

1 BRYAN M. GARRIE (SBN 131738)
BRYAN M. GARRIE, APC
2 Post Office Box 2731
La Jolla, California 92038
3 Telephone: (858) 459-0020
Facsimile: (858) 459-0777

4 MATTHEW P. TYSON (SBN 178427)
5 LAW OFFICE OF MATTHEW P. TYSON
5580 La Jolla Blvd. #170
6 La Jolla, California 92037
Telephone: (619) 787-0614

7 Attorneys for Cindy Balch, LaVonne Perez, and Egle Balsiene
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF RIVERSIDE, PALM SPRINGS COURTHOUSE**

11 CINDY BALCH, LAVONNE PEREZ, and
12 EGLE BALSIE NE,

13 Plaintiffs,

14 v.

15 EISENHOWER MEDICAL CENTER, and
DOE 1 through DOE 50, inclusive,

16 Defendant.
17

Case No. CVPS2201466

VERIFIED COMPLAINT FOR:

1. **VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT – RELIGIOUS CREED DISCRIMINATION – FAILURE TO ACCOMMODATE;**
2. **VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT – MEDICAL CONDITION DISCRIMINATION – FAILURE TO ACCOMMODATE;**
3. **VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT – RETALIATION;**
4. **VIOLATION OF THE FAIR EMPLOYMENT AND HOUSING ACT – DISPARATE TREATMENT; AND**
5. **WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY – EXERCISE OF STATUTORY RIGHT OR PRIVILEGE**

1 Common Allegations

2 **Plaintiffs Cindy Balch (Nurse Balch), LaVonne Perez (Nurse Perez), and Egle**

3 **Balsiene (Nurse Balsiene) each allege:**

4 1. This case is about the harm suffered by three long-term and dedicated nurses who
5 were denied reasonable accommodation and unlawfully terminated by their hospital employer
6 for declining a COVID-19 vaccine which was unnecessary, contrary to their religious beliefs,
7 presented an unreasonable risk of known and unknown harm, and was only available under an
8 Emergency Use Authorization and could not be mandated.

9 A. Parties, Jurisdiction, and Venue

10 2. Nurse Balch is an individual who resides in La Quinta, California.

11 3. Nurse Perez is an individual who resides in La Quinta, California.

12 4. Nurse Balsiene is an individual who resides in Indio, California.

13 5. Eisenhower Medical Center (“EMC”) is a 501(c)(3) organization with its
14 principal place of business in Rancho Mirage, California.

15 6. The true names and capacities of DOE 1 through DOE 50, inclusive, are
16 unknown, and Plaintiffs will seek leave to amend this complaint to set forth their true names and
17 capacities when known. On information and belief, each of the fictitiously named DOE
18 defendants is responsible for, or has contributed to, the matters giving rise to the relief sought by
19 Nurses Balch, Perez, and Balsiene.

20 7. The conduct giving rise to these claims occurred within Riverside County.

21 8. Nurses Balch, Perez, and Balsiene each seek a damages award of more than the
22 jurisdictional threshold for the Superior Court of the State of California.

23 9. Nurses Balch, Perez, and Balsiene each have exhausted administrative remedies
24 and been issued a Right-to-Sue letter by the Department of Fair Employment and Housing.

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1 B. BNT162b2 was an Unapproved Medical Product

2 10. The U.S. Food and Drug Administration (FDA) website states: “Drugs that are
3 being tested but are not yet approved are called investigational (or experimental) drugs.”

4 11. On December 11, 2020, the Food and Drug Administration (FDA) granted an
5 Emergency Use Authorization (EUA) – and not an approval or license – to Pfizer, Inc. which
6 allowed it to market an investigational COVID-19 vaccine medical product (BNT162b2)
7 intended to prevent COVID-19 caused by severe respiratory syndrome coronavirus 2 (SARS-
8 CoV-2) to individuals 16 years of age and older.

9 12. According to the clinical trials website published by the National Institutes of
10 Health (NIH), the Phase III clinical trial for the BNT162b2 medical product is not scheduled to
11 end until February of 2024.

12 13. On August 23, 2021, the FDA approved BioNTech’s Biologics License
13 Application (BLA) to market the COMIRNATY medical product for the same intended use as
14 BNT162b2 to individuals 16 years of age and older.¹

15 14. The approval of COMIRNATY did not change the EUA status of BNT162b2. On
16 the same day as the COMIRNATY approval, the FDA extended the EUA for BNT162b2 and
17 acknowledged that the two medical products are legally distinct.

18 15. The packaging, labeling and disclosure requirements for BNT162b2 under its
19 EUA were different than the packing, labeling, and disclosure requirements for COMIRNATY
20 under its BLA. The FDA required the COMIRNATY medical product to include an FDA
21 approved packet insert to inform the recipient of the list of risks and benefits of the product,
22 while the BNT162b2 medical product did not.

23 _____
24 ¹ The FDA also granted an EUA to Moderna, and to Johnson & Johnson, for COVID-19
25 vaccines. Neither of those COVID-19 vaccines received an FDA approved BLA, and
remained under an EUA, up to the time that EMC terminated Nurses Balch, Perez, and
Balsiene.

1 16. The manufacturing restrictions for BNT162b2 under its EUA were different than
2 the manufacturing restrictions for BNT162b2 under its BLA. The BNT162b2 medical product
3 was authorized for manufacture “at a number of facilities” but the COMINARTY medical
4 product was only approved for manufacture of the mRNA drug substance at one specific facility
5 and manufacture, fill, label, and package of the final formulated product at two specific facilities.

6 17. On September 13, 2021, the National Institutes of Health (NIH) published a
7 statement that: “[T]he FDA published a BLA package insert that included the approved new
8 COVID-19 vaccine tradename COMIRNATY and listed 2 new NDCs (0069-1000-03, 0069-
9 1000-02) and images of labels with the new tradename. [¶] At present, Pfizer does not plan to
10 produce any product with these new NDCs and labels over the next few months while EUA
11 authorized product is still available and being made available for U.S. distribution. As such, the
12 CDC, AMA, and drug compendia may not publish these new codes until Pfizer has determined
13 when the product will be produced with the BLA labels.”

14 18. On November 9, 2021, Robert Malone, MD, MS, a member of the NIH’s
15 Accelerating COVID-19 Therapeutic Interventions and Vaccines (ACTIV), a public/private
16 partnership for the coordinated research strategy for prioritizing and speeding development of the
17 most promising treatments and vaccines, publicly stated under penalty of perjury that “...there is
18 no FDA approved SARS-CoV-2 vaccine available...” “...the FDA approved BioNTech
19 COMIRNATY vaccine is not available...” and “...**none** of the SARS-CoV-2 vaccines currently
20 available in the U.S. are FDA approved and licensed for use. All doses currently available
21 (Pfizer-BioNTech, Moderna, and Johnson & Johnson) are experimental medical products made
22 available as such by the FDA and the Department of Health and Human Services under the
23 Emergency Use Statutes and Authorizations.” [Emphasis in original.]

