 (9th Cir. 1999).

As to public employers, however, the Ninth Circuit properly rejected such reliance on conflicting state law, reasoning that "exempt[ing] [the employer] from a federal accommodation requirement *solely* because the requested accommodation would violate

state law would essentially permit states to legislate away any federal accommodation obligation, raising Supremacy Clause concerns." *Bolden-Hardge* v. *Office of Cal. State Controller*, 63 F.4th 1215, 1225 (9th Cir. 2023) (citing *Malabed* v. *North Slope Borough*, 355 F.3d 864, 871 (9th Cir. 2003)). Despite seemingly realizing the flaws in its earlier private-employer cases and acknowledging that similar Supremacy Clause concerns were present for both public and private employers, the panel was bound by *Bhatia* and *Sutton* as to private employers and thus limited its holding to public employers. *Ibid.*

In short, other than the Ninth Circuit as to public employers, every circuit to consider the question presented has concluded that employers need not provide religious accommodations if an accommodation would violate state law.

B. By contrast, six circuits correctly recognize that Title VII's other anti-discrimination provisions preempt conflicting state laws.

This practice of state preemption of federally required religious accommodations stands in contrast to how the circuits treat state laws that conflict with *other* Title VII provisions without undue-hardship exceptions. Indeed, many of the same circuits have correctly held for decades that state laws are preempted when they allow violations of Title VII in other contexts.

For example, the Second Circuit has held "that the mandates of state law are no defense to Title VII liability" because "'Title VII preempts any state laws

in conflict with it.'" *Gulino* v. *New York State Educ. Dep't*, 460 F.3d 361, 380 (2d Cir. 2006) (upholding district court's conclusion). Decades earlier, that same court rejected an employer's defense that it should not be liable under Title VII for racial discrimination because it was following a state-mandated rank-ordering system. *Guardians Ass'n of N.Y.C. Police Dep't* v. *Civil Serv. Comm'n*, 630 F.2d 79, 104-105 (2d Cir. 1980). The court explained that "Title VII explicitly relieves employers from any duty to observe a state hiring provision 'which purports to require or permit' any discriminatory employment practice." *Ibid.* (quoting 42 U.S.C. §2000e-7). The decision below cannot be squared with such a holding.

Similarly, in Title VII sex-discrimination cases, the Sixth Circuit has correctly held that "an employer's compliance" with state law "does not render the company's actions any less a violation of Title VII." *Palmer* v. *General Mills Inc.*, 513 F.2d 1040, 1042 (6th Cir. 1975); cf. *Ash* v. *Hobart Mfg. Co.*, 483 F.2d 289, 292 (6th Cir. 1973) ("even good faith reliance by an employer upon a conflicting state female employment statute * * * would not render that employer's actions any less a violation of the Federal Civil Rights Act").

The Ninth Circuit likewise has been clear for decades that Title VII preempts contrary state laws requiring sex discrimination. For example, where state law prevented an employer from giving a female employee 9-hour shifts because of her sex, the Ninth Circuit held "[t]he fact that the [employer] may have been relying on a state statute does not make their actions any less of a violation[.]" *Schaeffer* v. *San*

Diego Yellow Cabs, Inc., 462 F.2d 1002, 1006 (9th Cir. 1972) (citation omitted). In still another case in which an employer was required by California labor law to "refuse[] assignment[s]" to female employees, the court held that "by virtue of the Supremacy Clause," "state law limitations" running contrary to the requirements of Title VII are "supplanted by Title VII." *Rosenfeld* v. *Southern Pac. Co.*, 444 F.2d 1219, 1225 (9th Cir. 1971).

This same reasoning has prevailed in other circuits across the country. See, *e.g.*, *Kober* v. *Westinghouse Elec. Corp.*, 480 F.2d 240, 245-246 (3d Cir. 1973) (discrimination based on reliance on conflicting state statutes constitutes intentional unfair employment practice preempted by Title VII); *Williams* v. *General Foods Corp.*, 492 F.2d 399, 403-404 (7th Cir. 1974) ("[I]nstead of a *defense* to liability" under Title VII, an employer's reliance on state law "*evidences* liability, for that law required employers [to violate] Title VII." (emphasis added)); cf. *Johnson* v. *Goodyear Tire & Rubber Co.*, 491 F.2d 1364, 1377 & n.40 (5th Cir. 1974) (rejecting that state law could have shielded employer from Title VII liability because "[m]ost courts have been very restrictive in permitting a defense of reliance on state protective statutes"). The preemption analysis as seen in these cases is so well established that employers now rarely rely on state laws as a defense for Title VII's requirements—except for religious accommodations.

C. Circuits similarly recognize that the Age Discrimination in Employment Act preempts conflicting state laws.

Similarly with the Age Discrimination in Employment Act (ADEA), courts correctly recognize preemption of conflicting state laws. The ADEA prohibits employers from discriminating based on age. See 29 U.S.C. §623(a). And many circuits have held that where a state law runs contrary to the ADEA's nondiscrimination requirements, the ADEA controls. In *EEOC* v. *Massachusetts*, for example, the First Circuit held that the ADEA preempted a state law that used age as a criterion for evaluating an employee's fitness to serve. In so doing, the Court explained that it was "far too late in the day to argue that Congress does not have the power to require states to regulate the public employer/public employee relationship in a non-discriminatory fashion." 987 F.2d 64, 71 (1st Cir. 1993). Similarly, in *EEOC* v. *Allegheny County*, the Third Circuit concluded that a covered entity could not "rel[y] on a[n] [age-discriminating] state statute which conflicts with federal law" because a state law "cannot insulate an employer from liability from employment discrimination." 705 F.2d 679, 681 (3d Cir. 1983) (per curiam) (citation omitted).

In an opinion by Judge Easterbrook, the Seventh Circuit reached the same conclusion in *Quinones* v. *City of Evanston*, 58 F.3d 275, 277 (7th Cir. 1995). In that case, a state law prohibited an employer from providing pensions to firefighters hired after age thirty-four. *Ibid.* The Seventh Circuit explained that "[a] discriminatory state law is not a *defense* to liability

under federal law; it is a *source* of liability under federal law." *Ibid.* (citation omitted).

D. Circuits similarly recognize that the Americans with Disabilities Act, even with its undue burden exception, preempts conflicting state laws.

The circuits' conflicting treatment also extends to other federal accommodation statutes *with undue-hardship exceptions* like Title VII's when facing state law that stands as an obstacle to the federal statute's requirements.

For example, the Americans with Disabilities Act (ADA) uses the same undue-hardship language as Title VII to determine whether employers must accommodate the disabilities of their employees. Accommodations are required unless the employer "can demonstrate that the accommodation would impose an undue hardship on the operation of the business." 42 U.S.C. §§12112(a), (b)(5)(A). Similarly, for public accommodations, the law often requires the provision of "reasonable modifications" to benefits unless such modifications would "fundamentally alter" the benefits offered. See *id.* §12182(b)(2)(A)(ii). And a public accommodation's eligibility requirements that "screen out or tend to screen out an individual with a disability" are unlawful unless they are "necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered." See *id.* §12182(b)(2)(A)(i).

Thus, the Eleventh Circuit has rejected the existence of an asserted "Hobson's choice" of potential ADA liability or potential state liability since the

covered entity could always assert the federal law "as a defense to an enforcement action by [a state] or seek a declaratory judgment ahead of time." *Campbell* v. *Universal City Dev. Partners, Ltd.*, 72 F.4th 1245, 1258 (11th Cir. 2023) (citing *Brickers* v. *Cleveland Bd. of Educ.*, 145 F.3d 846, 850 (6th Cir. 1998)). When there are alleged conflicts between the ADA's accommodation requirements and state law, the court held that "compliance with state law does not qualify as 'necessary' under" the ADA. *Id.* at 1259. And the court so held because allowing an employer to hide behind the need to comply with state law to overcome the ADA's requirements would allow any state to "unilaterally nullify the ADA by enacting a state law requiring discrimination. That can't be right." *Id.* at 1258 (citations omitted).

Far from allowing per se undue hardship to derive from state law—like the Second Circuit did below—the circuits undergo a case-by-case reasonableness inquiry into whether state laws barring reasonable modifications under the ADA pose an undue hardship or fundamentally alter the nature of the benefits a company offers. See, *e.g.*, *Gibbs* v. *City of Pittsburgh*, 989 F.3d 226, 230 (3d Cir. 2021) (quoting *Barber*, 562 F.3d at 1234 (Gorsuch, J., concurring)); *Hindel* v. *Husted*, 875 F.3d 344, 348-349 (6th Cir. 2017); *Crowder* v. *Kitagawa*, 81 F.3d 1480, 1485-1486 (9th Cir. 1996). As the Fourth Circuit explained, "the mere fact of a state statutory requirement" cannot "insulate[]" a company from the need to provide "otherwise reasonable modifications to prevent disability discrimination." *National Fed. of Blind* v. *Lamone*, 813 F.3d 494, 508-509 (4th Cir. 2016). The

Second Circuit, too, has held that even without an express preemption provision, the ADA preempts "irreconcilable" state laws and is not "powerless" to "permit[] preemption of inconsistent state laws." *Mary Jo C.* v. *New York State & Loc. Ret. Sys.*, 707 F.3d 144, 163-164 & n.8 (2d Cir. 2013) (collecting cases from the Seventh, Ninth, and Tenth Circuits).

These same principles should apply to Title VII religion accommodations. Title VII, no less than the ADA, is not powerless to enforce its requirement to provide reasonable religious accommodations when states pass contrary laws. States may not dictate—contrary to Congress—that religious accommodations are unnecessary or undesirable. This fidelity to the Supremacy Clause in cases involving other kinds of protections, even with undue-burden exceptions, shows that the lower courts' refusal to look past state law in considering Title VII's requirements is unique to protections against religious discrimination—and all the more problematic in its own discriminatory treatment of religion.

This Court should grant the petition to resolve the incompatibility between the proper preemption standard applied to other provisions of Title VII, the ADEA, and the ADA and the conflicting and discriminatory standard that four circuits apply to Title VII's religious accommodation requirements.

II. Circuits Allowing State Law to Preempt Title VII's Religious-Accommodation Provision Are Wrong.

Another reason review is warranted is that the circuits that have allowed state laws to provide per se undue hardships to employers have gone badly astray. Under the Supremacy Clause, and especially after *Groff*, a state law simply cannot be allowed to "reverse-preempt" a federal law.

Indeed, as the Ninth Circuit in *Bolden-Hardge* correctly recognized, at least in the context of public employers, allowing state laws to serve as an undue hardship would allow a state to "enact a law for the sole purpose of evading federal accommodation requirements." *Bolden-Hardge*, 63 F.4th at 1225. That conclusion—limited by virtue of Ninth Circuit precedent to public employees—is no less correct for private employees. Indeed, as the Eleventh Circuit recognized in the ADA context for a private company, a contrary conclusion would allow any state to "unilaterally nullify" any federal accommodation obligation. *Campbell*, 72 F.4th at 1259.

Of course, that reasoning applies with full force to Title VII as well. The Supremacy Clause ensures states do not introduce "disparities, confusions and conflicts" into federal law. *United States* v. *Allegheny County*, 322 U.S. 174, 183 (1944), *abrogated on other grounds by United States* v. *City of Detroit,* 355 U.S. 466 (1958). Thus the decision below was wrong to look to New York law to determine whether Respondent had to comply with Title VII. Because Title VII is a law

of the United States, any state law that is either directly contrary to it or that stands as an obstacle to its enforcement should be disregarded so that state law does not determine or overcome federal requirements. See *Hillsborough County*, 471 U.S. at 712. Indeed, Title VII itself says as much. See 42 U.S.C. §§2000e-7, 2000h-4 (preemption clauses).

And here, although Title VII says that religious accommodations must be provided short of undue hardship, New York concluded that such accommodations can never be provided to employees seeking to avoid its vaccine mandate, even when there is no independent burden or hardship to the employer in doing so. This is as stark a conflict between state and federal law as they come. Title VII thus controls over the contrary New York law. As the Tenth Circuit has correctly recognized elsewhere, any "[r]eliance on state statutes to excuse non-compliance with federal laws is simply unacceptable under the Supremacy Clause." See *Barber*, 562 F.3d at 1233; accord *id.* at 1234 (Gorsuch, J., concurring) (explaining that "the demands of [a] federal [antidiscrimination law] do not yield to state laws that discriminate" against a protected class; "it works the other way around").

Yet in those circuits that hold state law can obviate the need to accommodate religious employees, it is the federal law that yields. That outcome flouts this Court's decision in *Groff* by treating the undue-hardship inquiry not as a "fact-specific inquiry" into "when a burden is substantial in the overall context of an employer's business," *Groff*, 600 U.S. at 468, but into a per se rule giving employers a pass on federal law whenever there is contrary state law. That

outcome should be rejected to ensure that Title VII's religious-accommodation provision is treated the same vis-à-vis state law as the secular provisions of Title VII and other civil-rights statutes.

III. The Questions Presented Are of Immense Practical Importance for People of Faith.

For religious employees, getting this question correct is enormously important. As this Court recognized in *Groff*, Congress amended Title VII to require religious accommodations because it recognized that failing to accommodate a religious employee can be a form of what Title VII has always forbidden: discrimination "because of * * * religion." 600 U.S. at 457 (quoting 42 U.S.C. §2000e-2(a)(1)).

As the Fifth Circuit has recognized, when employees are not accommodated by their employers, they face "an impossible choice": They can either "remain faithful" or they can "put food on the table." *Sambrano* v. *United Airlines, Inc.*, No. 21-11159, 2022 WL 486610, at *9 (5th Cir. Feb. 17, 2022) (per curiam). And, where a private employer can simply point to state law to avoid any judicial scrutiny, the path to religious discrimination gets all the easier.

Unfortunately, New York is not alone in allowing that result. Like New York, for example, Maine has forbidden religious exemptions for healthcare worker vaccine mandates. *Does 1-3* v. *Mills*, 142 S. Ct. 17, 18 (2021) (Gorsuch, J., dissenting from denial of injunctive relief). For other examples, some states have forbidden licensed therapists from discussing traditional views of gender identity and sex rejection. See, *e.g.*, *Chiles* v. *Salazar*, 116 F.4th 1178 (10th Cir.

2024), *cert. granted,* 145 S. Ct. 1328 (2025) (argued Oct. 7, 2025); *Wyatt Bury, LLC* v. *City of Kansas City*, 804 F. Supp. 3d 939 (W.D. Mo. 2025), *appeal docketed* No. 25-2566 (8th Cir. Aug. 7, 2025). And they have required religiously objecting pharmacists to immediately administer prescription drugs like contraceptives, abortion pills, and medication to assist suicide. See, *e.g.*, *Stormans, Inc.* v. *Wiesman*, 794 F.3d 1064, 1073 (9th Cir. 2015); *Vandersand* v. *Wal-Mart Stores, Inc.*, 525 F. Supp. 2d 1052 (C.D. Ill. 2007). Under current precedent, employers in these states could claim that state law creates a per se undue hardship precluding Title VII religious accommodations.

Thus, in any circuits where state law can overcome the need to provide religious accommodations, religious employees are at a heightened risk of unlawful religious discrimination only to face the additional harm of a courthouse door that is shut to them. To prevent these harms to religious employees and to vindicate the supremacy of federal law, the Court should grant the petition and reverse.

IV. This Case Provides an Ideal Vehicle for Resolving the Questions Presented.

This case also provides a clean vehicle with which to resolve the questions presented.

First, the procedural posture is ideal. As this Court has recognized, in cases like this one that "come[] to [it] at the motion-to-dismiss stage, the Court assumes the truth of 'well-pleaded factual allegations' and 'reasonable inference[s]' therefrom." *National*

Rifle Ass'n of Am. v. *Vullo*, 602 U.S. 175, 181 (2024) (quoting *Ashcroft* v. *Iqbal*, 556 U.S. 662, 678-679 (2009)). The Court can thus answer the legal questions presented by the petition with no factual disputes: What the complaint alleges is, for now, what happened. State law was the only burden considered by the Second Circuit, and the resolution of the case will not be diverted by other possible burdens.

Moreover, the panel's resolution of Petitioners' Title VII claims against Respondent was outcome determinative. These questions were preserved and fully briefed below. And the panel squarely affirmed the dismissal of Petitioners' amended complaint against Respondent because granting a reasonable accommodation to Petitioners would have caused Respondent to violate state law. App.7a-8a. The panel determined that, under its precedent, if a reasonable religious accommodation would violate state law, that—without more—would impose an undue hardship on an employer. App.8a. The decision below thus squarely presents the question whether those precedents—and adverse precedents in other circuits—are correct. For all these reasons, this is an ideal vehicle.

CONCLUSION

The Court should grant this petition to vindicate Title VII protections for all employees—even those in hostile states that enact laws forbidding religious accommodations. The Court may also wish to consider this case along with similar issues in *Doe* v. *Hochul*, No. 24-1015.

Respectfully submitted,

GENE C. SCHAERR
Counsel of Record
ERIK S. JAFFE
HANNAH C. SMITH
JOSHUA J. PRINCE
MIRANDA CHERKAS SHERRILL
SCHAERR | JAFFE LLP
1717 K Street NW
Suite 900
Washington, DC 20006
(202) 787-1060
gschaerr@schaerr-jaffe.com

Counsel for Petitioners

February 9, 2026

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[1] Both the Second Circuit and the Eastern District of New York erroneously recorded Petitioner Cynthia "Braccia" as Cynthia "Braccica" on the docket.

[2] See note 1; the Memorandum Opinion and Order from the Eastern District of New York contains one instance of referring to Plaintiff Cynthia "Braccia" as Cynthia "Braccica," which is incorrect. See App.13a.

[3] See note 1.

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[4] See note 1; the Amended Consolidated Complaint contains one instance of referring to Plaintiff Cynthia "Braccia" as Cynthia "Braccica," which is incorrect. See App.69a.

Appendix A

Case: 24-2665, 09/10/2025, DktEntry: 59.1

24-2665-cv
Braccia v. Northwell Health Sys.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 10th day of September, two thousand twenty-five.

PRESENT: JON O. NEWMAN,
BARRINGTON D. PARKER,
SARAH A. L. MERRIAM,
Circuit Judges.

CYNTHIA BRACCIA; JENNIFER BROWNE; ANDREA DE PALMA; DENNISE JOHNSON; MARISOL VENTRICE; IRINA ABRAMOV; MAUREEN ALCHERMES; DAWN ALOIS; JOY ALTRUI; ANGELA BASTONE-PERGOLA; EVGENIYA BATALLA; DIANE BONO; KATHERINE CARNEY; KAREN FERRANDO; CARMELA FIORICA; EILEEN HAGAN; SARAH HASENEY; MARYANN HOJNOWSKI; KATHERINE KOUGENTAKIS; NILBERK KURT; KAREN LA ROSA; DEBRA LANAHAN; NADIRA MAHABIR; VERONICA NEWTON; KATLYN PASTOR; REBECCA RAMIREZ; JULIA SHAW; ROSE TAYLOR; MIA TORRES; and MICHELE WOODWARD-LAWTON,

Plaintiffs-Appellants,

v.

NORTHWELL HEALTH SYSTEMS,*

Defendant-Appellee.

24-2665-cv

* The Clerk of Court is respectfully directed to amend the caption as reflected above.

FOR PLAINTIFFS-APPELLANTS:
Rachel Dreher, Yoder Dreher Pearson LLP, Washington, D.C.

FOR DEFENDANT-APPELLEE:
Erin M. Train, Jacqueline Phipps Polito, Littler Mendelson, P.C., Fairport, NY.

Appeal from an order of the United States District Court for the Eastern District of New York (Merchant, J.).

UPON DUE CONSIDERATION, the judgment of the District Court is **AFFIRMED**.

Plaintiffs-Appellants appeal from the District Court's order dismissing their amended complaint alleging that Defendant-Appellee Northwell Health Systems ("Northwell") discriminated against them in violation of Title VII of the Civil Rights Act of 1964 ("Title VII"), 42 U.S.C. §2000e *et seq.*, and, as to one plaintiff, the Americans with Disabilities Act ("ADA"), 42 U.S.C. §12101 *et seq*. *See Abramov v. Northwell Health Sys.,* No. 2:22CV06687(OEM), 2024 WL 4276171 (E.D.N.Y. Sept. 24, 2024). We assume the parties' familiarity with the underlying facts, procedural history, and issues on appeal, to which we refer only as necessary to explain our decision.

BACKGROUND

The following facts are taken from the amended complaint and attached exhibits, which are accepted as true for the purposes of this appeal. *See Miller v. United States ex rel. Miller*, 110 F.4th 533, 538 (2d Cir. 2024). Plaintiffs were employed by Northwell as healthcare workers in the state of New York. *See*

generally App'x at 46-55. On August 18, 2021, Northwell instituted a policy under which "all employees were required to become fully vaccinated against COVID-19 in order to remain employed" by Northwell. App'x at 57. Northwell "created a 'Religious Exemption Request Form' and instructed its religious employees to submit their completed form by September 3, 2021." App'x at 57. At that time, each individual plaintiff held a sincere religious belief that prevented her from taking the vaccine and, consequently, from complying with this new mandatory vaccination policy.

On August 26, 2021, the New York State Department of Health adopted an emergency rule "that eliminated an employee's ability to request a religious exemption while continuing to allow medical exemptions." App'x at 60. This emergency rule required certain healthcare entities, such as Northwell, to "continuously require personnel to be fully vaccinated against COVID-19." N.Y. COMP. CODES R. & REGS. tit. 10, §2.61 ("Section 2.61").[1] Plaintiffs do not contest that the rule applied to Northwell. After the implementation of Section 2.61, Northwell "refused to accept Religious Exemption Request Forms because 'the New York State Department of Health has indicated, consistent with the Vaccinate Mandate, that we are unable to recognize any religious exemptions to the mandate for healthcare employees.'" App'x at 58 (sic). Nonetheless, all plaintiffs "submitted religious accommodation requests." App'x at 59. Northwell did not provide the

[1] Section 2.61 has since been repealed.

accommodations requested. One plaintiff, Rose Taylor, also sought an accommodation for a disability, which Northwell also did not provide. Between September and November 2021, Northwell terminated the employment of each plaintiff based on failure to adhere to the vaccination policy.

Plaintiffs brought this action alleging religious discrimination in violation of Title VII and, as to plaintiff Taylor, disability discrimination in violation of the ADA, seeking monetary damages and injunctive relief. Northwell filed a motion to dismiss the amended complaint, which the District Court granted in its entirety. Plaintiffs appealed.

DISCUSSION

"We review *de novo* a district court's dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), accepting as true all factual allegations in the complaint and drawing all reasonable inferences in favor of the plaintiff." *Buon v. Spindler*, 65 F.4th 64, 76 (2d Cir. 2023). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation and quotation marks omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

I. Religious Discrimination

Title VII prohibits employers from discriminating "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." 42 U.S.C. §2000e-2(a)(1). In the amended complaint, plaintiffs alleged violations of Title VII under two theories: failure to accommodate and disparate treatment. However, plaintiffs do not make any argument regarding disparate treatment on appeal; indeed, the word "disparate" does not appear in their brief, and though they criticize the District Court's reading of their allegations, they make no argument to this Court that Northwell acted with discriminatory intent. Accordingly, plaintiffs have forfeited any challenge to the dismissal of this claim. We therefore proceed to consider plaintiffs' failure to accommodate claim.

To assert a Title VII claim for religious discrimination based on a failure to accommodate, a plaintiff must allege (1) that she has "a bona fide religious belief conflicting with an employment requirement," (2) that she "informed [her] employer[] of this belief," and (3) that she was "disciplined for failure to comply with the conflicting employment requirement." *Baker v. The Home Depot*, 445 F.3d 541, 546 (2d Cir. 2006) (citation and quotation marks omitted). An employer must offer an employee who satisfies the first two requirements "a reasonable accommodation, unless doing so would cause the employer to suffer an undue hardship." *Id.* (citation and quotation marks omitted); *see also Cosme v. Henderson*, 287 F.3d 152, 158 (2d Cir. 2002). An "undue hardship" in this context is a burden that "would result in substantial increased costs in relation to the conduct of [the employer's] particular business." *Groff v. DeJoy*, 600 U.S. 447, 470 (2023).

Section 2.61 mandated that Northwell require any employee within the definition of "personnel to be fully vaccinated against COVID-19." N.Y. COMP. CODES R. & REGS. tit. 10, §2.61(c). Under this provision, "if a medically eligible employee's work assignments mean that she qualifies as 'personnel,' she is covered by the Rule and her employer must 'continuously require' that she is vaccinated against COVID-19." *We The Patriots USA, Inc. v. Hochul*, 17 F.4th 368, 370 (2d Cir. 2021) (per curiam) (citation omitted). Section 2.61(d) allowed for exemptions for medical reasons, but not for religious reasons. Thus, the only way to "accommodate" an employee's religious objection to vaccination was to reassign the employee "in a manner that removes them from [Section 2.61's] definition of 'personnel.'" *Id.* (citation omitted).

The amended complaint does not allege that any plaintiff sought accommodation in the form of a reassignment that would remove her from Section 2.61's definition of "personnel" so that Section 2.61 would not apply. Rather, the amended complaint asserts that Northwell could have accommodated plaintiffs by the use of "masking and weekly testing." App'x at 63. Plaintiffs further assert that they were willing to engage in social distancing. *See* App'x at 61. Plaintiffs do not contend – nor could they – that these steps would have satisfied Section 2.61. Thus, if Northwell had accommodated plaintiffs in the way they sought, it would have been violating the law.

"Under our precedent, an accommodation that would require an employer to violate the law imposes an undue hardship." *Russo v. Patchogue-Medford Sch. Dist.*, 129 F.4th 182, 186 (2d Cir. 2025) (per curiam).

We have addressed this principle as applied to Section 2.61 in a recent non-precedential summary order:

> Plaintiffs were all covered personnel under Section 2.61, which meant that granting their sole request for a religious exemption would have required the [defendant] to violate the state regulation. This, in turn, would have subjected the [defendant] to financial penalties or a suspension or revocation of their operating licenses. *See* N.Y. Pub. Health Law §12 (2008); *id.* §2806(1)(a) (2010). Even under the heightened standard for undue hardship recently set forth in *Groff*, the risk of these potential penalties more than suffices to demonstrate that the [defendant was] subject to such hardships here.

Does 1-2 v. Hochul, No. 22-2858, 2024 WL 5182675, at *4 (2d Cir. Dec. 20, 2024) (summary order). We have also specifically held that requiring *this* employer, Northwell, to violate Section 2.61 in order to accommodate an employee's religious objection would constitute an undue hardship. *See D'Cunha v. Northwell Health Sys.*, No. 23-476, 2023 WL 7986441, at *3 (2d Cir. Nov. 17, 2023) (summary order). We conclude, as we did in these previous decisions, that Northwell was not obligated to grant the accommodations requested by plaintiffs because doing so would constitute an undue hardship, and accordingly, the amended complaint fails to state a plausible claim for religious discrimination under Title VII.

II. Disability Discrimination

Plaintiff Rose Taylor also alleges that Northwell discriminated against her in violation of the ADA by refusing her requests for accommodation and eventually terminating her employment. The ADA provides: "No covered entity shall discriminate against a qualified individual on the basis of disability." 42 U.S.C. §12112(a).

> The elements of a claim under the ADA are that: (1) the employer is subject to the ADA; (2) the plaintiff is disabled within the meaning of the ADA or perceived to be so by her employer; (3) she was otherwise qualified to perform the essential functions of the job with or without reasonable accommodation; (4) she suffered an adverse employment action; and (5) the adverse action was imposed because of her disability.

Davis v. New York City Dep't of Educ., 804 F.3d 231, 235 (2d Cir. 2015) (per curiam). To be considered disabled under the ADA, a plaintiff must have "a physical or mental impairment that substantially limits one or more major life activities . . . ; a record of such an impairment; or be[] regarded as having such an impairment." 42 U.S.C. §12102(1). Taylor alleges, in conclusory fashion, that she "is a disabled person within the meaning of 42 U.S.C. §12102(1)." App'x at 66. She alleges that she "suffers from a neurological disorder . . . that limits one or more of [her] major life activities, such as working, caring for herself, performing manual tasks, eating, sleeping, breathing, learning, reading, concentrating, thinking,

communicating, and working." App'x at 66. She further alleges that Northwell regarded her "as having such an impairment as defined by 42 U.S.C. §§12102(1)(C), 3(A)." App'x at 66.

These purely conclusory allegations are insufficient; they are exactly the sort of "[t]hreadbare recitals of the elements" that the Supreme Court has explained will not survive a motion to dismiss. *Iqbal*, 556 U.S. at 678. Taylor has not asserted any facts indicating *how* her alleged disability limits her activities. *See Morey v. Windsong Radiology Grp.*, 794 F. App'x 30, 33 (2d Cir. Dec. 12, 2019) (summary order) ("Plaintiff must allege further facts as to how her disability 'substantially limits' her 'major life activities' to plausibly state a claim."). Taylor has provided a declaration, which was attached to the amended complaint. But rather than explaining the nature of her alleged disability, the declaration merely asserts: "My treating physician determined that, to a reasonable degree of medical certainty, my pre-existing condition placed me in a position where the risk caused if I were to receive the COVID-19 vaccine outweighed any potential benefit of the vaccine." App'x at 160. This purely conclusory assertion is insufficient.[2] We thus conclude that Taylor has failed to adequately allege that she was in fact disabled under the ADA.

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[2] Indeed, the declaration is arguably inconsistent with the allegations in the body of the amended complaint, which make no mention of a treating physician and instead suggest that Taylor is claiming her termination was based on retaliation for expressing her religious views. *See* App'x at 67-68.

Taylor also makes no factual allegations in support of any claim that Northwell *regarded* her as being disabled. Furthermore, we have held that "an employee who is discharged for refusing to comply with a company-wide vaccination mandate" cannot state a claim under the ADA's "regarded as" prong because such a mandate applies equally to all employees and does not single out any employee. *Sharikov v. Philips Med. Sys. MR, Inc.*, 103 F.4th 159, 168 (2d Cir. 2024); *see also Apuzza v. NYU Langone Long Island*, 2025 WL 763425, at *2 (2d Cir. Mar. 11, 2025) (summary order).

Accordingly, Taylor has failed to state a claim for violation of the ADA.

* * *

We have considered plaintiffs' remaining arguments and find them to be without merit. Accordingly, we **AFFIRM** the judgment of the District Court.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

Appendix B

Case 2:22-cv-06687-OEM-LGD, Document 30, Filed 09/24/24

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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IRINA ABRAMOV, MAUREN ALCHERMES, DAWN ALOIS, JOY ALTRUI, ANGELA BASTONE-PERGOLA, EVGENIYA BATALLA, DIANE BONO, CYNTHIA BRACCIA, JENNIFER BROWNE, KATHERINE CARNEY, ANDREA DE PALMA, KAREN FERRANDO, CARMELA FIORICA, EILEEN HAGAN, SARAH HASENEY, MARYANN HOJNOWSKI, DENNISE JOHNSON, KATHERINE KOUGENTAKIS, NILBERK KURT, KAREN LA ROSA, DEBRA LANAHAN, NADIRA MAHABIR, VERONICA NEWTON, KATLYN PASTOR, REBECCA RAMIREZ, JULIA SHAW, ROSE TAYLOR, MIA TORRES, MARISOL VENTRICE, and MICHELE WOODWARD-LAWTON,

Plaintiffs,

-against-

NORTHWELL HEALTH SYSTEMS,

Defendant.
----------X

MEMORANDUM AND ORDER
22-CV-06687 (OEM) (LGD)

ORELIA E. MERCHANT, United States District Judge:

On November 2, 2022, plaintiffs Cynthia Braccica, Jennifer Browne, Andrea de Palma, Dennise Johnson, and Marisol Ventrice commenced this action asserting claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000ff *et seq*. ("Title VII"). Complaint, ECF 1. Plaintiffs[1] filed an amended consolidated complaint in which they bring claims against their former employer Defendant Northwell Health ("Northwell," "NHS," or Defendant") for Religious Discrimination and Disparate Treatment under Title VII. *See* Amended Consolidated Complaint ("Am. Compl."), ECF 19, at 22-23. Plaintiffs challenge a workplace Covid-19 vaccination policy implemented by Northwell. In addition, an individual plaintiff, Rose Taylor ("Taylor") brings a separate claim against Defendant asserting discrimination pursuant to 42 U.S.C. § 12101 *et seq*., for an alleged violation of the Americans with Disabilities Act ("ADA").

Now before the Court is Northwell's Motion to Dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim.

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[1] There are 30 named plaintiffs in this action: Irina Abramov, Mauren Alchermes, Dawn Alois, Joy Altrui, Angela Bastone-Pergola, Evgeniya Batalla, Diane Bono, Cynthia Braccia, Jennifer Browne, Katherine Carney, Andrea De Palma, Karen Ferrando, Carmela Fiorica, Eileen Hagan, Sarah Haseney, Maryann Hojnowski, Dennise Johnson, Katherine Kougentakis, Nilberk Kurt, Karen La Rosa, Debra Lanahan, Nadira Mahabir, Veronica Newton, Katlyn Pastor, Rebecca Ramirez, Julia Shaw, Rose Taylor, Mia Torres, Marisol Ventrice, and Michele Woodward-Lawton (collectively "Plaintiffs"). *See* ECF 16 (Court granted consolidation on April 7, 2023, with *Abramov et al v. Northwell Health Systems* ("Abramov Action"), 22-CV-07538-GRB-LG).