24 19. The BNT162b2 medical product remained on the market under its EUA after the
25 approval of the COMIRNATY medical product. The COMIRNATY medical product was never

1 brought on the market under an FDA approved BLA and available to Nurses Balch, Perez, or
2 Balsiene before they were terminated by EMC.

3 C. EMC Unlawfully Required Plaintiffs to Take a COVID-19 Vaccine

4 20. Every COVID-19 vaccine available to Nurses Balch, Perez, and Balsiene before
5 their termination by EMC was on the market under an EUA. There was no COVID-19 vaccine
6 on the market under an FDA approved BLA and available to Nurses Balch, Perez, or Balsiene
7 before they were terminated by EMC.

8 21. Nurses Balch, Perez, and Balsiene each have a statutory right and/or privilege
9 under 21 United States Code Section 360bbb-3 to refuse administration of a medical product
10 brought to market under an EUA.

11 22. EMC could not lawfully require Nurses Balch, Perez, or Balsiene take a COVID-
12 19 vaccine as a condition of continued employment.

13 D. BNT162b2 was Tested on Fetal Cell Lines Derived from Aborted Human Babies

14 23. Fetal cell lines derived from aborted human babies were used during the
15 development and testing of mRNA vaccine technology, and BNT162b2 was tested on fetal cell
16 lines derived from aborted human babies.

17 E. BNT162b2 Presents Risk of Harm

18 24. In March of 2020, the National Institute of Allergy and Infection Diseases
19 (NIAID) Director, Dr. Anthony Fauci, cautioned the public about COVID-19 vaccines by
20 stating: “There’s another element to safety, and that is if you vaccinate someone, and they make
21 an antibody response, and then they get exposed and infected, does the response that you induce
22 actually enhance the infection and make it worse. And the only way you’ll know that is if you
23 do an extended study.” He also stated: “This would not be the first time, if it happened, that a
24 vaccine that looked good in initial safety actually made people worse.”

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1 25. The BNT162b2 medical product contains volatile genetic material. A single 30-
2 microgram dose injects an individual with billions of lipid nanoparticles (LNPs) containing
3 mRNA.

4 26. A biodistribution study of BNT162b2 by Pfizer in 2020 found that less than 25%
5 of the injected LNPs remained at the injection site, and concentrations of the LNPs distributed
6 into organs including bone marrow, intestines, lungs, liver, thyroid, adrenal glands, and ovaries,
7 and, in lesser concentrations, in the brain, eyes, and heart.

8 27. Each mRNA sequence in BNT162b2 instructs the body to produce a SARS-CoV-
9 2 spike glycoprotein, resulting in billions of spike proteins being produced in the body. The Salk
10 Institute explained in April of 2021 that a major new published study “...shows conclusively that
11 COVID-19 is a vascular disease...” and that “...the spike protein alone was enough to cause
12 disease. Tissue samples showed inflammation in endothelial cells lining the pulmonary artery
13 walls... [¶] ...the damage occurs when cells are exposed to the spike protein on its own.”

14 28. A published medical study by authors who declare no conflict of interest has
15 shown that BNT162b2 is reverse transcribed intracellularly into DNA – modifying human cell
16 DNA – in as fast as 6 hours upon BNT162b2 exposure.

17 29. Within 3 (three) months after the introduction of BNT162b2 into commerce under
18 an EUA, through February 28, 2021, there were a total of 42,086 case reports containing 158,893
19 events attributed to BNT162b2, including nervous system disorders, musculoskeletal and
20 connective tissue disorders, gastrointestinal disorders, skin and subcutaneous disorders,
21 respiratory, thoracic and mediastinal disorders, infections and infestations, poisoning, and more
22 than 1,000 deaths.

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1 F. Natural Immunity Provides Equivalent or Better Protection than BNT162b2

2 30. Pfizer submitted a briefing document to the FDA regarding BNT162b2 for its
3 December 10, 2020 Vaccine and Related Biological Products Advisory Committee Meeting (the
4 Report.)

5 31. The Report, at Table 6, provided final analysis efficacy of BNT162b2 against
6 confirmed COVID-19 from 7 days after dose 2 in participants without prior evidence of SARS-
7 CoV-2 infection. The vaccinated group showed efficacy in 17,403 of 17,411 participants, which
8 was 99.95%. The placebo group showed efficacy in 17,349 of 17,511 participants, which was
9 99.07%. The absolute risk reduction for the vaccinated group, as compared to the placebo group,
10 calculated as 99.95% less 99.07%, yields an absolute risk reduction of 0.88% (ZERO-point-
11 eighty-eight-percent.)

12 32. The Report showed, at page 41, that there was no statistically significant
13 difference in the number of deaths between the vaccinated and placebo groups. It stated: “[a]ll
14 deaths represent events that occur in the general population of the age groups where they
15 occurred, at a similar rate.”

16 33. The Report revealed, at page 27, that vaccine efficacy for participants who did
17 have a prior SARS-CoV-2 infection was negative. The Report did not demonstrate any medical
18 benefit to a person taking BNT162b2 when they previously recovered from SARS-CoV-2.

19 34. On July 30, 2021, the Centers for Disease Control and Prevention (CDC)
20 published a report which found that COVID-vaccinated and COVID-unvaccinated people who
21 become infected with SARS-CoV-2 carry similar viral loads and present a similar risk of
22 transmission to others.

23 35. On August 25, 2021, a medical study in Israel titled “Comparing SARS-CoV-2
24 natural immunity to vaccine-induced immunity: reinfections versus breakthrough infections” was
25 published in the medical community by authors who declared no conflicts of interest. The study

1 found that the chance of a vaccine breakthrough infection by a fully vaccinated person was more
2 than 13 (thirteen) fold higher than the chance of reinfection in a person with natural immunity.

3 36. On October 28, 2021, a comprehensive systematic review of clinical studies titled
4 “Equivalency of Protection From Natural Immunity in COVID-19 Recovered Versus Fully
5 Vaccinated Persons: A Systematic Review and Pooled Analysis” was published in the medical
6 community by authors who declared no conflicts of interest. It states: “...our review
7 demonstrates that natural immunity in COVID-recovered individuals is, at least, equivalent to the
8 protection afforded by complete vaccination of COVID-naïve populations...” and it concludes:
9 “...until further data is available, unvaccinated COVID-recovered individuals should be
10 considered to have at least equal protection to their vaccinated COVID-naïve counterparts.”

11 37. The NIAID Director, Dr. Anthony Fauci, has stated: “The most potent vaccination
12 is getting infected yourself.”

13 38. In August of 2021, sixty-nine-percent (69%) of the COVID-19 cases among the
14 CDC’s own employees that month were breakthrough infections by employees who had
15 previously taken a COVID-19 vaccine.