ECF 23. For the reasons set forth below, Defendant's motion to dismiss the complaint in its entirety is **GRANTED**.

BACKGROUND

A. Department of Health Mandate: Covid-19 Vaccines for Healthcare Workers

On August 18, 2021, in response to the surge in Covid-19 cases, the Department of Health ("DOH") Commissioner[2] issued an "Order for Summary Action" (the "Order")[3] requiring certain healthcare facilities to "continuously require" all covered personnel to be "fully vaccinated against COVID-19." *We the Patriots USA, Inc. v. Hochul*, 17 F.4th 266, 274-75 (2d Cir. 2021) [hereinafter *We the Patriots I*]; *see also* Am. Compl. at fn. 2; *id.* ¶¶ 37, 39. The rule allowed for two exemptions to its vaccination requirement—a medical exemption and a religious exemption. The religious exemption provided as follows:

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[2] "Section 16 authorizes the Commissioner to issue an order—effective for a maximum of 15 days—in response to a condition that in his opinion constitutes a 'danger to the health of the people.' N.Y. Pub. Health Law § 16." *Does 1-2 v. Hochul*, 632 F. Supp. 3d 120, 129 n.11 (E.D.N.Y. 2022).

[3] In August of 2021 the COVID-19 pandemic was "surging in New York, with daily positive cases up over 1000% over the course of six weeks." *Does 1-2 v. Hochul*, 632 F. Supp. 3d 120, 128 (E.D.N.Y. 2022) (internal citation omitted); *see also id.* at 127 n.1 (collecting cases noting that "the [c]ourt may take judicial notice of facts regarding COVID-19."). The DOH regulates "the sanitary aspects of . . . businesses and activities affecting public health," N.Y. Pub. Health Law ("PHL") § 201(1)(m).

> Covered entities shall grant a religious exemption for COVID-19 vaccination for covered personnel if they hold a genuine and sincere religious belief contrary to the practice of immunization, subject to a reasonable accommodation by the employer.

Am. Compl. ¶ 39; Order for Summary Action at 6-7. The Medical Exemption provided:

> If any licensed physician or certified nurse practitioner certifies that immunization with COVID-19 vaccine is detrimental to a specific member of a covered entity's personnel, based upon a specific pre-existing health condition, the requirements of this section relating to COVID-19 immunization shall be subject to a reasonable accommodation of such health condition only until such immunization is found no longer to be detrimental to the health of such member. The nature and duration of the medical exemption must be stated in the personnel employment medical record and must be in accordance with generally accepted medical standards, (see, for example, the recommendations of the Advisory Committee on Immunization Practices of the U.S. Department of Health and Human Services). Covered entities shall document medical exemptions and any reasonable accommodation in personnel records or other appropriate records in accordance with applicable privacy laws by September 27,

> 2021, and continuously, as needed, thereafter.

Order for Summary Action at 5-7. *See* Am. Compl. ¶ 57.

On August 26, 2021, the DOH published Section 2.61[4], the emergency rule at issue in this case, superseding the Order for Summary Action. *We the Patriots I*, 17 F.4th at 274-75; Am. Compl. at 2. Section 2.61 directed hospitals, nursing homes, hospices, adult care facilities, and other identified healthcare entities to "continuously require" certain employees to be fully vaccinated against COVID-19 beginning on September 27, 2021, for "general hospitals" and nursing homes, and on October 7, 2021, for all other "covered entities" as defined in the Rule. *See We the Patriots I*, 17 F.4th at 274-75.

Section 2.61 applied only to employees covered by the Rule's definition of "personnel," which includes employees, staff members, and volunteers "who engage in activities such that if they were infected with COVID-19, they could potentially expose other covered personnel, patients or residents to the disease." Section 2.61(a)(2); *We the Patriots I*, 17 F.4th at 274. Section 2.61 eliminated the religious exemption that was provided in the Order of Summary Action. Section 2.61(a)(2); *We the Patriots I*, 17 F.4th at 274; *see also* Am. Compl. at 2.

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[4] N.Y. Comp. Codes R. & Regs. ("N.Y.C.C.R.R.") Tit. 10, § 2.61 (2021) 10 N.Y.C.R.R. § 2.61(c) (Aug. 26, 2021) ("Section 2.61").

B. Plaintiffs' Employment and Covid-19 Procedures

Plaintiffs were healthcare workers[5] who worked at various sites and facilities within Northwell until their termination. *See* Am. Compl. at 4-13. Before the COVID-19 vaccine was available, Northwell imposed a set of mitigation protocols that employees were instructed to follow, including "wearing masks, socially distancing," and on August 2, 2021 Northwell began requiring its employees to test for Covid-19 on a weekly basis. Am. Compl. ¶¶ 36, 63.

On August 18, 2021, Northwell implemented a new Covid-19 vaccination policy (the "Policy") announcing that all employees, including Plaintiffs, were required to be fully vaccinated against COVID-19 to remain employed by Northwell. That Policy was implemented in response to the vaccine mandate ("DOH Mandate") that was imposed on August 16, 2021. Am. Compl. ¶¶ 37-41 ("[O]n August 16, 2021, former Governor Andrew Cuomo announced that all New York state healthcare workers would be required to be vaccinated against COVID-19 if they wished to continue working at a healthcare facility in the

[5] Plaintiffs' declarations include their positions, including, but not limited to: Nurses, Practice Supervisor of Operation, Senior Surgery Physician Assistant, CT Supervisor, Medical Assistant Physical Therapist, Administrative/Clerical Associate, Admitting Clerk, Ambulatory Care Clerk, Sign Language Interpreter, Speech Language Pathologist, Social Worker, Radiologic & Cardiovascular Technologist, Medical Records Analyst and Surgical Technologist. *See* Am. Compl. ¶ 32; *see generally* Plaintiffs' Declarations ("Pls. Decl.'s"), ECF 19-1, Ex. 1-25. For ease of reference, the Court will generally refer to them as healthcare workers.

state."). The Policy stated that the submission of negative test results each week could no longer replace the vaccination requirement. Am. Compl. ¶ 41.

Northwell created a "Religious Exemption Request Form" and instructed employees who sought religious exemptions to submit the completed form by September 3, 2021. Am. Compl. ¶ 43. "NHS did concede exemption request forms submitted after September 3, 2021, would be reviewed, 'but in order to comply with the State's regulatory requirement, team members submitting forms after September 3 may be placed on unpaid administrative leave as of September 27th if they are unvaccinated and their request is still being reviewed on that date.'" Am. Compl.¶ 49.

Each of the Plaintiffs submitted a religious accommodation request to Northwell stating they sincerely held religious beliefs that prevented them from complying with the Policy.[6] Am. Compl. at 3; *see also* Pls. Decl.'s Ex. 1-25. ("My sincerely held religious beliefs extend beyond the mere performance of abortions or receipt of an abortion; I sincerely believe that if I were to knowingly inject, ingest, or receive a product that I knew was created through the use of fetal cell line tissue, such action would impact my ability to ultimately go to Heaven. Because of this, I cannot comply with NHS' mandatory COVID-19 vaccination policy."). In response, Northwell did not contest the validity of Plaintiffs' asserted religious beliefs, but ultimately denied Plaintiffs'

[6] Plaintiffs attempt to distinguish "'exemption' and a religious 'accommodation' are not analogous but rather, legally distinct terms." Am. Compl. ¶ 52.

"accommodation" request.[7] *See* Am. Compl. at 21-22. Subsequently, throughout September and October of 2021, Northwell terminated individual Plaintiffs for failure to comply with the Policy—reasoning that violating the Policy would violate the DOH Mandate. *See* Am. Compl. ¶¶ 55, 57 ("Instead, NHS relied upon Title 10 N.Y. Comp. Codes R. & Regs. § 2.61 ("Section 2.61")); *id*. ¶¶ 62, 86; *see generally* Pls. Decl.'s ¶ 12. Consequently, Plaintiffs allege that Northwell "refused to reasonably accommodate Plaintiffs sincerely held religious beliefs."[8] Am. Compl. at 3.

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[7] No additional information was provided by Plaintiffs regarding NHS's denial—only that each Plaintiff filed a timely Charge of Discrimination with the EEOC and receiving the right to sue letter, which ultimately allowed Plaintiffs to bring this lawsuit. *See Cohn v. KeySpan Corp*., 713 F. Supp. 2d 143, 155 (E.D.N.Y. 2010) (citing *Curto v. Edmundson*, 392 F.3d 502, 503 (2d Cir. 2004)) ("Exhaustion of administrative remedies and the timely filing of a complaint with the [Equal Employment Opportunity Commission ("EEOC")] are preconditions to filing an ADA action in federal court.").

[8] The amended complaint states that "NHS simply ignored Plaintiffs religious accommodation requests, reiterated unsolicited and irrelevant information (i.e., telling Plaintiffs they were not entitled to religious exemptions), and terminated their employment without due process of law." Am. Compl. ¶ 62. However, the Court notes an inconsistency in that the amended complaint, with regard to plaintiffs Cynthia Braccia, Jennifer Browne, Andera DePalma, Dennise Johnson, and Marisol Ventrice stating that "Northwell discriminated against her and denied her accommodation request." *Id*. at 5. Further the 25 declarations submitted on behalf of the Plaintiffs' also *all* state "[t]here was no lawful basis for NHS to deny my request and refuse to accommodate me." *See generally* Pls. Decl.'s. Thus, Plaintiffs also appear to assert that NHS did in fact respond to their accommodation.

C. Plaintiff Rose Taylor's Employment and Termination

Plaintiff Rose Taylor ("Taylor") worked as a Surgical Technologist at NHS' South Shore University Hospital. Am. Compl. ¶ 113, Taylor Declaration ("Taylor Decl."), Ex. 23, ¶ 3. Taylor submitted a request for a "reasonable accommodation" to Northwell due to her "sincerely held religious beliefs" which she alleges Northwell "knew of." *Id.* ¶ 12. However, Taylor's declaration only briefly mentions her claim of disability, and does not state whether she properly filed a claim before the EEOC specifically regarding her ADA claim. *See* Taylor Decl. ¶ 16-17 (Taylor asserts that "to also protect my interest in maintaining employment free from discrimination on the basis of religion, [she] timely filed a Charge of Discrimination ("Charge") with the EEOC pursuant to 42 U.S.C. §§ 2000e–5(e)(1), (f)(1) …. [and that her] Charge alleged NHS discriminated and retaliated against me because of my religion and my sincerely held religious beliefs.").

Further, Taylor alleges that she is a disabled person within the meaning of 42 U.S.C. § 12102(1). Am. Compl. ¶ 110. Taylor alleges that she "suffers from a neurological disorder, which is a physical or mental impairment that substantially limits one or more of [her] major life activities, such as working, caring for herself, performing manual tasks, eating, sleeping, breathing, learning, reading, concentrating, thinking, communicating, and working. NHS also regard [her] as having such an impairment as defined by 42 U.S.C. §§ 12102(1)(C), 3(A)." Am. Compl. ¶ 111. Taylor further asserts that she is a qualified

individual within the meaning of 42 U.S.C. § 12111(8), and that "NHS had actual knowledge or constructive knowledge of [her] disability at all times relevant to this action, in that NHS previously accommodated [her] disability; discussed [her] disability; discussed [her] need for accommodations; examined, reviewed, or possessed medical evidence of [her] disability; and received [her] numerous requests for a disability accommodation." *Id*. ¶¶ 112-16. In addition, Taylor asserts that "NHS purposefully, willfully, intentionally, or recklessly retaliated against [her] by engaging in a series of adverse actions, including: … Ignoring, denying, or refusing [her] requests for an accommodation; Threatening [her]; Condoning, encouraging, or incentivizing executives and administrative staff to discriminate against [her]; Manufacturing a false pretext in an attempt to terminate [her]; Terminating [her] employment; and NHS committed the aforesaid acts or omissions with the intent to humiliate, ridicule, and insult [her]." *Id*. ¶¶ 117-23.

D. Procedural History

On October 24, 2023, Defendants filed their Motion to Dismiss. Defendant's Memorandum in Support of Motion to Dismiss ("Def. Memo"), ECF 23. Plaintiffs filed their opposition to Defendant's motion to dismiss on November 27, 2023, ("Pl. Opp."), ECF 24, and Defendants filed a reply on December 11, 2023, ("Def. Reply"), ECF 25.

LEGAL STANDARD

In reviewing a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, a court "must construe [the complaint] liberally, accepting all factual allegations therein as true and drawing all reasonable inferences in the plaintiffs favor." *Sacerdote v. N.Y. Univ.*, 9 F.4th 95, 106-07 (2d Cir. 2021) (citing *Palin v. N.Y. Times Co.*, 940 F.3d 804, 809 (2d Cir. 2019)); *see also Vaughn v. Phoenix House N.Y. Inc.*, 957 F.3d 141, 145 (2d Cir. 2020). Therefore, to withstand a Rule 12(b)(6) motion to dismiss, a complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is facially plausible when the alleged facts allow the court to draw a "reasonable inference" of a defendant's liability for the alleged misconduct. *Id.* While the Court "must accept as true all of the allegations contained in a complaint," this "tenet … is inapplicable to legal conclusions." *Id.* "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* In considering this motion, the Court "must limit itself to the facts stated in the complaint, documents attached to the complaint as exhibits, and documents incorporated by reference in the complaint." *Hayden v. Cnty. of Nassau*, 180 F.3d 42, 54 (2d Cir. 1999).[9]

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[9] The adjudication of a Rule 12(b)(6) motion normally requires the district court "to look only to the allegations on the face of the complaint," but "may consider documents that 'are attached to the complaint,' 'incorporated in it by reference,' 'integral' to the

DISCUSSION

A. Plaintiffs Fail to Plausibly Allege Title VII Claims[10]

Title VII prohibits an employer from discriminating "against any individual ... because of such individual's ... religion [or] sex." 42 U.S.C. § 2000e-2(a)(1). For a Title VII discrimination claim to

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complaint, or the proper subject of judicial notice." *United States v. Strock*, 982 F.3d 51, 63 (2d Cir. 2020) (*quoting Roth v. Jennings*, 489 F.3d 499, 509 (2d Cir. 2007)). The Court also considers documents incorporated by reference in the Amended complaint and takes judicial notice of relevant state laws, state regulations, state case law, and public documents that are not subject to dispute. *See* Fed. R. Evid. 201(b) (permitting judicial notice of facts "not subject to reasonable dispute"); *Giraldo v. Kessler*, 694 F.3d 161, 164 (2d Cir. 2012) (stating that "relevant matters of public record" are susceptible to judicial notice).

[10] The Court notes that Defendant's motion papers do not argue that Plaintiffs failed to meet their administrative remedies or requirements with the Opportunity Employment Commission ("EEOC") pursuant to 42 U.S.C. §§ 2000e–5(e)(1), (f)(1). *See Williams v. N.Y. City Hous. Auth.*, 458 F.3d 67, 69 (2d Cir. 2006); 42 U.S.C. § 2000e-5(e)(1). Further, the amended complaint and Declarations that follow assert that all Plaintiffs timely filed Complaints with the EEOC. *See* Am. Compl. at 4-13; *see generally* Pl.'s Decl.'s; *see also AMTRAK v. Morgan*, 536 U.S. 101, 109, 122 S. Ct. 2061, 153 L. Ed. 2d 106 (2002). Therefore, for the purposes of this Motion, the Court will not further address administrative remedies as it relates specifically to the religious discrimination EEOC charge as it appears the parties concede that is not at issue here. *See generally* Am. Compl. and Pl.'s Decl.'s (stating that "[] timely filed a charge of discrimination with the EEOC concerning claims arising under Title VII ..., the EEOC issued [] her right-to-sue letter, providing that [] had 90 days to commence a civil action in federal court. Because [] filed this action within 90 days of receiving her right-to-sue letter, all conditions precedent to maintaining this action have been satisfied.").

survive a motion to dismiss, a plaintiff must plausibly allege "(1) she is a member of a protected class; (2) she is qualified for her position; (3) she suffered an adverse employment action; and (4) the circumstances give rise to an inference of discrimination." *Vega v. Hempstead Union Free Sch. Dist.*, 801 F.3d 72, 83 (2d Cir. 2015) (citation omitted); *see also Sumar v. Brooklyn Hosp. Ctr.*, 22-CV-7390 (RPK) (MMH), 2023 WL 8622654, at *2 (E.D.N.Y. Dec. 13, 2023).