16 39. No later than September of 2021, COVID-19-vaccinated people were admitted as
17 patients at EMC with vaccine breakthrough infections of SARS-CoV-2.

18 G. Demanding Unnecessary Medical Treatment Not Approved and Licensed by FDA is
19 Unethical and Negligent

20 40. A prerequisite to offering a medical treatment is establishment of medical
21 necessity for the treatment. Without adequate establishment of medical necessity, offering the
22 treatment is a violation of medical ethics and prohibited in Western medical practice.

23 41. The offering of an unnecessary medical treatment is also a violation of the
24 medical ethical principle of beneficence because it opens the unnecessarily treated person to the
25 risk of totally avoidable complications that are present in all medical treatments, a risk that is

1 heightened in the context of the unapproved and unlicensed BNT162b2 medical product which is
2 scheduled to undergo clinical testing beyond 2023.

3 42. Any realized side effect of an unnecessary medical treatment becomes an
4 unambiguous direct harm, and the treatment also violates the medical ethical principle of non-
5 maleficence.

6 43. To demand, at risk of loss of employment, an unnecessary medical treatment is
7 also a violation of the medical ethical principles of autonomy and justice.

8 44. Only licensed individuals may practice medicine in California; corporations are
9 prohibited by both statute and strong public policy from practicing medicine. EMC unlawfully
10 and negligently imposed medical decisions on Plaintiffs under the threat of the loss of
11 employment.

12 H. EMC Policies

13 45. In December of 2020, EMC published a SARS-CoV-2 COVID-19 Vaccination
14 Policy. Under the policy, a COVID-19 vaccine was not mandatory for employees. This EMC
15 policy remained in effect through the suspension of Nurses Balch, Perez, and Balsiene without
16 pay, and their termination, for declining a COVID-19 vaccine.

17 46. On August 11, 2021, EMC published Visiting Hours and Policies. Under EMC
18 Visiting Hours and Policies, a visitor who had not taken a COVID-19 vaccine was permitted to
19 visit a patient by complying with certain mask and testing requirements.

20 47. In August of 2021, EMC stated that its healthcare workers must comply with the
21 August 5, 2021 order by the State Public Health Officer for the California Department of Public
22 Health (“CDPH”) pertaining to healthcare workers (the “State Order”). The State Order
23 explicitly prescribed certain mask and testing requirements to accommodate medical and
24 religious beliefs exemptions to the COVID-19 vaccine mandate for healthcare workers. The
25 State Order provided that once an operator of a healthcare facility deems a worker to have met

1 the requirements of a medical and/or religious beliefs exemption to the COVID-19 vaccine
2 mandate for healthcare workers, that worker can continue working at the facility in compliance
3 with the State Order by submitting to a certain SARS-CoV-2/COVID-19 testing schedule and
4 wearing a surgical mask or higher-level respirator approved by the NIOSH.

5 **Allegations by Plaintiff Cindy Balch**

6 **Nurse Balch alleges:**

7 48. Nurse Balch is a Registered Nurse. She holds certifications in Critical Care
8 (CCRN), Emergency Nursing (CEN), Stroke Nursing (SCRN), and Legal Nursing (CLNC).

9 49. Nurse Balch has worked in an Intensive Care Unit (ICU) for more than fifty (50)
10 years and served as an expert witness in healthcare litigation for more than fifteen (15) years.

11 50. EMC employed Nurse Balch as a nurse at its hospital on May 15, 2006.

12 51. Beginning in 2020, Nurse Balch was repeatedly exposed to SARS-CoV-2 over the
13 course of eighteen (18) months while working in EMC's ICU and COVID-19 Units.

14 52. Nurse Balch only developed mild COVID-19 clinical symptoms and she fully
15 recovered, indicating natural immunity.

16 53. Nurse Balch presented equal or less risk of SARS-CoV-2 reinfection or
17 transmission than a person who had taken a COVID-19 vaccine.

18 54. Nurse Balch continued her employment until September 30, 2021, without issue
19 for want of a COVID-19 vaccine.

20 55. Nurse Balch has a medical condition which conflicts with EMC's requirement
21 that she take a COVID-19 vaccine.

22 56. Nurse Balch submitted a written application for a medical exemption to EMC's
23 COVID-19 vaccine requirement; she included a signed letter from her licensed primary care
24 physician, and an EMC COVID-19 Medical Exemption Form signed by her physician which
25 attested to Nurse Balch qualifying for a permanent medical exemption.

1 57. Nurse Balch also holds sincere religious beliefs which conflict with EMC's
2 requirement that she take a COVID-19 vaccine.

3 58. Nurse Balch submitted a written application for a religious beliefs exemption to
4 EMC's COVID-19 vaccine requirement; she included a signed EMC COVID-19 Vaccine
5 Religious Exemption Form which detailed her sincere religious beliefs which conflict EMC's
6 COVID-19 vaccine requirement.

7 59. EMC held a meeting with Nurse Balch, purportedly to discuss accommodation for
8 her medical and religious beliefs exemption applications.

9 60. The meeting was attended by EMC human resources relationship manager, Kathy
10 Peffers, and EMC senior director of nursing, Sue Romkema.

11 61. EMC began the meeting by telling Nurse Balch that her religious beliefs
12 exemption had been denied. EMC did not and would not discuss the merits of Nurse Balch's
13 application for a religious beliefs exemption, or the reason for the denial. Instead, Nurse Balch
14 was told that she should not "muddy the waters" with her religious beliefs exemption request
15 because she already had such strong grounds for a medical exemption.

16 62. During the meeting, Nurse Balch told EMC that she was agreeable to mask and
17 testing requirements, temperature checks, and other safeguards, as part of an accommodation for
18 her exemption to EMC's COVID-19 vaccine requirement.

19 63. During the meeting, EMC did not question the merits of Nurse Balch's request to
20 be exempt of EMC's COVID-19 vaccine requirement based on her medical condition.

21 64. During the meeting, Nurse Balch was told that she would receive a thirty (30) day
22 suspension without pay if she did not take a COVID-19 vaccine, and that the purpose of the
23 thirty (30) day suspension without pay was to make her "change her mind" and take the vaccine.

24 65. During the meeting, Nurse Balch was told that she would lose her seniority and
25 health insurance if she did not take a COVID-19 vaccine.

1 66. During the meeting, Nurse Balch was told “to not get vaccinated meant a
2 voluntary dismissal.”

3 67. During the meeting, EMC did not mention or discuss that Nurse Balch would be
4 disqualified for accommodation on the basis that she held a patient-facing position.

5 68. During the meeting, Nurse Balch asked who made the decision to deny her
6 religious exemption, and EMC told her that it was one individual, but would not provide the
7 name.

8 69. On September 27, 2021, EMC mailed an “Interactive Accommodation
9 Assessment Summary” to Nurse Balch (the Denial Letter). It stated: “Based on our detailed
10 discussion, Cindy’s job duties as an RN II in the Resource Nursing Pool, a patient facing
11 position, we are not able to accommodate the vaccination exemption request.”