The Second Circuit has held that at the pleading stage of an employment discrimination case, a plaintiff has a "minimal burden" of alleging facts "suggesting an inference of discriminatory motivation." *Littlejohn v. City of New York*, 795 F.3d 297, 311 (2d Cir. 2015). Therefore, the facts alleged in the complaint must provide "at least minimal support for the proposition that the employer was motivated by discriminatory intent." *Vega*, 801 F.3d at 85. An inference of discrimination can arise from circumstances including, but not limited to, the employer's criticism of the plaintiff's performance in degrading terms relating to their religion, or its invidious comments about others in the employee's protected group. *See id.* at 85-87.

1. Plaintiffs Do Not Allege Circumstances Giving Rise to An Inference of Discrimination

The *McDonnell Douglas* burden-shifting framework governs the Plaintiffs' claim of religious discrimination based on disparate treatment. *Adams v. N.Y. State Unified Ct. Sys.*, 22-CV-9739 (JMF), 2023 WL 5003593, at *3 (S.D.N.Y. Aug. 4, 2023) (citing

McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, (1973)). Therefore, to survive a motion to dismiss on a disparate treatment claim under Title VII, a plaintiff must plausibly allege that "the plaintiff is a member of a protected class, was qualified, suffered an adverse employment action, and has at least minimal support for the proposition that the employer was motivated by discriminatory intent."[11] *Santiago v. ACACIA Network, Inc.*, 634 F. Supp. 3d 143, 152 (S.D.N.Y. 2022) (citing *Littlejohn v. City of New York*, 795 F.3d 297, 311 (2d Cir. 2015))." *Riggs v. Akamai Techs.*, 23-CV-06463 (LTS), 2024 WL 3347032, at *6 (S.D.N.Y. July 8, 2024). "At the motion to dismiss phase of litigation, the plaintiff 'need only give plausible support to a minimal inference of discriminatory motivation; she need not plausibly allege that the adverse employment action was attributable to discrimination.'" *Tandian v. State Univ. of N.Y.*, 698

[11] While Plaintiffs assert that they were "qualified" for their positions, the Second Circuit has held that vaccination is a proper "condition of employment in the healthcare field." *We The Patriots*, 17 F.4th at 294; *see also Kane v. De Blasio*, 623 F. Supp. 3d 339, 363 (S.D.N.Y. 2022) (collecting cases). The complaint alleges that "NHS announced its employees would no longer have the option to submit negative test results each week and all employees were required to become fully vaccinated against COVID-19 in order to remain employed by NHS .... In order to comply with the State's regulatory requirement, team members submitting forms after September 3 may be placed on unpaid administrative leave as of September 27th if they are unvaccinated and their request is still being reviewed on that date." Am. Compl. ¶ 41 n 4. Ultimately, Plaintiffs did not receive a vaccine or an exemption. *See generally* Am. Compl.; *see generally* Pls. Decl.'s. Accordingly, the amended complaint fails to allege that Plaintiffs were qualified for their position. *See Vega*, 801 F.3d at 83.

F. Supp. 3d 425, 438 (N.D.N.Y. 2023) (citation omitted).

Here, Plaintiffs fail to adequately plead a religious discrimination claim because they fail to plead an inference of discrimination. *Vega*, 801 F.3d at 85. Put another way, Plaintiffs did not plead facts that indicate that Northwell discriminated against them because of their religion. The Complaint alleges that Northwell "refused to provide Plaintiffs with a reasonable religious accommodation on the basis that doing so would impose upon [Northwell] an undue hardship." Am. Compl. ¶ 55. The Court is left to parse Plaintiffs' amended complaint—that only offers conclusory allegations asserting that "NHS committed the above-mentioned discriminatory actions with the intent to humiliate, ridicule, and such discriminatory and retaliatory misconduct occurred because Plaintiffs requested an accommodation for their sincerely held religious beliefs and otherwise engaged in protected activity[,]" yet failing to actually identify any facts to substantiate these empty assertions. Am. Compl. ¶ 106. Such conclusory statements do not sufficiently show that Northwell's purportedly discriminatory intent but only that a refusal was predicated on an undue burden. In fact, the amended complaint itself acknowledges that Northwell "did not contest the validity of [Plaintiffs'] religious beliefs." *See* Am. Compl. ¶¶ 55, 57. ("NHS relied upon Title 10 N.Y. Comp. Codes R. & Regs. § 2.61 ("Section 2.61") – the brand new and ever so convenient regulation that eliminated an employee's ability to request a religious exemption while continuing to allow medical exemptions.").

Significantly, the 25 individual declarations and the personal statements made by some Plaintiffs in the amended complaint are devoid of any factual averments that any plaintiff experienced religious discrimination by Northwell. There is no factual evidence proffered that Northwell engaged in degrading conduct based upon Plaintiffs' religion. Equally, there are no allegations of invidious comments made by Northwell about other religious employees. *See Vega*, 801 F.3d at 85. Further, Plaintiffs do not identify any similarly situated employees who were treated differently in a way that suggests that the timing of the Defendant's denial of their request was discriminatory. *Salas v. New York City Dep't of Investigation*, 298 F. Supp. 3d 676, 688 (S.D.N.Y. 2018)(" To show that preferential treatment gives rise to an inference of discrimination, a plaintiff normally must allege that the relevant comparators were not members of the relevant "protected group" and were treated less harshly despite being "similarly situated" to the plaintiff."); *see Bandalos v. Stony Brook Univ. Med. Ctr.*, 23-CV-0135 (AMD) (JMW), 2024 WL 1308708, at *4 (E.D.N.Y. Mar. 26, 2024). Plaintiffs failed to allege any facts to suggest even an inference of discrimination, and therefore have failed to state the fourth element of their Title VII claims. The Court finds that this is fatal to Plaintiffs' claims.

2. Plaintiffs Have Failed to Plausibly Allege Religious Discrimination for Failure to Accommodate

Title VII directs an employer to "reasonably accommodate" an employee's "religious observance or practice," unless such accommodations would impose

"undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e-2(a)(1). In a case involving alleged religious discrimination, a plaintiff may satisfy this burden by plausibly alleging that he or she "actually requires an accommodation of [his or her] religious practice" and that "the employer's desire to avoid the prospective accommodation [was] a motivating factor in [an employment] decision." *See E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 774-775 (2015). An employer does not violate Title VII, however, if it can show that the prospective accommodation "would cause the employer to suffer an undue hardship." *Cosme v. Henderson*, 287 F.3d 152, 158 (2d Cir. 2002).

Plaintiffs' attempt to distinguish between "accommodation" and "exemption" is unavailing. Plaintiffs sought a vaccine "accommodation" that would allow Plaintiffs to continue to work their DOH "personnel"[12] jobs unvaccinated. *See* Am. Compl. ¶¶ 56-60. As an initial matter, Plaintiffs do not dispute that they are covered "personnel" as defined by Section 2.61(a)(2). Yet, Plaintiffs argue that they should have been able to continue in their respective roles without receiving the Covid-19 vaccine. While the Court acknowledges that there may be some relief

[12] Section 2.61 defines "personnel" as any employees or affiliates of a covered entity "who engage in activities such that if they were infected with COVID-19, they could potentially expose other covered personnel, patients or residents to the disease." Section 2.61(a)(2); *see also* 10 N.Y.C.R.R. § 2.61. 2023 (New York State Department of Health's State Mandate, issued on August 26, 2021, mandating that all "personnel" employed in "covered entities," such as hospitals, be vaccinated by September 27, 2021).

for accommodation under Section 2.61 "for an employer to accommodate—not exempt—employees with religious objections, by employing them in a manner that removes them from [Section 2.61's] definition of 'personnel,'" Plaintiffs' amended complaint and declaration are devoid of any assertion that they requested any accommodation that would have removed them from this definition. *See We the Patriots USA, Inc. v. Hochul*, 17 F.4th 368, 370 (2d Cir. 2021) [hereinafter "*We the Patriots II*"].

Here, Plaintiffs assert that the religious "accommodation" sought was to continue to participate in the mitigation protocols, *i.e.,* wearing face masks and receiving weekly Covid-19 tests. *See* Am. Compl. ¶¶ 63, 96. However, Plaintiffs "accommodation" request has clearly been foreclosed by the Second Circuit holding that "Title VII does not require covered entities to provide the accommodation that Plaintiffs prefer—in this case, a *blanket religious exemption* allowing them to continue working at their current positions unvaccinated." *We the Patriots II*, 17 F.4th at 370(emphasis added); *see also* 10 N.Y.C.R.R. § 2.61(a)(2), (c). Thus, Plaintiffs have not plausibly alleged religious discrimination for failure to accommodate.

3. Northwell Would Face Undue Hardship in Granting Plaintiffs Accommodation

Title VII makes it unlawful for employers "to discharge ... or otherwise to discriminate against any individual" in his or her employment "because of such individual's ... religion." 42 U.S.C. § 2000e-2(a)(1). The

statute defines "religion" to include "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate ... an employee's ... religious observance or practice without undue hardship on ... the employer's business." *Id*. § 2000e(j)." *We the Patriots I*, 17 F.4th at 291 (internal citations omitted). "An accommodation is said to cause an undue hardship whenever it results in 'more than a de minimis cost' to the employer." *Baker v. The Home Depot*, 445 F.3d 541, 548 (2d Cir. 2006) (citation omitted). Undue hardship is "shown when a burden [on an employer] is substantial in the overall context of an employer's business." *Groff v. DeJoy*, 600 U.S. 447, 468 (2023); *accord D'Cunha v. Northwell Health Sys.*, 23-CV-476, 2023 WL 7986441, at *2 (2d Cir. Nov. 17, 2023).

"Courts in this circuit have dismissed … Title VII claims brought against healthcare employers with COVID-19 vaccination mandates, on the basis that allowing plaintiffs the religious exemptions they sought would have created an undue hardship on the employer by forcing them to violate Section 2.61." *Haczynska v. Mount Sinai Health Sys.*, 23-CV-3091 (MKB), 2024 WL 3178639, at *13 (E.D.N.Y. June 26, 2024) (*citing Cagle v*, 680 F. Supp. 3d 428 at 436 (collecting "[a] long line of cases in the Southern and Eastern Districts of New York" that "have uniformly rejected claims that an employer is required by Title VII to accommodate a request for a religious exemption from [Section 2.61] at the cost of violating Section 2.61 and thus New York law."); *Accord Bey v. City of New York*, 999 F.3d 157, 170 (2d Cir. 2021)

("Title VII cannot be used to require employers to depart from binding federal regulations."); *see also Adamowicz v. Northwell Health Inc.*, 23-CV-01277 (OEM) (LGD), 2024 WL 072210, at *7-8 (E.D.N.Y. Mar. 11, 2024); 10 N.Y.C.R.R. § 2.61.

Therefore, even assuming *arguendo* that Plaintiffs could plead religious discrimination based upon the failure to accommodate or disparate treatment, the blanket accommodation Plaintiffs were seeking would have imposed on Northwell an impermissible undue hardship. Northwell relies on *Groff* to argue that the religious exemption requested by Plaintiffs would have created an undue hardship for Northwell by forcing Northwell to violate New York state law. Def. Memo at 2. However, Plaintiffs contend that *Groff* requires *Northwell* to bear the burden of proving that Plaintiffs' accommodation requests would result in a substantial increase in cost—which Plaintiffs assert Defendants have failed to do. *See* Pl. Opp. at 12. Plaintiffs' interpretation of *Groff* is unavailing in that the outcome of this argument has already been foreclosed by the Second Circuit's decision in *D'Cunha*, a case brought against Northwell Health that was dismissed on nearly identical facts. 2023 WL 7986441, at *2-3 (2d Cir. Nov. 17, 2023).

The Court finds that the Defendant has sufficiently shown that granting Plaintiffs a religious exemption—that was styled as an "accommodation"—would have imposed an "undue hardship" as recognized under *Groff*. *See Groff*, 600 U.S. at 469. At the time in which Defendant had denied Plaintiffs request for religious exemptions to the DOH Mandate, the state law was clear in that "[c]overed entities"—

which incontrovertibly included Northwell—"continuously require personnel to be fully vaccinated against COVID-19." Section 2.61(c). The mandate did not allow for religious exemptions. *See* Section 2.61(d). Consequently, Northwell would have had to violate state law in order to grant Plaintiffs requested religious exemptions, "thereby suffering an undue hardship." *See D'Cunha*, 2023 WL 7986441, at *3 ("Defendant could not have granted [plaintiff's] religious-exemption request without violating [Section 2.61], exposing itself to potential penalties, and thereby suffering an undue hardship.").[13]

Plaintiffs' allegations are insufficient to allege that Northwell could have accommodated their religious beliefs without imposing on Northwell an undue hardship. The Court therefore grants Defendant's motion to dismiss Plaintiffs' Title VII claims.

B. Plaintiff Taylor Fails to Plausibly Allege Her ADA Claim[14]

To state a claim for discrimination under the ADA, a plaintiff must allege that "(1) the defendant is

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[13] *See also* 10 N.Y.C.R.R. § 2.61 (New York State Department of Health's State Mandate, issued on August 26, 2021, mandating that all "personnel" employed in "covered entities," such as hospitals, be vaccinated by September 27, 2021.).

[14] As a threshold matter, although not raised by Defendant—it appears that Plaintiff Taylor failed to exhaust her administrative remedies as it relates to her ADA claim. *Cohn v. KeySpan Corp.*, 713 F. Supp. 2d 143, 155 (E.D.N.Y. 2010) (citing *Curto v. Edmundson*, 392 F.3d 502, 503 (2d Cir. 2004)) ("Exhaustion of administrative remedies and the timely filing of a complaint with the [Equal Employment Opportunity Commission ("EEOC")] are preconditions to filing an ADA action in federal court."). Here

covered by the ADA; (2) plaintiff suffers from or is regarded as suffering from a disability within the meaning of the ADA; (3) plaintiff was qualified to perform the essential functions of the job, with or without reasonable accommodation; and (4) plaintiff suffered an adverse employment action because of his disability or perceived disability." *Luka v. Bard Coll.*, 263 F. Supp. 3d 478, 486 (S.D.N.Y. 2017) (quoting *Capobianco v. City of N.Y.*, 422 F.3d 47, 56 (2d Cir. 2005)).

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plaintiff Taylor's exhaustion remedies are only with regard to her religious discrimination. Taylor Decl. at 4. The amended complaint and plaintiff Taylor's declaration is devoid of any mention of a charge specifically brought before the EEOC with regard to her ADA claim, if and or when she brought it, if there was any determination on such charges, or even about when the EEOC mailed her right-to-sue letter or when she received it. Claims not asserted before the EEOC may still be pursued in a subsequent federal action if they are "reasonably related to" those that were filed with the agency. *Legnani v. Alitalia Linee Aeree Italiane, S.P.A.*, 274 F.3d 683, 686 (2d Cir. 2001) (internal quotation marks omitted). "A claim is considered reasonably related if the conduct complained of would fall within the scope of the EEOC investigation which can reasonably be expected to grow out of the charge that was made." *Deravin v. Kerik*, 335 F.3d 195, 200-01 (2d Cir. 2003) (internal quotation marks omitted). In this case, none of the acts of religious discrimination alleged in Plaintiff Taylors EEOC charge involved the same acts raised in connection with her ADA claim. A claim of disability discrimination is conceptually distinct from a claim of religious discrimination, and based upon what Plaintiff Taylor has plead as to her EEOC charge related to the religious discrimination would not have given agency reason to investigate a disability claim. *See Rosado v. Port Auth. of N.Y. & N.J.*, 22-587, 2024 WL 658776, at *2 (2d Cir. Feb. 16, 2024); *see also Tsai v. Rockefeller Univ.*, 137 F. Supp. 2d 276, 284 (S.D.N.Y. 2001) (collecting cases) (courts in this Circuit have typically found that "Title VII claims are not reasonably related to ADA claims.").

Defendant argues that even assuming plaintiff Taylor meets the first element—coverage under the ADA—she has failed to plead sufficient facts for the remaining elements of a *prima facie* ADA claim. Def. Memo at 15. Plaintiff Taylor's argument in her opposition is nothing more than recitation of the conclusory facts already set forth in the amended complaint. *See* Pl's Opp. at 16-17. Plaintiff Taylor's opposition papers do not address the deficiencies raised in Defendant's Motion, but rather restate her position that she properly pled sufficiently to support her ADA claim. *Id.*

1. Plaintiff Fails to Plead That She Has a Disability Under The ADA

Under the ADA, a "disability" is: "(A) a physical or mental impairment that substantially limits one or more major life activities of [an] individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment ...." 42 U.S.C. § 12102(1).