12 70. After receiving the Denial Letter, Nurse Balch asked EMC why her religious
13 beliefs exemption was denied. EMC told Nurse Balch: “The denial was that we are not able to
14 accommodate your exemption. Not that we did not believe you had a valid religious
15 exemption.”

16 71. After receiving the Denial Letter, Nurse Balch asked who made the decision to
17 deny accommodation for her medical exemption. EMC said her medical exemption was
18 acknowledged, but that a committee of physicians, nurses, and attorneys made the decision that
19 EMC was unable to accommodate the exemption.

20 72. After receiving the Denial Letter, Nurse Balch asked EMC about her right to
21 appeal the denial. EMC told Nurse Balch that she had no right to appeal.

22 73. Nurse Balch met the requirements of a religious beliefs exemption to the State
23 COVID-19 vaccine mandate for healthcare workers under the State Order.

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1 74. EMC should have deemed Nurse Balch to have met the requirements of a
2 religious beliefs exemption to the State COVID-19 vaccine mandate for healthcare workers
3 under the State.

4 75. Nurse Balch met the requirements of a medical exemption to the State COVID-19
5 vaccine mandate for healthcare workers under the State Order.

6 76. EMC should have deemed Nurse Balch to have met the requirements of a medical
7 exemption to the State COVID-19 vaccine mandate for healthcare workers under the State.

8 77. Nurse Balch was willing to submit to a SARS-CoV-2/COVID-19 testing schedule
9 as prescribed by the State Order.

10 78. Nurse Balch was willing to wear a surgical mask or higher-level respirator
11 approved by the NIOSH as prescribed by the State Order.

12 79. Nurse Balch was able to perform the essential duties of her job, either with or
13 without reasonable accommodation.

14 80. Nurse Balch did not compromise workplace safety for want of a COVID-19
15 vaccine. She presented an equal or lesser risk of reinfection and transmission of SARS-CoV-2
16 than a COVID-19-vaccinated patient-facing nurse.

17 81. Nurse Balch tried to engage in an interactive process with EMC in good faith to
18 identify reasonable accommodations for her medical condition and religious beliefs which
19 conflicted with EMC's COVID-19 vaccine requirement.

20 82. EMC failed to engage in an interactive discussion with Nurse Balch in good faith
21 regarding possible accommodations for her medical condition or religious beliefs.

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1 83. Nurse Balch declined the COVID-19 vaccine because she believed that (a) it
2 would harm her due to her medical condition, (b) it would violate her religious beliefs, (c) it was
3 not medically necessary given her natural immunity, (d) it presented unacceptable known and
4 unknown risks of harm to her body, and (e) no FDA approved and licensed COVID-19 vaccine
5 was available.

6 84. EMC disciplined Nurse Balch and gave her a Counseling Form.

7 85. The Counseling Form stated that Nurse Balch was receiving “Formal Counseling
8 with suspension” and that the counseling was because Nurse Balch was “not in compliance with
9 CDPH order to all Health Care Workers to be vaccinated by September 30, 2021.”

10 86. The Counseling Form provided a Corrective Action Plan and/or Consequences
11 statement that if Nurse Balch “does not receive the COVID-19 vaccination by October 30, 2021,
12 employment will be terminated. This is an unpaid administrative leave that does not include job
13 protection. [¶] If performance or behavior does not improve or is not maintained, further
14 disciplinary action up to and including termination may result.”

15 87. Nurse Balch had complied with the State Order and qualified for accommodation
16 based on a medical and/or religious beliefs exemption.

17 88. EMC deviated from the State Order by failing to accommodate Nurse Balch.

18 89. EMC suspended Nurse Balch without pay on October 1, 2021 as punishment for
19 declining to take a COVID-19 vaccine.

20 90. EMC terminated Nurse Balch on November 1, 2021 as punishment for declining
21 to take a COVID-19 vaccine.

22 91. EMC used threats, intimidation, coercion, and adverse employment actions
23 against Nurse Balch in an effort to force a medical decision on her.

24 92. EMC caused Nurse Balch to suffer emotional distress, mental suffering, grief,
25 anxiety, humiliation, and economic harm, including lost income and lost future income.

1 93. EMC submitted a Statement of Position letter to the Equal Employment
2 Opportunity Commission regarding its suspension and termination of Nurse Balch (the Letter).

3 94. In the Letter, EMC falsely stated that it had conditionally approved Nurse Balch's
4 exemption request until it could engage in the interactive process with her. In fact, EMC decided
5 to deny Nurse Balch's religious beliefs exemption before the meeting with Nurse Balch started.

6 **Allegations by Plaintiff LaVonne Perez**

7 **Nurse Perez alleges:**

8 95. EMC employed Nurse Perez as a nurse at its hospital in September of 2012.

9 96. Beginning in or around 2020, Nurse Perez was infected with SARS-CoV-2 during
10 the course of her employment, and she recovered from her infection.

11 97. Nurse Perez acquired natural immunity to SARS-CoV-2 and had measured
12 antibodies.

13 98. Nurse Perez presented equal or less risk to workplace safety than a person who
14 had taken a COVID-19 vaccine.

15 99. Nurse Perez continued her employment until September 30, 2021, without any
16 health or safety issue for want of a COVID-19 vaccine.

17 100. In late August of 2021, EMC told Nurse Perez that a COVID-19 vaccine was a
18 requirement for continued employment as of October 1, 2021, and that she would be suspended
19 without pay, and then terminated, if she did not take one.

20 101. Nurse Perez held, and continues to hold, sincere religious beliefs which conflicted
21 with EMC's COVID-19 vaccine requirement.

22 102. Nurse Perez asked EMC what criteria it used to determine whether to grant or
23 deny a religious beliefs exemption to its COVID-19 vaccine requirement. EMC told Nurse Perez
24 that the only criteria was sincerity, and no other parameters could be articulated.

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1 103. Nurse Perez submitted a written request to EMC for a religious beliefs exemption
2 to its COVID-19 vaccine requirement, and EMC told Nurse Perez that it was granted.

3 104. EMC deemed Nurse Perez to have met the requirements of a religious beliefs
4 exemption to the State COVID-19 vaccine mandate for healthcare workers under the State Order.

5 105. Nurse Perez was willing to submit to a SARS-CoV-2/COVID-19 testing schedule
6 as prescribed by the State Order.

7 106. Nurse Perez was willing to wear a surgical mask or higher-level respirator
8 approved by the NIOSH as prescribed by the State Order.

9 107. Nurse Perez was able to perform the essential duties of her job, either with or
10 without reasonable accommodation.

11 108. EMC later told Nurse Perez that no accommodation for her religious beliefs
12 exemption was possible and that she must take a COVID-19 vaccine or be suspended without
13 pay, and then fired.

14 109. Nurse Perez did not compromise workplace safety for want of a COVID-19
15 vaccine; she presented an equal or lesser risk of reinfection and transmission of SARS-CoV-2
16 than a COVID-19-vaccinated patient-facing nurse.

17 110. Nurse Perez tried to engage in an interactive process with EMC in good faith to
18 identify reasonable accommodations for her religious beliefs. EMC failed to engage in an
19 interactive discussion with Nurse Perez in good faith regarding possible accommodations for her
20 religious beliefs.

21 111. Nurse Perez declined the COVID-19 vaccine because she believed that (a) it
22 would violate her religious beliefs, (b) it was not medically necessary given her natural
23 immunity, (c) it presented unacceptable known and unknown risks of harm to her body, and (d)
24 no FDA approved and licensed COVID-19 vaccine was available.

25 112. EMC retaliated against Nurse Perez for declining a COVID-19 vaccine.

1 113. EMC placed Nurse Perez on a Corrective Action Plan. It stated that Nurse Perez
2 was not in compliance with the State Order. However, Nurse Perez had complied with the State
3 Order and qualified for accommodation based on her religious beliefs exemption. EMC deviated
4 from the State Order by failing to accommodate Nurse Perez.

5 114. Under the Corrective Action Plan, EMC would suspend Nurse Perez without pay,
6 and then terminate her, for declining a COVID-19 vaccine.

7 115. EMC suspended Nurse Perez without pay on October 1, 2021, as punishment for
8 declining a COVID-19 vaccine.

9 116. EMC terminated Nurse Perez on November 1, 2021, as punishment for declining
10 a COVID-19 vaccine.

11 117. EMC used threats, intimidation, coercion, and adverse employment actions in an
12 effort to force a medical decision on Nurse Perez.

13 118. EMC caused Nurse Perez to suffer emotional distress, mental suffering, grief,
14 anxiety, humiliation, and economic harm, including lost income and lost future income.

15 **Allegations by Plaintiff Egle Balsiene**

16 **Nurse Balsiene alleges:**

17 119. EMC employed Nurse Balsiene as a nurse at its hospital for nearly 20 years.

18 120. Beginning in or around 2020, Nurse Balsiene was repeatedly exposed to SARS-
19 CoV-2 during the course of her employment.

20 121. Nurse Balsiene never developed symptoms of COVID-19 that were severe
21 enough to be clinically diagnosed, which indicates her natural immunity.

22 122. Nurse Balsiene presented equal or less risk of SARS-CoV-2 reinfection or
23 transmission in the workplace than a person who received a COVID-19 vaccine.

24 123. Nurse Balsiene continued her employment until October 12, 2021, without any
25 health or safety issue for want of a COVID-19 vaccine.

1 124. In late August of 2021, EMC told Nurse Balsiene that a COVID-19 vaccine was a
2 requirement for continued employment as of October 1, 2021, and that she would be suspended
3 without pay, and then terminated, if she did not take one.

4 125. Nurse Balsiene held, and continues to hold, sincere religious beliefs which
5 conflicted with EMC's COVID-19 vaccine requirement.

6 126. Nurse Balsiene submitted a written request to EMC for a religious beliefs
7 exemption to its COVID-19 vaccine requirement. EMC told Nurse Balsiene that her
8 documentation supporting the request was insufficient, so Nurse Balsiene promptly submitted
9 additional documentation.

10 127. EMC did not meet with Nurse Balsiene or share its decision on her request prior
11 to the October 1, 2021 deadline imposed by EMC for her to take a COVID-19 vaccine.

12 128. On October 6, 2021, EMC informed Nurse Balsiene that her request for an
13 exemption was denied, and EMC disciplined Nurse Balsiene and gave a deadline of October 12,
14 2021 for her to take a COVID-19 vaccine.

15 129. That same day, Nurse Balsiene spoke to EMC human resources relationship
16 manager, Kathy Peffers, about the discipline. Nurse Balsiene asked what to do since she was not
17 vaccinated, she was still scheduled to work multiple times that week, and her suspension would
18 not begin until October 12. Ms. Peffers told Nurse Balsiene that she may continue to work until
19 October 12 and should appear for her shifts as scheduled.

20 130. Nurse Balsiene met the requirements of a religious beliefs exemption to the State
21 COVID-19 vaccine mandate for healthcare workers under the State Order.

22 131. Nurse Balsiene tried to engage in an interactive process with EMC in good faith
23 to identify accommodations for her religious beliefs.

24 132. EMC did not engage in the interactive process with Nurse Balsiene in good faith.
25 EMC never met with Nurse Balsiene to discuss her religious beliefs exemption request.

1 133. Nurse Balsiene was willing to submit to a SARS-CoV-2/COVID-19 testing
2 schedule as prescribed by the State Order.

3 134. Nurse Balsiene was willing to wear a surgical mask or higher-level respirator
4 approved by the NIOSH as prescribed by the State Order.

5 135. Nurse Balsiene was able to perform the essential duties of her job, either with or
6 without reasonable accommodation.

7 136. Nurse Balsiene did not compromise workplace safety for want of a COVID-19
8 vaccine; she presented an equal or lesser risk of reinfection and transmission of SARS-CoV-2
9 than a COVID-19-vaccinated patient-facing nurse.

10 137. Nurse Balsiene declined the COVID-19 vaccine because she believed that (a) it
11 would violate her religious beliefs, (b) it was not medically necessary given her natural
12 immunity, (c) it presented unacceptable known and unknown risks of harm to her body, and (d)
13 no FDA approved COVID-19 vaccine was available.

14 138. EMC retaliated against Nurse Balsiene for declining a COVID-19 vaccine.

15 139. EMC placed Nurse Balsiene on a Corrective Action Plan. It stated that Nurse
16 Balsiene was not in compliance with the State Order. However, Nurse Balsiene had complied
17 with the State Order and qualified for accommodation based on a religious beliefs exemption.
18 EMC deviated from the State Order by failing to acknowledge Nurse Balsiene's religious beliefs
19 and failing to accommodate her.

20 140. Under the Corrective Action Plan, EMC would suspend Nurse Balsiene without
21 pay, and then terminate her, for declining a COVID-19 vaccine.

22 141. EMC suspended Nurse Balsiene without pay on October 12, 2021, as punishment
23 for declining a COVID-10 vaccine.

24 142. EMC terminated Nurse Balsiene on November 12, 2021, as punishment for
25 declining a COVID-10 vaccine.

1 143. EMC used threats, intimidation, coercion, and adverse employment actions in an
2 effort to force a medical decision on Nurse Balsiene.

3 144. EMC caused Nurse Balsiene to suffer emotional distress, mental suffering, grief,
4 anxiety, humiliation, and economic harm, including lost income and lost future income.

5 **First Cause of Action**
6 **For Violation of the Fair Employment and Housing Act**
7 **– Religious Creed Discrimination – Failure to Accommodate**
8 **By Plaintiff Cindy Balch, LaVonne Perez, and Egle Balsiene**
9 **Against Defendants Eisenhower Medical Center and DOE 1 through DOE 50, Inclusive**

10 **Nurse Balch alleges:**

11 145. Paragraphs 1 through 94 are re-alleged.