"Major life activities" include "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." § 12102(2)(A); *see Niles v. New York City Hum. Res. Admin.*, 22-CV-6307 (AMD) (JAM), 2024 WL 496346, at *5 (E.D.N.Y. Feb. 8, 2024). "In determining whether a major life activity is substantially limited by a physical or mental impairment, courts consider (1) the nature and severity of the impairment, (2) its duration or expected duration; and (3) the existence of any actual or expected permanent or long-term impact."

Metzler v. Kenmore-Town of Tonawanda Union Free School District, 22-CV-9595, 2024 WL 3621480, at *4 (W.D.N.Y. 2024) (citations omitted).

Therefore, a plaintiff must state sufficient facts as to the nature of the disability and purported limitations, as well as details regarding the 'frequency, duration, or severity of his or her limitations." *Earl v. Good Samaritan Hospital of Suffern NY*, 625 F.Supp. 292, 304 (S.D.N.Y 2022) (citation omitted). To survive a motion to dismiss, "a plaintiff [must] do more than simply allude to her impairments in her pleadings; she must plead how those impairments significantly impacted major life activities." *Bailey-Lynch v. Dollar Tree Stores, Inc.*, 20-CV-01610 (JLS) (MJR), 2022 WL 20741772, at *8 (W.D.N.Y. Oct. 27, 2022), report and recommendation adopted by 2023 WL 6057427 (W.D.N.Y. Sept. 18, 2023) (alteration in original; quotation and citation omitted). Taylor fails to do so here.

First, Taylor alleges she suffers from a "neurological disorder" which is a "physical or mental impairment" that substantially limits one or more of her "major life activities, such as working, caring for herself, performing manual tasks, eating, sleeping, breathing, learning, reading, concentrating, thinking, communicating, and working." Am. Compl. ¶ 111; Pl. Opp., at 16. Taylor, however, provides no detailed factual information regarding the nature and severity of this "neurological condition," nor its duration or effects. While Taylor alleges this condition affects one or more aspects of her life, she fails to plead any facts regarding which specific major life activity is affected by her alleged condition, nor does she provide any

details as to how her life activities are affected. Pl. Opp., at 16-17. Courts routinely grant motions to dismiss on disability claims where the plaintiff does not plead sufficient facts to allege they are disabled under the meaning of the ADA. *See also Dechberry v. N.Y.C. Fire Dep't*, 124 F. Supp. 3d 131, 151 (E.D.N.Y. 2015) ("Without any factual specificity as to the alleged disability claimed and the major life activities affected, the Complaint fails to plead that plaintiff was disabled."); *Reid v. Time Warner Cable*, 14-CV-3241 (DLI) (RML), 2016 WL 743394, (E.D.N.Y. Feb. 22, 2016) (granting a Motion to Dismiss where the Plaintiff identified his disability only as "aveloplasty," but failed to provide any "details concerning the frequency with which these symptoms manifested, or the duration he suffered from them."); *Mercer v. Viacombs/Paramount*, 22-CV-6322 (LGS), 2024 WL 3553133, at *5 (S.D.N.Y. July 26, 2024) (finding plaintiff failed to state a claim where plaintiff claimed a medical allergy/contraindication to all Covid-19 vaccinations as a disability but failed to provide any supporting documentation with details regarding the allergy or how this substantially limits a major life activity).

Therefore, the Court finds that plaintiff Taylor has failed to plead facts that properly allege that she has physical or mental impairment that substantially limits one or more major life activities pursuant to 42 U.S.C. § 12102(1)(a). *See Metzler*, 2024 WL 3621480, at *5 (dismissing plaintiff's claim for disability discrimination for failure to state a claim finding plaintiff's assertion that she "has a disability under the ADA," is "a factually unsupported legal conclusion

not entitled to the presumption of truthfulness," and a list of various diagnosis "allege[d] no facts whatsoever concerning how her medical conditions substantially limit her major life activities. She thus fails to state a claim.").

Second, Taylor asserts that because Defendant had previously accommodated her for her disability, as defined in 42 U.S.C. §§ 12102(1)(C), 3(A), and possessed medical evidence of her alleged disability she has met prongs B & C. Further, she alleges Northwell had "actual or constructive knowledge" of her disability. Am. Comp. ¶¶ 111, 116. However, the Amended Complaint and Taylor's declaration are barren of any allegations or details as to when Defendant was informed of her disability or what accommodations she previously received in the workplace. Plaintiff Taylor did not plead sufficient facts to support a finding that she is disabled within the meaning of the ADA.

2. Plaintiff Was Not Qualified to Perform the Essential Functions of The Job

"The term 'qualified individual' means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8). Plaintiff alleges she is a qualified individual within the meaning of 42 U.S.C. § 12111(8) because she can perform "the essential functions of a Surgical Technologist based factors including but not limited to, her education, experience, and performance reviews." Am. Compl. ¶¶ 112-13.

Defendant argues plaintiff Taylor was not qualified for the position at the time of her termination because she was not in compliance with the employment requirements with regard to Northwell's Policy arising out of the DOH Mandate. Def.'s Mot., at 20. As discussed *infra*, pursuant to the DOH mandate and Taylor's role as Surgical Technologist, she is clearly considered "personnel" under 10 N.Y.C.R.R. § 2.61. Thus, Covid-19 vaccination was a qualification of employment and Taylor's choice[15] to not get vaccinated (without a medical exemption) makes her *per se* unqualified for her position.[16] *Id.; see also We The Patriots II*, 17 F.4th at 370 ("[I]f a medically eligible employee's work assignments mean that she qualifies as 'personnel,' she is covered by the Rule and

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[15] As Defendant's correctly note, Plaintiffs' argument that they did not have "the power of choice" (see Opp., at 10-11) has already been foreclosed by the Second Circuit. *We the Patriots USA, Inc. v. Hochul,* 17 F.4th 266, 293-94 (2d Cir. 2021)("Although individuals who object to receiving the vaccines on religious grounds have a hard choice to make, they do have a choice.").

[16] Defendant brings forth an additional argument that Plaintiff Taylor failed to satisfy the statutory requirements as it relates to medical exemption pursuant to Section 2.61 by failing to provide documentation from a physician that identified a "pre-existing medical condition" and failing to assert the medical risk she would face if she received the COVID-19 vaccination. Def. Memo. at 16. Plaintiff Taylor does not address any of the arguments made by Defendants as it relates to the statutory requirements. Plaintiffs' general assertion is that the DOH Mandate was not enforceable. However, the Court notes that this issue has been foreclosed countless times in this Circuit. *See Montgomery v. New York Presbyterian Hospital*, 23-CV-9201 (PAE) (OTW), 2024 WL 4068786, at *1 (S.D.N.Y. Aug. 13, 2024); *accord Wilson v. New York Soc'y for the Relief of the Ruptured & Crippled, Maintaining the Hospital for Special Surgery*, 22-CV-9207 (AT) (JLC), 2023 WL 5766030 at *5 (S.D.N.Y. Sept. 7, 2023).

her employer must 'continuously require' that she is vaccinated against COVID-19"); 10 N.Y.R.R. § 2.61(a)(2), (c); *Broecker v. New York City Dep't of Educ.*, 585 F. Supp. 3d 299, 316-17 (E.D.N.Y. 2022); *see also We The Patriots I*, 17 F.4th at 294 ("Vaccination is a condition of employment in the healthcare field.").

3. Plaintiff Taylor Did Not Suffer Adverse Employment Action Because Of Her Disability

"To establish a claim of disability discrimination under the ADA, the adverse employment action must be *causally linked* to the alleged act of discrimination on the basis of disability." *Holmes v. New York City Dept. of City-Wide Admin. Servs.*, 14-CV-8289 (KBF), 2015 WL 1958941, at *14 (S.D.N.Y. Apr. 30, 2015) (*citing Parker v. Sony Pictures Entm't, Inc.*, 260 F.3d 100, 107 (2d Cir. 2001) (a "causal connection between a disability and an adverse employment action" is "requisite" for establishing liability for discrimination claim under the ADA). "A plaintiff's failure to establish a nexus between her qualifying disability and her request for an accommodation is fatal to a claim for failure to accommodate." *Mirinaviciene v. Keuka Coll.*, 23-CV-6233 (FPG), 2023 WL 8281897, at *3 (W.D.N.Y. Nov. 30, 2023) (citation omitted).

As with her Title VII claim, Taylor fails to allege any facts to plausibly suggest that any employment actions—adverse or otherwise—were based on her alleged disability. *See Heckman v. Town of Hempstead,* 568 F. App'x 41, 45 (2d Cir. 2014) (affirming dismissal where plaintiff's allegations did

not suggest a plausible inference that any of the defendants intentionally discriminated against him on the basis of his disability). Plaintiff Taylor asserts in the amended complaint that:

> NHS purposefully, willfully, intentionally, or recklessly retaliated against Plaintiff by engaging in a series of adverse actions, including: 'Ignoring, denying, or refusing Ms. Taylor's requests for an accommodation; Threatening Ms. Taylor; Condoning, encouraging, or incentivizing executives and administrative staff to discriminate against Ms. Taylor; Manufacturing a false pretext in an attempt to terminate Ms. Taylor; and Terminating Ms. Taylor's employment.' NHS committed the aforesaid acts or omissions with the intent to humiliate, ridicule, and insult Ms. Taylor.

See Am. Compl. ¶¶ 117-123.

However, these conclusory allegations fail to elucidate specific instances of Defendant's conduct, nor do they assert inferences of discrimination that were purportedly done by Northwell because of her disability. Further, plaintiff Taylor has failed to plead sufficient facts to assert she has a disability within the meaning of 42 U.S.C. § 12102(1), and thus, she fails to state a claim that her termination of employment was because of her disability. *See* Am. Compl. ¶¶ 55, 57 (where Taylor asserts that Northwell terminated her because providing the religious accommodation of remaining in her "personnel" unvaccinated would

impose the undue burden of violation New York state law).

Accordingly, plaintiff Taylor has not pled sufficient facts to establish a claim for discrimination under the ADA and thus her claim must be dismissed for failure to state a claim.[17]

CONCLUSION

For the foregoing reasons, the Defendant's motion to dismiss is **GRANTED**, and the Amended Complaint is dismissed in its entirety.

SO ORDERED.

/s/
ORELIA E. MERCHANT
United States District Judge

Dated: September 24, 2024
Brooklyn, New York

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[17] "Claims alleging discrimination under the ADA are subject to the burden-shifting analysis established in *McDonnell*." *Davis v. New York City Dep't of Educ.*, 804 F.3d 231, 235 (2d Cir. 2015) (cleaned up). Under this framework, "once a plaintiff produces minimal evidentiary support for the claim of discriminatory motivation, the burden of production shifts to the employer to articulate a non-discriminatory reason for the adverse employment action." *Id*. Whether a proposed accommodation is reasonable, however, is a separate question, where the plaintiff only has the burden of production to show the existence of a plausible accommodation. *Borkowski v. Valley Cent. Sch. Dist.*, 63 F.3d 131, 138 (2d Cir. 1995). Once a plaintiff has done this, the defendant's burden merges with showing the proposed accommodation is unreasonable, with its burden of showing "as an affirmative defense, that the proposed accommodation would cause it to suffer an undue hardship." *Id*. Here, the Court finds that the undue burden analysis for Plaintiff Taylor's ADA accommodation is identical to the above discussion regarding undue hardship, *infra* Discussion, A(3).

Appendix C

Case 2:22-cv-06687-OEM-LGD, Document 31, Filed 09/25/24

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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IRINA ABRAMOV, MAUREN ALCHERMES, DAWN ALOIS, JOY ALTRUI, ANGELA BASTONE-PERGOLA, EVGENIYA BATALLA, DIANE BONO, CYNTHIA BRACCIA, JENNIFER BROWNE, KATHERINE CARNEY, ANDREA DE PALMA, KAREN FERRANDO, CARMELA FIORICA, EILEEN HAGAN, SARAH HASENEY, MARYANN HOJNOWSKI, DENNISE JOHNSON, KATHERINE KOUGENTAKIS, NILBERK KURT, KAREN LA ROSA, DEBRA LANAHAN, NADIRA MAHABIR, VERONICA NEWTON, KATLYN PASTOR, REBECCA RAMIREZ, JULIA SHAW, ROSE TAYLOR, MIA TORRES, MARISOL VENTRICE, and MICHELE WOODWARD-LAWTON,

Plaintiffs,

v.

NORTHWELL HEALTH SYSTEMS,

Defendant.

----------X

JUDGMENT

22-cv-06687 (OEM) (LGD)

A Memorandum and Order of the Honorable Orelia E. Merchant, United States District Court, having been filed on September 24, 2024, granting the Defendant's motion to dismiss; and dismissing the Amended Complaint in its entirety; it is

ORDERED and ADJUDGED that the Defendant's motion to dismiss is granted; and that the Amended Complaint is dismissed in its entirety.

Dated: Brooklyn, New York
September 25, 2024

Brenna B. Mahoney
Clerk of Court

By: */s/Jalitza Poveda*
Deputy Clerk

Appendix D

U.S. Constitution Article VI
Clause 2. Supreme Law of Land

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Appendix E

42 U.S.C. §2000e. Definitions [excerpted]

For the purposes of this subchapter--

* * *

(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.

* * *

Appendix F

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

(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.

* * *

Appendix G

42 U.S.C. §2000e-7. Effect on State laws

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.

Appendix H

42 U.S.C. §2000h-4. Construction of provisions not to exclude operation of State laws and not to invalidate consistent State laws

Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which any such title operates to the exclusion of State laws on the same subject matter, nor shall any provision of this Act be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this Act, or any provision thereof.

Appendix I

10 N.Y.C.R.R. 2.61

Section 2.61. Prevention of COVID-19 transmission by covered entities

Effective: August 26, 2021 to November 23, 2021

As used in this chapter:

(a) Definitions.

(1) *Covered entities* for the purposes of this section, shall include:

(i) any facility or institution included in the definition of "hospital" in section 2801 of the Public Health Law, including but not limited to general hospitals, nursing homes, and diagnostic and treatment centers;

(ii) any agency established pursuant to Article 36 of the Public Health Law, including but not limited to certified home health agencies, long term home health care programs, acquired immune deficiency syndrome (AIDS) home care programs, licensed home care service agencies, and limited licensed home care service agencies;

(iii) hospices as defined in section 4002 of the Public Health Law; and

(iv) adult care facility under the Department's regulatory authority, as set forth in Article 7 of the Social Services Law.

(2) *Personnel*, for the purposes of this section, shall mean all persons employed or affiliated with a

covered entity, whether paid or unpaid, including but not limited to employees, members of the medical and nursing staff, contract staff, students, and volunteers, who engage in activities such that if they were infected with COVID-19, they could potentially expose other covered personnel, patients or residents to the disease.

(3) *Fully vaccinated*, for the purposes of this section, shall be determined by the Department in accordance with applicable federal guidelines and recommendations. Unless otherwise specified by the Department, documentation of vaccination must include the manufacturer, lot number(s), date(s) of vaccination; and vaccinator or vaccine clinic site, in one of the following formats:

(i) record prepared and signed by the licensed health practitioner who administered the vaccine, which may include a CDC COVID-19 vaccine card;

(ii) an official record from one of the following, which may be accepted as documentation of immunization without a health practitioner's signature: a foreign nation, NYS Countermeasure Data Management System (CDMS), the NYS Immunization Information System (NYSIIS), City Immunization Registry (CIR), a Department-recognized immunization registry of another state, or an electronic health record system; or

(iii) any other documentation determined acceptable by the Department.

(c)[1] Covered entities shall continuously require personnel to be fully vaccinated against COVID-19, with the first dose for current personnel received by September 27, 2021 for general hospitals and nursing homes, and by October 7, 2021 for all other covered entities absent receipt of an exemption as allowed below. Documentation of such vaccination shall be made in personnel records or other appropriate records in accordance with applicable privacy laws, except as set forth in subdivision (d) of this section.

(d) Exemptions. Personnel shall be exempt from the COVID-19 vaccination requirements set forth in subdivision (c) of this section as follows:

> (1) Medical exemption. If any licensed physician or certified nurse practitioner certifies that immunization with COVID-19 vaccine is detrimental to the health of member of a covered entity's personnel, based upon a pre-existing health condition, the requirements of this section relating to COVID-19 immunization shall be inapplicable only until such immunization is found no longer to be detrimental to such personnel member's health. The nature and duration of the medical exemption must be stated in the personnel employment medical record, or other appropriate record, and must be in accordance with generally accepted medical standards, (see, for example, the recommendations of the Advisory Committee on Immunization Practices of the U.S. Department of Health and Human Services), and any reasonable

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[1 Mislettering in original].

accommodation may be granted and must likewise be documented in such record. Covered entities shall document medical exemptions in personnel records or other appropriate records in accordance with applicable privacy laws by: (i) September 27, 2021 for general hospitals and nursing homes; and (ii) October 7, 2021 for all other covered entities. For all covered entities, documentation must occur continuously, as needed, following the initial dates for compliance specified herein, including documentation of any reasonable accommodation therefor.

(e) Upon the request of the Department, covered entities must report and submit documentation, in a manner and format determined by the Department, for the following:

(1) the number and percentage of personnel that have been vaccinated against COVID-19;

(2) the number and percentage of personnel for which medical exemptions have been granted;

(3) the total number of covered personnel.

(f) Covered entities shall develop and implement a policy and procedure to ensure compliance with the provisions of this section and submit such documents to the Department upon request.

(g) The Department may require all personnel, whether vaccinated or unvaccinated, to wear an appropriate face covering for the setting in which such personnel are working in a covered entity. Covered entities shall supply face coverings required by this section at no cost to personnel.

Appendix J

STATE OF NEW YORK:
DEPARTMENT OF HEALTH

IN THE MATTER

OF

COVERED ENTITIES IN THE PREVENTION AND CONTROL OF THE 2019 NOVEL CORONAVIRUS

ORDER FOR SUMMARY ACTION

WHEREAS the 2019 Novel Coronavirus ("COVID-19") is an infection associated with fever and signs and symptoms of pneumonia and other respiratory illness that is easily transmitted from person to person, predominantly through droplet transmission, and has significant public health consequences; and

WHEREAS COVID-19 is a global pandemic that, to date, has resulted in 2,195,903 documented cases and 43,277 deaths in New York State alone; and

WHEREAS the Centers for Disease Control and Prevention (CDC) has identified a concerning national trend of increasing circulation of the Delta COVID-19 variant; and

WHEREAS the U.S. Food and Drug Administration (FDA) granted Emergency Use Authorizations (EUA) for Pfizer -BioNTech, Moderna, and Janssen COVID-19 vaccines which have been shown to be safe and effective as determined by data from the

manufacturers and findings from large clinical trials; and

WHEREAS while New York State has aggressively promoted vaccination since COVID-19 vaccines first became available in December 2020, current vaccination rates are not high enough to prevent the spread of the Delta variant, which is approximately twice as transmissible as the original SARS-CoV-2 strain; and

WHEREAS data show that unvaccinated individuals are approximately 5 times as likely to be diagnosed with COVID-19 as are vaccinated individuals; and

WHEREAS those who are unvaccinated have over 10 times the risk of being seriously ill and hospitalized with COVID-19; and

WHEREAS since early July, cases have risen 10-fold, and 95 percent of sequenced recent positives in New York State were the Delta variant; and

WHEREAS certain settings, such as healthcare facilities, pose increased challenges and urgency for controlling the spread of this disease because of the vulnerable patient and resident populations that they serve; and

WHEREAS unvaccinated personnel in such settings have an unacceptably high risk of both acquiring COVID-19 and transmitting such virus to colleagues and/or vulnerable patients or residents; and

WHEREAS based upon the foregoing, the Commissioner of Health of the State of New York is of the Opinion that all entities identified in this Order ("covered entities"), must immediately implement and

comply with the requirements identified herein, and that failure to do so constitutes a danger to the health, safety, and welfare of the people of the State of New York; and

WHEREAS the Commissioner of Health of the State of New York has determined that requiring covered entities to immediately implement and comply with the requirements set forth herein and cannot be achieved through alternative means, including the adoption of the Public Health and Health Planning Council of emergency regulations, without delay, which would be prejudicial to health, safety, and welfare of the people of the State of New York; and

WHEREAS it therefore appears to be prejudicial to the interest of the people to delay action for fifteen (15) days until an opportunity for a hearing can be provided in accordance with the provisions of Public Health Law Section (PHL) 12-a.

NOW, THEREFORE, THE HEALTH COMMISSIONER HEREBY ORDERS THAT:
Pursuant to PHL § 16:

(a) Definitions.

(1) Covered entity shall mean a general hospital or nursing home pursuant to section 2801 of the Public Health Law.

(2) Covered Personnel. All persons employed or affiliated with a covered entity, whether paid or unpaid, including but not limited to employees, members of the medical and nursing staff, contract staff, students, and volunteers, who engage in activities such that

if they were infected with COVID-19, they could potentially expose, patients, residents, or personnel working for such entity to the disease.

(3) Fully vaccinated. Covered personnel are considered fully vaccinated for COVID-19 ≥ 2 weeks after receiving either (1) the second dose in a 2-dose series (e.g., Pfizer-BioNTech or Moderna), or (2) a single-dose vaccine (e.g., Johnson & Johnson [J&J]/Janssen), authorized for emergency use or approved by the U.S. Food and Drug Administration, and holds an emergency use listing by the World Health Organization.

(4) Documentation of vaccination shall include:

(i) a record prepared and signed by the licensed health practitioner who administered the vaccine, which may include a CDC COVID-19 vaccine card;

(ii) an official record from one of the following, which may be accepted as documentation of immunization without a health practitioner's signature: a foreign nation, NYS Countermeasure Data Management System (CDMS), the NYS Immunization Information System (NYSIIS), City Immunization Registry (CIR), a Department-recognized immunization registry of another state, or an electronic health record system; or

(iii) any other documentation determined acceptable by the Department. Unless otherwise specified by the Department.

(iv) The following elements, unless otherwise specified by the Department: manufacturer, lot number(s), date(s) of vaccination; and vaccinator or vaccine clinic site.

(b) Covered entities shall continuously require all covered personnel to be fully vaccinated against COVID-19, with the first dose for current personnel received by September 27, 2021. Documentation of such vaccination shall be made in personnel records or other appropriate records in accordance with applicable privacy laws, except as set forth in section (c) of this order.

(c) Limited exemptions to vaccination:

1. Medical exemption. If any licensed physician or certified nurse practitioner certifies that immunization with COVID-19 vaccine is detrimental to a specific member of a covered entity's personnel, based upon a specific pre-existing health condition, the requirements of this section relating to COVID-19 immunization shall be subject to a reasonable accommodation of such health condition only until such immunization is found no longer to be detrimental to the health of such member. The nature and duration of the medical exemption must be stated in the personnel employment medical record and must be in accordance with generally accepted medical

standards, (see, for example, the recommendations of the Advisory Committee on Immunization Practices of the U.S. Department of Health and Human Services). Covered entities shall document medical exemptions and any reasonable accommodation in personnel records or other appropriate records in accordance with applicable privacy laws by September 27, 2021, and continuously, as needed, thereafter.

2. Religious exemption. Covered entities shall grant a religious exemption for COVID-19 vaccination for covered personnel if they hold a genuine and sincere religious belief contrary to the practice of immunization, subject to a reasonable accommodation by the employer. Covered entities shall document such exemptions and such reasonable accommodations in personnel records or other appropriate records in accordance with applicable privacy laws by September 27, 2021, and continuously, as needed, thereafter.

(d) Upon the request of the Department, covered entities must report the number and percentage of covered personnel that have been vaccinated against COVID-19 and the number of personnel for which medical or religious exemptions have been granted by covered entities in a manner and format determined by the Department.

(e) Covered entities shall develop and implement a policy and procedure to ensure compliance with the provisions of Order.

(f) The Department may require all covered personnel, whether vaccinated or unvaccinated, to wear acceptable face coverings for the setting in which they work. Covered entities shall supply acceptable face coverings required by this section at no cost to covered personnel.

FURTHER, I DO HEREBY give notice that any entity that receives notice of and is subject to this Order is provided with an opportunity to be heard at 10:00 a.m. on September 2, 2021, via videoconference, to present any proof that failure to implement and comply with the requirements of this Order does not constitute a danger to the health of the people of the State of New York. If any such entity desires to participate in such a hearing, please inform the Department by written notification to **Vaccine.Order.Hearing@health.ny.gov**, New York State Department of Health, Corning Tower, Room 2438, Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12237, within five (5) days of their receipts of this Order. Please include in the notification the email addresses of all individuals who will be representing or testifying for the entity at the hearing so that an invitation to access the hearing remotely can be provided.

DATED: Albany, New York
August 18, 2021

NEW YORK STATE DEPARTMENT OF HEALTH

BY: /s/
HOWARD A. ZUCKER, M.D., J.D.
Commissioner of Health

Appendix K

Case 2:22-cv-06687-OEM-LGD, Document 19, Filed 05/17/23

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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IRINA ABRAMOV, MAUREN ALCHERMES, DAWN ALOIS, JOY ALTRUI, ANGELA BASTONE-PERGOLA, EVGENIYA BATALLA, DIANE BONO, CYNTHIA BRACCIA, JENNIFER BROWNE, KATHERINE CARNEY, ANDREA DE PALMA, KAREN FERRANDO, CARMELA FIORICA, EILEEN HAGAN, SARAH HASENEY, MARYANN HOJNOWSKI, DENNISE JOHNSON, KATHERINE KOUGENTAKIS, NILBERK KURT, KAREN LA ROSA, DEBRA LANAHAN, NADIRA MAHABIR, VERONICA NEWTON, KATLYN PASTOR, REBECCA RAMIREZ, JULIA SHAW, ROSE TAYLOR, MIA TORRES, MARISOL VENTRICE and MICHELE WOODWARD-LAWTON,

Plaintiffs,

-against-

NORTHWELL HEALTH SYSTEMS,

Defendant.

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Index No.:
2:22-cv-06687

JURY TRIAL DEMANDED

AMENDED CONSOLIDATED COMPLAINT

Plaintiffs Irina Abramov, Maureen Alchermes, Dawn Alois, Joy Altrui, Angela Bastone-Pergola, Evgeniya Batalla, Diane Bono, Cynthia Braccia, Jennifer Browne, Katherine Carney, Andrea De Palma, Karen Ferrando, Carmela Fiorica, Eileen Hagan, Sarah Haseney, Maryann Hojnowski, Dennise Johnson, Katherine Kougentakis, Nilberk Kurt, Karen La Rose, Debra Lanahan, Nadira Mahabir, Katlyn Pastor, Rebecca Ramirez, Julia Shaw, Rose Taylor[1], Mia Torres, Veronica Webb, Marisol Ventrice, and Michele Woodward-Lawton (collectively, "Plaintiffs"), file this action for damages against Northwell Health Systems ("NHS") to seek redress for NHS' unlawful discrimination and retaliation on the basis of their religion in violation of Title VII of the Civil Rights Act of 1964 ("Title VII") and in support thereof, Plaintiffs allege as follows:

PRELIMINARY STATEMENT

"Violate your sincerely held religious beliefs or you lose your job." There is perhaps no greater textbook example of the conduct expressly prohibited by Title VII. But after years of fear, exhaustion, and ever-shifting landscape had sent American workers into a tailspin, corporations began exploiting their workers' vulnerabilities and capitalized on the opportunity to engage in conduct that has been prohibited by law for 232 years. It is time this ends,

[1] Plaintiff Rose Taylor also lodges a claim for disability discrimination pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq*. ("ADA").

and it is time the rights of American workers–especially healthcare workers–are restored.

For 35 consecutive weeks – the deadliest weeks of the COVID-19 pandemic – NHS permitted its employees to forego vaccination despite its availability since December 2020. In what originally appeared to be a well-struck balance between effective mitigation of COVID-19 and the preservation of fundamental religious liberties, New York took an about-face. On August 23, 2021, one day before Governor Hochul took office, the State's Public Health and Health Planning Council—an advisory committee headed by Commissioner Zucker—proposed a revised mandate, this time with no religious exemption despite then-Governor Cuomo's promise religious freedoms would be preserved. Just 72 hours later, the council issued the regulation eviscerating religious protections. *See* 10 N. Y. Admin. Code §2.61 (2021) ("Section 2.61").

There was no evidence to support the religious-based distinction. The regulatory impact statement accompanying this decision did not discuss the feasibility of a religious exemption or the reasons for removing it. It was not until August 15, 2021, any information concerning the basis upon which the abrupt removal of religious protections was made became available. In succinct response to a report, Governor Hochul simply informed the public that "we left off [the religious exemption] in our regulations intentionally." Governor Hochul further alleged the decision justified because no "organized religion" sought it and individuals who did were not "listening to God and what God wants." Now, thousands of New York healthcare workers, including the five plaintiffs

of this action, have not only lost their jobs, but also have been deemed ineligible for the State's unemployment benefits.

Unfortunately, the State's decision to desecrate the religious freedoms of New Yorkers also plagued the private sector. Corporations such as NHS likewise abruptly changed course and removed any ability for employees to maintain their employment while contemporaneously practicing their faith. Following New York's lead, NHS also prohibited its employees from obtaining religious exemptions to its mandatory COVID-19 vaccination policy. But NHS did not stop at merely religious exemptions; instead, NHS further refused to even provide its employees religious accommodations – which again, is a textbook example of the precise conduct that Title VII was enacted to prohibit.

At its core, Plaintiffs lodged this action because NHS discriminated against Plaintiffs and terminated their employment because (1) Plaintiffs sincerely held religious beliefs prohibited compliance with NHS' mandatory vaccination policy; (2) NHS refused to reasonably accommodate Plaintiffs sincerely held religious beliefs; and (3) because of Plaintiffs genetic information and their refusal to modify it – the resulting impact of being inoculated with an mRNA or viral vector COVID-19 vaccine. Perhaps most disappointing of all, NHS not only violated Title VII, but it did so without achieving anything. Indeed, it is well-established that "[b]eing vaccinated does not prevent an individual from contracting or transmitting Covid-19." *Garvey, et al. v. the City of*

New York, et al., N.Y. App. Div. Index No. 85163/2022 (Oct. 24, 2022).

In hopes of restoring the religious freedoms of New Yorkers, it is more important than ever to remember that "**even in a pandemic, the Constitution cannot be put away and forgotten**." *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68 (2021). Title VII is no different.

JURISDICTION AND VENUE

1. This action arises under 42 U.S.C. § 2000e-2 and therefore, jurisdiction is proper pursuant to 28 U.S.C. §§ 1331 and 1343.

2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District and NHS maintains its principal place of business in this district.

3. This Court is authorized to grant Plaintiffs' prayer for relief regarding costs, including a reasonable attorney's fee, pursuant to 42 U.S.C. § 1988.

PARTIES

I. PLAINTIFFS

4. IRINA ABRAMOV ("Ms. Abramov") is an adult resident of Queens County, New York and a former NHS employee. Ms. Abramov's specific factual allegations concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 1, incorporated by reference as if fully set forth in and attached hereto.

5. MAUREEN ALCHERMES ("Ms. Alchermes") is an adult resident of Suffolk County, New York and a former NHS employee. Ms. Alchermes' specific factual allegations concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 2, incorporated by reference as if fully set forth in and attached hereto.

6. DAWN ALOIS ("Ms. Alois") is an adult resident of Nassau County, New York and a former NHS employee. Ms. Abramov's specific factual allegations concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 3, incorporated by reference as if fully set forth in and attached hereto.

7. JOY ALTRUI ("Ms. Altrui") is an adult resident of Nassau County, New York and a former NHS employee. Ms. Altrui's specific factual allegations concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 4, incorporated by reference as if fully set forth in and attached hereto.

8. ANGELA BASTONE-PERGOLA ("Ms. Bastone-Pergola") is an adult resident of Suffolk County, New York and a former NHS employee. Ms. Bastone-Pergola's specific factual allegations concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 5, incorporated by reference as if fully set forth in and attached hereto.

9. EVGENIYA BATALLA ("Ms. Batalla") is an adult resident of St. John's County, Florida and a former NHS employee. Ms. Batalla's specific factual

allegations concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 6, incorporated by reference as if fully set forth in and attached hereto.

10. DIANE BONO ("Ms. Bono") is an adult resident of Nassau County, New York and a former NHS employee. Ms. Bono's specific factual allegations concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 7, incorporated by reference as if fully set forth in and attached hereto.