12 146. It is a violation of the Fair Employment and Housing Act (“FEHA”) for an
13 employer to fail to reasonably accommodate an employee’s religious beliefs.

14 147. EMC was an employer under the FEHA.

15 148. Nurse Balch held sincere religious beliefs which conflicted with a job
16 requirement.

17 149. EMC knew of the conflict between the job requirement and the religious beliefs
18 held by Nurse Balch.

19 150. A reasonable accommodation was available and acceptable to Nurse Balch.

20 151. EMC did not explore in good faith available reasonable alternatives of
21 accommodating Nurse Balch.

22 152. EMC failed and refused to provide reasonable accommodation to Nurse Balch.

23 153. EMC suspended Nurse Balch without pay, and terminated her.

24 154. Nurse Balch’s failure to comply with the conflicting job requirement was a
25 substantial motivating reason for suspension without pay and termination by EMC.

155. Nurse Balch was harmed.

156. The conduct of EMC was a substantial factor in causing the harm to Nurse Balch.

1 157. The conduct of EMC was authorized, approved, and/or ratified by an officer,
2 director, and/or managing agent of EMC, and the conduct was malicious, fraudulent, and/or
3 oppressive and warrants the imposition of punitive and exemplary damages.

4 158. Nurse Balch prays for entry of judgment in her favor and against EMC for
5 compensatory damages, punitive and exemplary damages, attorney's fees for enforcement of an
6 important right affecting the public interest, attorney's fees under statute, pre-judgement interest,
7 costs of suit, including expert witness fees, and an injunction prohibiting EMC from imposing a
8 COVID-19 vaccination requirement, and other relief the court deems just and proper.

9 **Nurse Perez alleges:**

10 159. Paragraph 1 through 47 and 95 through 118 are re-alleged.

11 160. It is a violation of the FEHA for an employer to fail to reasonably accommodate
12 an employee's religious beliefs.

13 161. EMC was an employer under the FEHA.

14 162. Nurse Perez held sincere religious beliefs which conflicted with a job
15 requirement.

16 163. EMC knew of the conflict between the job requirement and the religious beliefs
17 held by Nurse Perez.

18 164. A reasonable accommodation was available and acceptable to Nurse Perez.

19 165. EMC did not explore in good faith available reasonable alternatives of
20 accommodating Nurse Perez.

21 166. EMC failed and refused to provide a reasonable accommodation to Nurse Perez.

22 167. EMC suspended Nurse Perez without pay, and terminated her.

23 168. Nurse Perez's failure to comply with the conflicting job requirement was a
24 substantial motivating reason for suspension without pay and termination by EMC.

25 169. Nurse Perez was harmed.

1 170. The conduct of EMC was a substantial factor in causing the harm to Nurse Perez.

2 171. The conduct of EMC was authorized, approved, and/or ratified by an officer,
3 director, and/or managing agent of EMC, and the conduct was malicious, fraudulent, and/or
4 oppressive and warrants the imposition of punitive and exemplary damages.

5 172. Nurse Perez prays for entry of judgment in her favor and against EMC for
6 compensatory damages, punitive and exemplary damages, attorney's fees for enforcement of an
7 important right affecting the public interest, attorney's fees under statute, pre-judgement interest,
8 costs of suit, including expert witness fees, and an injunction prohibiting EMC from imposing a
9 COVID-19 vaccination requirement, and other relief the court deems just and proper.

10 **Nurse Balsiene alleges:**

11 173. Paragraphs 1 through 47 and 119 through 144 are re-alleged.

12 174. It is a violation of the FEHA for an employer to fail to reasonably accommodate
13 an employee's religious beliefs.

14 175. EMC was an employer under the FEHA.

15 176. Nurse Balsiene held sincere religious beliefs which conflicted with a job
16 requirement.

17 177. EMC knew of the conflict between the job requirement and the religious beliefs
18 held by Nurse Balsiene.

19 178. A reasonable accommodation was available and acceptable to Nurse Balsiene.

20 179. EMC did not explore in good faith available reasonable alternatives of
21 accommodating Nurse Balsiene.

22 180. EMC avoided providing a reasonable accommodation to Nurse Balsiene.

23 181. EMC suspended Nurse Balsiene without pay, and terminated her.

24 182. Nurse Balsiene's failure to comply with the conflicting job requirement was a
25 substantial motivating reason for suspension without pay and termination by EMC.

1 183. Nurse Balsiene was harmed.

2 184. The conduct of EMC was a substantial factor in causing the harm to Nurse
3 Balsiene.

4 185. The conduct of EMC was authorized, approved, and/or ratified by an officer,
5 director, and/or managing agent of EMC, and the conduct was malicious, fraudulent, and/or
6 oppressive and warrants the imposition of punitive and exemplary damages.

7 186. Nurse Balsiene prays for entry of judgment in her favor and against EMC for
8 compensatory damages, punitive and exemplary damages, attorney's fees for enforcement of an
9 important right affecting the public interest, attorney's fees under statute, pre-judgement interest,
10 costs of suit, including expert witness fees, and an injunction prohibiting EMC from imposing a
11 COVID-19 vaccination requirement, and other relief the court deems just and

12 **Second Cause of Action**
13 **For Violation of the Fair Employment and Housing Act**
14 **– Medical Condition Discrimination – Failure to Accommodate**
15 **By Plaintiff Cindy Balch**
16 **Against Defendants Eisenhower Medical Center and DOE 1 through DOE 50, Inclusive**

17 **Nurse Balch alleges:**

18 187. Paragraphs 1 through 94 are re-alleged.

19 188. It is a violation of the FEHA for an employer to fail to reasonably accommodate
20 an employee's medical condition.

21 189. EMC was an employer under the FEHA.

22 190. Nurse Balch had a medical condition which conflicted with a job requirement.

23 191. EMC knew of the conflict between the job requirement and Nurse Balch's
24 medical condition.

25 192. A reasonable accommodation was available and acceptable to Nurse Balch.

193. EMC did not explore in good faith available reasonable alternatives of
accommodating Nurse Balch.

1 194. EMC failed and refused to provide a reasonable accommodation to Nurse Balch.

2 195. EMC suspended Nurse Balch without pay, and terminated her.

3 196. Nurse Balch's failure to comply with the conflicting job requirement was a
4 substantial motivating reason for her suspension without pay and termination by EMC.

5 197. Nurse Balch was harmed.

6 198. The conduct of EMC was a substantial factor in causing the harm to Nurse Balch.

7 199. The conduct of EMC was authorized, approved, and/or ratified by an officer,
8 director, and/or managing agent of EMC, and the conduct was malicious, fraudulent, and/or
9 oppressive and warrants the imposition of punitive and exemplary damages.