11. CYNTHIA BRACCIA ("Ms. Braccia") is an adult resident of Monmouth County, New Jersey and a former employee of Northwell Health Systems. At all times relevant, Ms. Braccica was employed as a Registered Nurse at Staten Island University Hospital, a member hospital of Northwell Health Systems, until she was discriminated against and ultimately retaliatorily discharged. Specifically, Ms. Braccia advised Northwell and that her sincerely held religious beliefs prohibited compliance with Northwell's mandatory COVID-19 vaccination policy and as a result, Ms. Braccia requested that Northwell provide her with a reasonable accommodation. Despite its lawful obligation to reasonably accommodate Ms. Braccia's sincerely held religious beliefs and absent the imposition of any undue hardship in doing so, Northwell discriminated against her and denied her accommodation request. Northwell then retaliated against Ms. Braccia and terminated her employment on or about September 29, 2021. At all times relevant, Ms. Braccia satisfied or exceeded her employer's reasonable expectations as to job performance with or

without a reasonable accommodation. Ms. Braccia demonstrated her ability to perform the essential functions and duties of her job as evidenced by factors including without limitation, her education, experience, work history, and performance reviews. Perhaps most compelling is the fact that Northwell permitted Ms. Braccia to work in the exact same capacity and with the exact same reasonable accommodation Ms. Braccia requested. Despite her months' long record of satisfactory performance without incident, Northwell arbitrarily refused to accommodate Ms. Braccia and otherwise discriminated against her and subsequently retaliated by terminating her employment. Ms. Braccia timely filed a charge of discrimination with the EEOC concerning claims arising under Title VII. On August 25, 2022, the EEOC issued Ms. Braccia her right-to-sue letter, providing that Ms. Braccia had 90 days to commence a civil action in federal court. Because Ms. Braccia filed this action within 90 days of receiving her right-to-sue letter, all conditions precedent to maintaining this action have been satisfied.

12. JENNIFER BROWNE ("Ms. Browne") is an adult resident of Suffolk County, New York and a former employee of Northwell Health Systems. At all times relevant, Ms. Browne was employed as a Registered Nurse at Long Island Jewish Medical Center, a member hospital of Northwell Health Systems, until she was discriminated against and ultimately retaliatorily discharged. Specifically, Ms. Browne advised Northwell and that her sincerely held religious beliefs prohibited compliance with Northwell's mandatory COVID-19 vaccination policy

and as a result, Ms. Browne requested that Northwell provide her with a reasonable accommodation. Despite its lawful obligation to reasonably accommodate Ms. Browne's sincerely held religious beliefs and absent the imposition of any undue hardship in doing so, Northwell discriminated against her and denied her accommodation request. Northwell then retaliated against Ms. Browne and terminated her employment on or about September 30, 2021. At all times relevant, Ms. Browne satisfied or exceeded her employer's reasonable expectations as to job performance with or without a reasonable accommodation. Ms. Browne demonstrated her ability to perform the essential functions and duties of her job as evidenced by factors including without limitation, her education, experience, work history, and performance reviews. Perhaps most compelling is the fact that Northwell permitted Ms. Browne to work in the exact same capacity and with the exact same reasonable accommodation Ms. Browne requested. Despite this months' long history of satisfactory performance without incident, Northwell arbitrarily refused to accommodate Ms. Browne and otherwise discriminated against her prior to retaliatorily terminating her employment. Ms. Browne timely filed a charge of discrimination with the EEOC concerning claims arising under Title VII. On August 9, 2022, the EEOC issued Ms. Browne her right-to-sue letter, providing that Ms. Browne had 90 days to commence a civil action in federal court. Because Ms. Browne filed this action within 90 days of receiving her right-to-sue letter, all conditions precedent to maintaining this action have been satisfied.

13. KATHERINE CARNEY ("Ms. Carney") is an adult resident of Nassau County, New York and a former NHS employee. Ms. Abramov's specific factual allegations concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 8, incorporated by reference as if fully set forth in and attached hereto.

14. ANDREA DEPALMA ("Ms. DePalma") is an adult resident of Suffolk County, New York and a former employee of Northwell Health Systems. At all times relevant, Ms. DePalma was employed as a Physical Therapist at Glen Cove Hospital, a member hospital of Northwell Health Systems, until she was discriminated against and ultimately retaliatorily discharged. until she was discriminated against and thereafter, retaliatory discharged. Specifically, Ms. DePalma advised Northwell and that her sincerely held religious beliefs prohibited compliance with Northwell's mandatory COVID-19 vaccination policy and as a result, Ms. DePalma requested that Northwell provide her with a reasonable accommodation. Despite its lawful obligation to reasonably accommodate Ms. DePalma's sincerely held religious beliefs and absent the imposition of any undue hardship in doing so, Northwell discriminated against her and denied her accommodation request. Northwell then retaliated against Ms. DePalma and terminated her employment on or about September 28, 2021. At all times relevant, Ms. DePalma satisfied or exceeded her employer's reasonable expectations as to job performance with or without a reasonable accommodation. Ms. DePalma demonstrated her ability to perform the essential functions and duties of

her job as evidenced by factors including without limitation, her education, experience, work history, and performance reviews. Perhaps most compelling is the fact that Northwell permitted Ms. DePalma to work in the exact same capacity and with the exact same reasonable accommodation Ms. DePalma requested. Despite this months' long history of satisfactory performance without incident, Northwell arbitrarily refused to accommodate Ms. DePalma and otherwise discriminated against her prior to retaliatorily terminating her employment. Ms. DePalma timely filed a charge of discrimination with the EEOC concerning claims arising under Title VII. On August 18, 2022, the EEOC issued Ms. DePalma her right-to-sue letter, providing that Ms. DePalma had 90 days to commence a civil action in federal court. Because Ms. DePalma filed this action within 90 days of receiving her right-to-sue letter, all conditions precedent to maintaining this action have been satisfied.

15. KAREN FERRANDO ("Ms. Ferrando") is an adult resident of Richmond County, New York and a former NHS employee. Ms. Ferrando's specific factual allegations concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 9, incorporated by reference as if fully set forth in and attached hereto.

16. CARMELLA FIORICA ("Ms. Fiorica") is an adult resident of Richmond County, New York and a former NHS employee. Ms. Fiorica's specific factual allegations concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth

in Exhibit 10, incorporated by reference as if fully set forth in and attached hereto.

17. EILEEN HAGAN ("Ms. Hagan") is an adult resident of Nassau County, New York and a former NHS employee. Ms. Hagan's specific factual allegations concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 11, incorporated by reference as if fully set forth in and attached hereto.

18. SARAH HASENEY ("Ms. Haseney") is an adult resident of Suffolk County, New York and a former NHS employee. Ms. Haseney's specific factual allegations concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 12, incorporated by reference as if fully set forth in and attached hereto.

19. MARYANN HOJNOWSKI ("Ms. Hojnowski") is an adult resident of Nassau County, New York and a former NHS employee. Ms. Hojnowski's specific factual allegations concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 13, incorporated by reference as if fully set forth in and attached hereto.

20. DENNISE JOHNSON ("Ms. Johnson") is an adult resident of Fairfield County, Connecticut and a former employee of Northwell Health Systems. At all times relevant, Ms. Johnson was employed as a Registered Nurse at Westchester Health Associates, a member hospital of Northwell Health Systems, until she was discriminated against and thereafter, retaliatory discharged. Specifically, Ms. Johnson advised Northwell and that her sincerely held

religious beliefs prohibited compliance with Northwell's mandatory COVID-19 vaccination policy and as a result, Ms. Johnson requested that Northwell provide her with a reasonable accommodation. Despite its lawful obligation to reasonably accommodate Ms. Johnson's sincerely held religious beliefs and absent the imposition of any undue hardship in doing so, Northwell discriminated against her and denied her accommodation request. Northwell then retaliated against Ms. Johnson and terminated her employment on or about October 1, 2021. At all times relevant, Ms. Johnson satisfied or exceeded her employer's reasonable expectations as to job performance with or without a reasonable accommodation. Ms. Johnson demonstrated her ability to perform the essential functions and duties of her job as evidenced by factors including without limitation, her education, experience, work history, and performance reviews. Perhaps most compelling is the fact that Northwell permitted Ms. Johnson to work in the exact same capacity and with the exact same reasonable accommodation Ms. Johnson requested. Despite this months' long history of satisfactory performance without incident, Northwell arbitrarily refused to accommodate Ms. Johnson and otherwise discriminated against her prior to retaliatorily terminating her employment. Ms. Johnson timely filed a charge of discrimination with the EEOC concerning claims arising under Title VII. On August 26, 2022, the EEOC issued Ms. Johnson her right-to- sue letter, providing that Ms. Johnson had 90 days to commence a civil action in federal court. Because Ms. Johnson filed this action within 90 days of receiving her right-

to-sue letter, all conditions precedent to maintaining this action have been satisfied.

21. KATHERINE KOUGENTAKIS ("Ms. Kougentakis") is an adult resident of Nassau County, New York and a former NHS employee. Ms. Kougentakis' specific factual allegations concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 14, incorporated by reference as if fully set forth in and attached hereto.

22. NILBERK KURT ("Mr. Kurt") is an adult resident of Richmond County, New York and a former NHS employee. Mr. Kurt's specific factual allegations concerning his claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 15, incorporated by reference as if fully set forth in and attached hereto.

23. KAREN LA ROSA ("Ms. La Rosa") is an adult resident of Suffolk County, New York and a former NHS employee. Ms. La Rosa's specific factual allegations concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 16, incorporated by reference as if fully set forth in and attached hereto.

24. DEBRA LANAHAN ("Ms. Lanahan") is an adult resident of Richmond County, New York and a former NHS employee. Ms. Lanahan's specific factual allegations concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 17, incorporated by reference as if fully set forth in and attached hereto.

25. NADIRA MAHABIR ("Ms. Mahabir") is an adult resident of Nassau County, New York and a former NHS employee. Ms. Mahabir's specific factual allegations concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 18, incorporated by reference as if fully set forth in and attached hereto.

26. VERONICA NEWTON ("Ms. Newton") is an adult resident of Suffolk County, New York and a former NHS employee. Ms. Newton's specific factual allegations concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 19, incorporated by reference as if fully set forth in and attached hereto.

27. KATLYN PASTOR ("Ms. Pastor") is an adult resident of Nassau County, New York and a former NHS employee. Ms. Pastor's specific factual allegations concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 20, incorporated by reference as if fully set forth in and attached hereto.

28. REBECCA RAMIREZ ("Ms. Ramirez") is an adult resident of Suffolk County, New York and a former NHS employee. Ms. Ramirez's specific factual allegations concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 21, incorporated by reference as if fully set forth in and attached hereto.

29. JULIA SHAW ("Ms. Shaw") is an adult resident of Nassau County, New York and a former NHS employee. Ms. Shaw's specific factual allegations concerning her claims and satisfaction of the pre-

requisite exhaustion requirement are set forth in Exhibit 22, incorporated by reference as if fully set forth in and attached hereto.

30. ROSE TAYLOR ("Ms. Taylor") is an adult resident of Suffolk County, New York and a former NHS employee. Ms. Taylor's specific factual allegations concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 23, incorporated by reference as if fully set forth in and attached hereto.

31. MIA TORRES ("Ms. Torres") is an adult resident of Suffolk County, New York and a former NHS employee. Ms. Torres' specific factual allegations concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 24, incorporated by reference as if fully set forth in and attached hereto.

32. MARISOL VENTRICE ("Ms. Ventrice") is an adult resident of Richmond County, New York and a former employee of Northwell Health Systems. At all times relevant, Ms. Ventrice was employed as a Medical Assistant at Staten Island University Hospital, a member hospital of Northwell Health Systems, until she was discriminated against and thereafter, retaliatory discharged. Specifically, Ms. Ventrice advised Northwell and that her sincerely held religious beliefs prohibited compliance with Northwell's mandatory COVID-19 vaccination policy and as a result, Ms. Ventrice requested that Northwell provide her with a reasonable accommodation. Despite its lawful obligation to reasonably accommodate Ms. Ventrice's sincerely held religious beliefs and absent

the imposition of any undue hardship in doing so, Northwell discriminated against her and denied her accommodation request. Northwell then retaliated against Ms. Ventrice and terminated her employment on or about September 30, 2021. At all times relevant, Ms. Ventrice satisfied or exceeded her employer's reasonable expectations as to job performance with or without a reasonable accommodation. Ms. Ventrice demonstrated her ability to perform the essential functions and duties of her job as evidenced by factors including without limitation, her education, experience, work history, and performance reviews. Perhaps most compelling is the fact that Northwell permitted Ms. Ventrice to work in the exact same capacity and with the exact same reasonable accommodation Ms. Ventrice requested. Despite this months' long history of satisfactory performance without incident, Northwell arbitrarily refused to accommodate Ms. Ventrice and otherwise discriminated against her prior to retaliatorily terminating her employment. Ms. Ventrice timely filed a charge of discrimination with the EEOC concerning claims arising under Title VII. On August 4, 2022, the EEOC issued Ms. Ventrice her right-to-sue letter, providing that Ms. Ventrice had 90 days to commence a civil action in federal court. Because Ms. Ventrice filed this action within 90 days of receiving her right-to-sue letter, all conditions precedent to maintaining this action have been satisfied.

33. MICHELE WOODWARD-LAWTON ("Ms. Woodward-Lawton") is an adult resident of Essex County, New Jersey and a former NHS employee. Ms. Woodward-Lawton's specific factual allegations

concerning her claims and satisfaction of the pre-requisite exhaustion requirement are set forth in Exhibit 25, incorporated by reference as if fully set forth in and attached hereto.

II. DEFENDANT

34. Defendant Northwell Health Systems is a New York corporation and Plaintiffs' former employer. At all times relevant, Northwell employed more than fifteen (15) employees and is therefore subject to Title VII, which requires employers (such as Northwell) to reasonably accommodate its employees' (such as Plaintiffs) sincerely held religious beliefs.

STATEMENT OF FACTS

I. BACKGROUND

35. On or about December 11, 2020, the first COVID-19 vaccine became available to the public. For the next eight months, NHS never required its employees to be vaccinated against COVID-19. In fact, NHS did not even require its employees to test for COVID-19 until August 2, 2021.

36. Beginning on August 2, 2021, NHS began requiring its employees to test for COVID-19 on a weekly basis. Upon receipt of negative test results evidencing an employee did not have COVID-19, he or she would be permitted to work for that week in accordance with the protocols in place during the previous eight months – the same protocols that were in effect during the deadliest months of the pandemic. Alternatively, employees could get vaccinated against COVID-19 in lieu of the weekly testing requirement.

37. Approximately two (2) weeks later, on August 16, 2021, former Governor Andrew Cuomo announced that all New York state healthcare workers would be required to be vaccinated against COVID-19 if they wished to continue working at a healthcare facility in the state.

38. On August 18, 2021, New York Commissioner of Health, Howard Zucker, M.D. issued an Order for Summary Action[2] ("Healthcare Workers Mandate") memorializing then-Governor Cuomo's August 16th announcement, inclusive of certain exceptions.

39. Relevant here is the specific exception concerning religion. Specifically, the Healthcare Workers Mandate states in pertinent part:

> Covered entities shall grant a religious exemption for COVID-19 vaccination for covered personnel if they hold a genuine and sincere religious belief contrary to the practice of immunization, **subject to a reasonable accommodation** by the employer. Covered entities shall document such exemptions **AND** such **reasonable accommodations** in personnel records or other appropriate records in accordance with applicable privacy laws by September 27, 2021, and continuously, as needed, thereafter.[3]

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[2] Order for Summary Action, available at: https://www.littler.com/files/ny_doh_order_for_summary_action.pdf.

[3] *Id.*

40. As emphasized above, the Healthcare Workers Mandate clearly delineates that exemptions and accommodations are distinctly different, and further differentiation between exemptions and accommodations and further articulates employers shall reasonably accommodate healthcare workers who hold sincere religious beliefs that prohibit them from receiving a COVID-19 vaccine.

41. Hours later that same day, NHS announced its employees would no longer have the option to submit negative test results each week and all employees were required to become fully vaccinated against COVID-19 in order to remain employed by NHS.

42. NHS did not inform its employees that the Healthcare Mandate expressly required NHS to provide for reasonable accommodations to any employee who holds sincere religious beliefs that prohibit his or her compliance with mandatory COVID-19 vaccination policies.

43. Instead, NHS created a "Religious Exemption Request Form" and instructed its religious employees to submit their completed form by September 3, 2021.[4]

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[4] NHS did concede exemption request forms submitted after September 3, 2021 would be reviewed, "but in order to comply with the State's regulatory requirement, team members submitting forms after September 3 may be placed on unpaid administrative leave as of September 27th if they are unvaccinated and their request is still being reviewed on that date."

44. NHS never made available a means by which its employees were permitted to seek – let alone obtain – a religious accommodation as required by not only the Healthcare Workers Order, but also 42 U.S.C. § 2000e *et seq*.

45. While the specious September 3, 2021 "deadline" is arbitrary and bears no weight as to whether any NHS employee is entitled to a reasonable accommodation, NHS evidenced its discriminatory animus against religious persons by refusing to accept "timely-submitted" "Religious Exemption Request Form" as early as September 1, 2021.

46. According to NHS, it refused to accept Religious Exemption Request Forms because "the New York State Department of Health has indicated, consistent with the Vaccinate Mandate, that we are unable to recognize any religious exemptions to the mandate for healthcare employees."

47. As of September 3, 2021, NHS only made information available as to religious exemptions – at no time did NHS make available a means by which its employees could seek religious accommodations despite the requirement under state and federal law to do so.

II. NHS' INTENTIONAL SCHEME TO MISLEAD EMPLOYEES WITH SEMANTICS

48. NHS' intent to discriminate against religious persons and refuse to accommodate them is abundantly clear. In addition to refusing to provide any resources or information concerning religious accommodations, NHS' CEO, Michael J. Dowling, has

even conceded that NHS did "everything possible to make it difficult not to be vaccinated."

49. NHS did concede exemption request forms submitted after September 3, 2021 would be reviewed, "but in order to comply with the State's regulatory requirement, team members submitting forms after September 3 may be placed on unpaid administrative leave as of September 27th if they are unvaccinated and their request is still being reviewed on that date."

50. To carry out its scheme to discriminate against religious persons, NHS first took painstaking steps to ensure it only mentioned religious exemptions. Effectively, NHS sanitized any use of the term "religious accommodation" as NHS was fully aware that state and federal law require the provision of reasonable religious accommodations – not religious exemptions.

51. In the event an employee made reference to, asked a question, or attempted to submit a religious accommodation, NHS would surreptitiously respond with information concerning religious exemptions and ignore any reference made to religious accommodations.

52. The purpose of NHS' "sleight-of hand" non-answer was to deceive its employees into believing the terms "accommodation" and "exemption" were analogous despite knowing a religious "exemption" and a religious "accommodation" are not analogous but rather, legally distinct terms.

53. Despite this, Plaintiffs nevertheless submitted religious accommodation requests on the basis that they are Christians, and their faith compels

that they observe pro-life principles. Specifically, Plaintiffs believe and informed NHS that they sincerely believe abortion is a sin and as a result, Plaintiffs could not in good faith or conscience receive a medical product that they knew had been tested, produced, developed, or derived through the use of aborted fetal cell line tissues procured from aborted fetuses.

54. At all times relevant, the only available COVID-19 vaccines were tested, produced, developed, or derived through the use of aborted fetal cell line tissues procured from aborted fetuses.

55. In response, NHS did not contest the validity of Plaintiffs' asserted religious beliefs or that their beliefs were sincerely held; rather, NHS refused to provide Plaintiffs with a reasonable religious accommodation on basis that doing so would impose upon NHS an undue hardship.

56. Of course, the provision of a reasonable accommodation such as continued weekly testing or masking would not impose an undue hardship; indeed, NHS had operated while providing these exact accommodating conditions for more than 35 consecutive weeks while vaccines were available. 57.

57. Instead, NHS relied upon Title 10 N.Y. Comp. Codes R. & Regs. § 2.61 ("Section 2.61") – the brand new and ever so convenient regulation that eliminated an employee's ability to request a religious exemption while continuing to allow medical exemptions.

58. But as we know, pursuant to the binding authority of the Second Circuit, "**Section 2.61, on its**

face, does not bar an employer from providing an employee a reasonable accommodation." *We The Patriots USA, Inc. v. Hochul*, No. 21-2179 (2d Cir. 2021).

59. NHS used Section 2.61 as a blunt instrument to avoid providing reasonable accommodations.

60. Boiled down to its essence, NHS never made available a procedure by which its employees could seek religious accommodations. Instead, NHS exclusively made available a procedure by which its employees could request religious exemptions. Once NHS received an employee's exemption request, NHS would issue a boilerplate denial. NHS knew its boilerplate denials would be upheld as a matter of law because NHS could cite to Section 2.61 in asserting granting an exemption would constitute a violation of New York state law. And so long as granting an exemption on the basis of religion remained unlawful, NHS could show granting a religious exemption imposed an "undue hardship."

61. Despite enduring this reprehensible scheme, Plaintiffs were not fooled. Each Plaintiff individually submitted their own religious accommodation requests to NHS.

62. Unfortunately, the submissions were to no avail. NHS simply ignored Plaintiffs religious accommodation requests, reiterated unsolicited and irrelevant information (i.e., telling Plaintiffs they were not entitled to religious exemptions), and terminated their employment without due process of law.

III. PLAINTIFFS' RELIGIOUS ACCOMMODATION REQUESTS

63. At all times relevant, Plaintiffs complied with all COVID-19 mitigation protocols NHS implemented, including inter alia wearing masks, socially distancing, and testing for COVID-19 on a weekly basis (collectively, "mitigation protocols").

64. The mitigation protocols, both individually and collectively, have evidenced-based track records demonstrating their effectiveness and the feasibility with which NHS is able to implement and provide any or all of the mitigation protocols.

65. Based upon NHS' provision of the aforesaid mitigation protocols and the continuation of such provision of the same for more than eight months, it is not subject to reasonable dispute that the aforesaid mitigation protocols do not impose upon NHS an undue hardship.

66. Plaintiffs have always been amenable, and Plaintiffs remain amenable, to abiding by the aforesaid mitigation protocols, and NHS was aware of their amenability to the same at all times relevant.

67. Upon learning that Plaintiffs were required to be vaccinated against COVID-19 and could no longer elect to abide by the aforesaid mitigation protocols in lieu of vaccination, and despite NHS' malicious attempt to deceive Plaintiffs into foregoing the submission of religious accommodations, Plaintiffs each submitted to NHS their own individual requests for religious accommodations.

68. Plaintiffs submitted their own individual requests for religious accommodations despite NHS' failure and refusal to provide any resources or mechanisms for Plaintiffs to submit religious accommodation requests. The only resources or information NHS provided pertained to religious exemptions, as explained more fully above.

69. At all times relevant, NHS ignored Plaintiffs religious accommodation requests. To the extent that any correspondence NHS issued to Plaintiffs was elicited based upon their religious accommodation request submissions, NHS' correspondence does not vitiate its ignorance insofar as any correspondence NHS submitted to Plaintiff was entirely devoid as to the procedure to obtain religious accommodations and otherwise did not include any language responsive to Plaintiffs accommodation requests.

70. The reiteration that Plaintiffs are not entitled to religious exemptions is irrelevant in that Plaintiffs were never seeking to be exempted from NHS' mandatory vaccination policy; rather, Plaintiffs merely sought to be subjected to the policy with a reasonable accommodation.

71. At all times relevant, Plaintiffs never requested that they be deemed exempted from or otherwise permitted to continue working "free and clear" of NHS' mandatory vaccination policy.

72. Plaintiffs hold sincere religious beliefs, as explained more fully above.

73. There is no dispute that NHS and Plaintiffs are in agreement that the religious beliefs each respective Plaintiff asserted are in fact, religious. NHS

has never challenged the religious nature of any of the beliefs each respective Plaintiff asserted.

74. Plaintiffs' religious beliefs are sincerely held.

75. There is no dispute that NHS and Plaintiffs are in agreement that each respective Plaintiffs' religious beliefs are in fact, sincerely held. NHS has never challenged the sincerity with which each respective Plaintiff holds their beliefs.

76. Ignoring and otherwise failing to respond to each respective Plaintiffs' request for a religious accommodation, treating Plaintiffs differently or taking adverse employment action against them upon learning that Plaintiffs are religious persons constitutes religious-based discrimination in violation of Title VII. *See* 42 U.S.C. § 2000e, *et seq*.

77. Refusing to provide each respective Plaintiff with a reasonable religious accommodation that does not impose an undue hardship despite their lawful entitlement to the same is unlawful and violates Title VII. *See* 42 U.S.C. § 2000e, *et seq*.

78. As religious persons, Plaintiffs are members of a constitutionally protected class, and the protected class on the basis of religion is entitled to equal protection of law as other protected classes of persons, including those who are disabled.

79. Ignoring and otherwise failing to review or consider each respective Plaintiffs' request for a religious accommodation, as well as the refusal to reasonably accommodate Plaintiffs sincerely held religious beliefs while not ignoring and actually reviewing other NHS employees' requests for medical

accommodations constitutes disparate treatment in violation of violates Title VII. *See* 42 U.S.C. § 2000e, *et seq*.

80. Refusing to provide Plaintiffs with an accommodation on the basis of their religion while providing reasonable accommodations to other persons similarly situated to Plaintiffs on the basis of their disabilities constitutes disparate treatment in violation of Title VII. *See* 42 U.S.C. § 2000e, *et seq*.

81. Each respective Plaintiffs' beliefs are religious.

82. Each respective Plaintiff sincerely holds their beliefs.

83. NHS can reasonably accommodate Plaintiffs religious beliefs through *inter alia* masking and weekly testing.

84. Accommodating Plaintiffs through inter alia masking and weekly testing does not impose an undue hardship upon NHS.

85. Upon learning each respective Plaintiff was a religious person as intended by United States and New York law, NHS terminated each Plaintiff's employment.

86. After refusing to accommodate each respective Plaintiffs' sincerely held religious beliefs, NHS terminated each Plaintiffs' employment.

COUNT I – RELIGIOUS DISCRIMINATION
Violation of Title VII, 42 U.S.C. §§ 2000e *et seq.*
(All Plaintiffs v. NHS)

87. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as if fully set forth herein.

88. Each respective Plaintiff sincerely holds religious beliefs and are members of a protected class.

89. Each respective Plaintiff is an employee within the meaning of Title VII.

90. NHS is an employer within the meaning of Title VII.

91. NHS had actual knowledge of each respective Plaintiff's sincerely held religious beliefs based on the correspondences exchanged concerning their "Not Vaccinated" status and their communications concerning reasonable accommodations for their sincerely held religious beliefs.

92. Each respective Plaintiff experienced adverse employment action and a materially adverse change in the terms and conditions of their employment – namely, the termination of their employment – because of each respective Plaintiff sincerely holds religious beliefs.

93. At all times relevant, each respective Plaintiff was qualified, is qualified, and remains able to perform the essential functions of their jobs unvaccinated.

94. At all times relevant, each respective Plaintiff was qualified, is qualified, and remains able

to perform the essential functions of their jobs with a reasonable accommodation.

95. Because of each respective Plaintiff's sincerely held religious beliefs, NHS took adverse employment action against them by inter alia refusing to accommodate them and terminating their employment.

96. Providing a reasonable religious accommodation to each respective Plaintiff would not cause NHS to suffer an undue hardship as evidenced by NHS' previous provision of mitigation protocols in lieu of vaccination and the efficacy of such mitigation protocols to achieve the ends sought to be achieved by NHS' mandatory vaccination policy.

97. All allegations set forth herein constitute a discrimination on the basis of religion.

98. All allegations set forth herein constitute a failure to accommodate on the basis of religion.

99. All allegations set forth herein constitute a violation of Title VII.

100. As a direct and proximate result of the aforesaid complained of conduct and violation of Title VII, each respective Plaintiff sustained pecuniary and non-economic injuries in an amount that exceeds $75,000.00, including lost wages, benefits, retirement funds, the denial of promotional opportunity, humiliation, embarrassment, unnecessary pain and suffering, attorneys' fees, and costs associated with this action.

COUNT II – DISPARATE TREATMENT
Violation of Title VII, 42 U.S.C. §§ 2000e *et seq*.
(All Plaintiffs v. NHS)

101. Plaintiff incorporates by reference all preceding and subsequent paragraphs hereto as if fully set forth herein.

102. Plaintiffs are religious persons, members of a protected class, and qualified individual as intended by Title VII.

103. At all times relevant, Plaintiffs were NHS' employees and NHS was Plaintiffs' employer as intended by Title VII.

104. NHS had actual or constructive knowledge of Plaintiffs' sincerely held religious beliefs at all times relevant to this action.

105. Plaintiffs experienced adverse employment action and a materially adverse change in the terms and conditions of their employment based on the allegations set forth above.

106. NHS committed the above-mentioned discriminatory actions with the intent to humiliate, ridicule, and such discriminatory and retaliatory misconduct occurred because Plaintiffs requested an accommodation for their sincerely held religious beliefs and otherwise engaged in protected activity.

107. All allegations set forth herein violate Title VII.

108. As a direct and proximate result of NHS' actions or omissions complained of herein, Plaintiffs sustained economic injuries in amount in excess of

$75,000.00, including the denial of promotional opportunity, humiliation, embarrassment, unnecessary pain and suffering, and has incurred medical expenses, attorneys' fees, and costs associated with this action.

COUNT III – DISABILITY DISCRIMINATION
Violation of ADA, 42 U.S.C. § 12101 *et seq*.
(Rose Taylor v. NHS)

109. Ms. Taylor incorporate by reference all preceding paragraphs by reference as if fully set forth herein.

110. Ms. Taylor is a disabled person within the meaning of 42 U.S.C. § 12102(1).

111. Plaintiff suffers from a neurological disorder, which is a physical or mental impairment that substantially limits one or more of Ms. Taylor's major life activities, such as working, caring for herself, performing manual tasks, eating, sleeping, breathing, learning, reading, concentrating, thinking, communicating, and working. NHS also regard Ms. Taylor as having such an impairment as defined by 42 U.S.C. §§ 12102(1)(C), 3(A).

112. Ms. Taylor is a qualified individual within the meaning of 42 U.S.C. § 12111(8).

113. Ms. Taylor, with or without a reasonable accommodation, can perform the essential functions of a Surgical Technologist based factors including but not limited to, her education, experience, and performance reviews.

114. Ms. Taylor, at all times relevant to this action, was an employee within the meaning of 42 U.S.C. § 12111(4).

115. NHS, at all times relevant to this action, was Ms. Taylor's employer within the meaning of 42 U.S.C. § 12111(5). NHS engaged in an industry affecting commerce and has more than 25 employees for each working day in each of 20 or more calendar weeks in the current and preceding years.

116. NHS had actual knowledge or constructive knowledge of Ms. Taylor's disability at all times relevant to this action, in that NHS previously accommodated Ms. Taylor disability; discussed Ms. Taylor disability; discussed Ms. Taylor need for accommodations; examined, reviewed, or possessed medical evidence of Ms. Taylor disability; and received Ms. Taylor numerous requests for a disability accommodation.

117. NHS purposefully, willfully, intentionally, or recklessly retaliated against Plaintiff by engaging in a series of adverse actions, including:

118. Ignoring, denying, or refusing Ms. Taylor's requests for an accommodation;

119. Threatening Ms. Taylor;

120. Condoning, encouraging, or incentivizing executives and administrative staff to discriminate against Ms. Taylor;

121. Manufacturing a false pretext in an attempt to terminate Ms. Taylor; and

122. Terminating Ms. Taylor's employment.

123. NHS committed the aforesaid acts or omissions with the intent to humiliate, ridicule, and insult Ms. Taylor.

124. The aforesaid adverse employment actions occurred because Ms. Taylor requested an accommodation and/or engaged in protected activity by requesting an accommodation for her disability by protesting NHS' unlawful discriminatory and harassing conduct by and through its promulgation and implementation of its mandatory COVID-19 policy.

125. All allegations set forth herein violate the ADA.

126. As a direct and proximate result of Defendants' actions or omissions, Ms. Taylor sustained economic injuries in amount in excess of $75,000.00, including the denial of promotional opportunity, humiliation, embarrassment, unnecessary pain and suffering, and has incurred medical expenses, attorneys' fees, and costs associated with this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully prays that this Honorable Court enter judgment in their favor, award such relief as to make Plaintiffs whole and remedy the aforesaid violations of New York and federal law, and hold Defendants liable and in doing so, award all legal and equitable relief provided by law, including but not limited to:

127. Injunctive relief providing a reasonable accommodation and an otherwise non-hostile work environment;

128. Compensatory damages for past and future economic injuries in an amount in excess of $75,000.00;

129. Punitive damages in an amount to be determined at trial;

130. An award of reasonable attorney's fees and litigation costs pursuant to 42 U.S.C. § 1988; and

131. Any such other relief this Honorable Court deems just and proper.

PLAINTIFFS DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.

Dated: May 10, 2023

Respectfully submitted,

By: /s/ MICHAEL A. YODER
Michael A. Yoder*
LAW OFFICE OF MICHAEL A. YODER, PLLC
2300 Wilson Blvd., Suite 700
Arlington, VA 2201
Tel: (571) 234-5594
michael@yoderesq.com
*admitted *pro hac vice*

By: /s/ CHAD J. LAVEGLIA
Chad J. LaVeglia
LAW OFFICE OF CHAD J. LAVEGLIA, PLLC
350 Motor Parkway, Suite 308
Hauppauge, NY 11788
Tel: (631) 450-2468
claveglia@cjlaw.org

Counsel for Plaintiffs