10 200. Nurse Balch prays for entry of judgment in her favor and against EMC for
11 compensatory damages, punitive and exemplary damages, attorney's fees for enforcement of an
12 important right affecting the public interest, attorney's fees under statute, pre-judgement interest,
13 costs of suit, including expert witness fees, and an injunction prohibiting EMC from imposing a
14 COVID-19 vaccination requirement, and other relief the court deems just and proper.

15 **Third Cause of Action**
16 **For Violation of the Fair Employment and Housing Act**
17 **– Retaliation**
18 **By Plaintiffs Cindy Balch, LaVonne Perez, and Egle Balsiene**
19 **Against Defendants Eisenhower Medical Center and DOE 1 through DOE 50, Inclusive**

20 **Nurse Balch alleges:**

21 201. Paragraphs 1 through 94 are re-alleged.

22 202. It is a violation of the FEHA for an employer to retaliate against an employee for
23 requesting an accommodation for a medical condition or religious beliefs, or for opposing
24 unlawful conduct.

25 203. EMC was an employer under the FEHA.

204. EMC established a COVID-19 vaccine requirement when all COVID-19 vaccines
on the market and available to Nurse Balch were under an EUA and not an FDA approved BLA.

- 1 205. EMC required that Nurse Balch take an EUA medical product.
- 2 206. EMC’s requirement violated State, federal, and/or international law.
- 3 207. EMC’s requirement conflicted with the medical condition and/or religious beliefs
4 of Nurse Balch.
- 5 208. EMC’s requirement was an unauthorized practice of medicine.
- 6 209. Nurse Balch opposed EMC’s requirement.
- 7 210. EMC suspended Nurse Balch without pay, and terminated Nurse Balch, because
8 she opposed EMC’s requirement.
- 9 211. EMC’s conduct violated 21 United States Code Section 360bbb-3.
- 10 212. EMC’s conduct violated Health and Safety Code Section 24172.
- 11 213. EMC’s conduct violated the Nuremberg Code, Article 1.
- 12 214. EMC’s conduct violated the FEHA.
- 13 215. EMC’s conduct violated Business and Professions Code Sections 2400 and 2052.
- 14 216. Nurse Balch’s opposition to EMC’s requirement and/or her request for
15 accommodation was a substantial motivating reason for EMC’s decision to suspend her without
16 pay, and terminate her.
- 17 217. Nurse Balch was harmed.
- 18 218. EMC’s decision to suspend Nurse Balch without pay, and terminate her, was a
19 substantial factor in causing harm to Nurse Balch.
- 20 219. EMC’s conduct was authorized, approved, and/or ratified by an officer, director,
21 and/or managing agent of EMC, and the conduct was malicious, fraudulent, and/or oppressive
22 and warrants the imposition of punitive and exemplary damages.
- 23 220. Nurse Balch prays for entry of judgment in her favor and against EMC for
24 compensatory damages, punitive and exemplary damages, attorney’s fees for enforcement of an
25 important right affecting the public interest, attorney’s fees under statute, pre-judgement interest,

1 costs of suit, including expert witness fees, and an injunction prohibiting EMC from imposing a
2 COVID-19 vaccination requirement, and other relief the court deems just and proper.

3 **Nurse Perez alleges:**

4 221. Paragraph 1 through 47 and 95 through 118 are re-alleged.

5 222. It is a violation of the FEHA for an employer to retaliate against an employee for
6 requesting an accommodation for a medical condition or religious beliefs, or for opposing
7 unlawful conduct.

8 223. EMC was an employer under the FEHA.

9 224. EMC established a COVID-19 vaccine requirement when all COVID-19 vaccines
10 in the market and available to Nurse Perez were under an EUA and not an FDA approved BLA.

11 225. EMC required that Nurse Perez take an EUA medical product.

12 226. EMC's requirement violated State, federal, and/or international law.

13 227. EMC's requirement conflicted with the religious beliefs of Nurse Perez.

14 228. EMC's requirement was an unauthorized practice of medicine.

15 229. Nurse Perez opposed EMC's requirement.

16 230. EMC suspended Nurse Perez without pay, and terminated Nurse Perez, because
17 she opposed EMC's requirement.

18 231. EMC's conduct violated 21 United States Code Section 360bbb-3.

19 232. EMC's conduct violated Health and Safety Code Section 24172.

20 233. EMC's conduct violated the Nuremberg Code, Article 1.

21 234. EMC's conduct violated the FEHA.

22 235. EMC's conduct violated Business and Professions Code Sections 2400 and 2052.

23 236. Nurse Perez's opposition to EMC's requirement and/or her request for
24 accommodation was a substantial motivating reason for EMC's decision to suspend her without
25 pay, and terminate her.

1 237. Nurse Perez was harmed.

2 238. EMC's decision to suspend Nurse Perez without pay, and terminate her, was a
3 substantial factor in causing harm to Nurse Perez.

4 239. EMC's conduct was authorized, approved, and/or ratified by an officer, director,
5 and/or managing agent of EMC, and the conduct was malicious, fraudulent, and/or oppressive
6 and warrants the imposition of punitive and exemplary damages.

7 240. Nurse Perez prays for entry of judgment in her favor and against EMC for
8 compensatory damages, punitive and exemplary damages, attorney's fees for enforcement of an
9 important right affecting the public interest, attorney's fees under statute, pre-judgement interest,
10 costs of suit, including expert witness fees, and an injunction prohibiting EMC from imposing a
11 COVID-19 vaccination requirement, and other relief the court deems just and proper.

12 **Nurse Balsiene alleges:**

13 241. Paragraphs 1 through 47 and 119 through 144 are re-alleged.

14 242. It is a violation of the FEHA for an employer to retaliate against an employee for
15 requesting an accommodation for a medical condition or religious beliefs, or for opposing
16 unlawful conduct.

17 243. EMC was an employer under the FEHA.

18 244. EMC established a COVID-19 vaccine requirement when all COVID-19 vaccines
19 in the market and available to Nurse Balsiene were under an EUA and not an FDA approved
20 BLA.

21 245. EMC required that Nurse Balsiene take an EUA medical product.

22 246. EMC's requirement violated State, federal, and/or international law.

23 247. EMC's requirement conflicted with the religious beliefs of Nurse Balsiene.

24 248. EMC's requirement was an unauthorized practice of medicine.

25 249. Nurse Balsiene opposed EMC's requirement.

1 250. EMC suspended Nurse Balsiene without pay, and terminated Nurse Balsiene,
2 because she opposed the requirement.

3 251. EMC's conduct violated 21 United States Code Section 360bbb-3.

4 252. EMC's conduct violated Health and Safety Code Section 24172.

5 253. EMC's conduct violated the Nuremberg Code, Article 1.

6 254. EMC's conduct violated the FEHA.

7 255. EMC's conduct violated Business and Professions Code Sections 2400 and 2052.

8 256. Nurse Balsiene's opposition to EMC's requirement and/or her request for
9 accommodation was a substantial motivating reason for EMC's decision to suspend her without
10 pay, and terminate her.

11 257. Nurse Balsiene was harmed.

12 258. EMC's decision to suspend Nurse Balsiene without pay, and terminate her, was a
13 substantial factor in causing harm to Nurse Balsiene.

14 259. EMC's conduct was authorized, approved, and/or ratified by an officer, director,
15 and/or managing agent of EMC, and the conduct was malicious, fraudulent, and/or oppressive
16 and warrants the imposition of punitive and exemplary damages.

17 260. Nurse Balsiene prays for entry of judgment in her favor and against EMC for
18 compensatory damages, punitive and exemplary damages, attorney's fees for enforcement of an
19 important right affecting the public interest, attorney's fees under statute, pre-judgement interest,
20 costs of suit, including expert witness fees, and an injunction prohibiting EMC from imposing a
21 COVID-19 vaccination requirement, and other relief the court deems just and proper.

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Fourth Cause of Action
For Violation of the Fair Employment and Housing Act
– Disparate Treatment
By Plaintiffs Cindy Balch, LaVonne Perez, and Egle Balsiene
Against Defendants Eisenhower Medical Center and DOE 1 through DOE 50, Inclusive

Nurse Balch alleges:

261. Paragraphs 1 through 94 are re-alleged.

262. It is a violation of the FEHA for an employer to treat an employee less favorably than others because of the employee’s medical condition and/or religious belief.

263. EMC was an employer under the FEHA.

264. EMC treated Nurse Balch less favorably than employees who took a COVID-19 vaccine.

265. EMC treated Nurse Balch less favorably than employees who did not apply for a medical condition and/or religious beliefs exemption to taking a COVID-19 vaccine.

266. EMC treated Nurse Balch less favorably than employees who did not oppose taking an EUA medical product by suspending her without pay, and terminating her.

267. The medical condition and/or religious beliefs of Nurse Balch was a substantial motivating reason for the suspension without pay and/or termination of Nurse Balch.

268. Nurse Balch was harmed.

269. The conduct of EMC was a substantial factor in causing the harm to Nurse Balch.

270. EMC’s conduct was authorized, approved, and/or ratified by an officer, director, and/or managing agent of EMC, and the conduct was malicious, fraudulent, and/or oppressive and warrants the imposition of punitive and exemplary damages.

271. Nurse Balch prays for entry of judgment in her favor and against EMC for compensatory damages, punitive and exemplary damages, attorney’s fees for enforcement of an important right affecting the public interest, attorney’s fees under statute, pre-judgement interest, costs of suit, including expert witness fees, and an injunction prohibiting EMC from imposing a

1 COVID-19 vaccination requirement, and other relief the court deems just and proper.

2 **Nurse Perez alleges:**

3 272. Paragraph 1 through 47 and 95 through 118 are re-alleged.

4 273. It is a violation of the FEHA for an employer to an employee less favorably than
5 others because of the employee's medical condition and/or religious belief.

6 274. EMC was an employer under the FEHA.

7 275. EMC treated Nurse Perez less favorably than employees who took a COVID-19
8 vaccine.

9 276. EMC treated Nurse Perez less favorably than employees who did not apply for a
10 medical condition and/or religious beliefs exemption to taking a COVID-19 vaccine.

11 277. EMC treated Nurse Perez less favorably than employees who did not oppose
12 taking an EUA medical product by suspending her without pay, and terminating her.

13 278. The medical condition and/or religious beliefs of Nurse Perez was a substantial
14 motivating reason for the suspension without pay and/or termination of Nurse Perez.

15 279. Nurse Perez was harmed.

16 280. The conduct of EMC was a substantial factor in causing the harm to Nurse Perez.

17 281. EMC's conduct was authorized, approved, and/or ratified by an officer, director,
18 and/or managing agent of EMC, and the conduct was malicious, fraudulent, and/or oppressive
19 and warrants the imposition of punitive and exemplary damages.

20 282. Nurse Perez prays for entry of judgment in her favor and against EMC for
21 compensatory damages, punitive and exemplary damages, attorney's fees for enforcement of an
22 important right affecting the public interest, attorney's fees under statute, pre-judgement interest,
23 costs of suit, including expert witness fees, and an injunction prohibiting EMC from imposing a
24 COVID-19 vaccination requirement, and other relief the court deems just and proper.

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1 **Nurse Balsiene alleges:**

2 283. Paragraphs 1 through 47 and 119 through 144 are re-alleged.

3 284. It is a violation of the FEHA for an employer to an employee less favorably than
4 others because of the employee's medical condition and/or religious belief.

5 285. EMC was an employer under the FEHA.

6 286. EMC treated Nurse Balsiene less favorably than employees who took a COVID-
7 19 vaccine.

8 287. EMC treated Nurse Balsiene less favorably than employees who did not apply for
9 a medical condition and/or religious beliefs exemption to taking a COVID-19 vaccine.

10 288. EMC treated Nurse Balsiene less favorably than employees who did not oppose
11 taking an EUA medical product by suspending her without pay, and terminating her.

12 289. The medical condition and/or religious beliefs of Nurse Balsiene was a substantial
13 motivating reason for the suspension without pay and/or termination of Nurse Balsiene.

14 290. Nurse Balsiene was harmed.

15 291. The conduct of EMC was a substantial factor in causing the harm to Nurse
16 Balsiene.

17 292. EMC's conduct was authorized, approved, and/or ratified by an officer, director,
18 and/or managing agent of EMC, and the conduct was malicious, fraudulent, and/or oppressive
19 and warrants the imposition of punitive and exemplary damages.

20 293. Nurse Balsiene prays for entry of judgment in her favor and against EMC for
21 compensatory damages, punitive and exemplary damages, attorney's fees for enforcement of an
22 important right affecting the public interest, attorney's fees under statute, pre-judgement interest,
23 costs of suit, including expert witness fees, and an injunction prohibiting EMC from imposing a
24 COVID-19 vaccination requirement, and other relief the court deems just and proper.

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1 **Fifth Cause of Action**
2 **For Wrongful Discharge in Violation of Public Policy**
3 **– Exercise of Statutory Right or Privilege**
4 **By Plaintiffs Cindy Balch, LaVonne Perez, and Egle Balsiene**
5 **Against Defendants Eisenhower Medical Center and DOE 1 through DOE 50, Inclusive**

6 **Nurse Balch alleges:**

7 294. Paragraphs 1 through 94 are re-alleged.

8 295. It is a violation of public policy for an employer to discharge an employee when
9 the employee's exercise of a statutory right or privilege is a substantial motivating reason for the
10 discharge.

11 296. Nurse Balch was employed by EMC.

12 297. Nurse Balch exercised a statutory right and/or privilege under 21 United States
13 Code Section 360bbb-3, Health and Safety Code Section 24172, the Nuremberg Code, Article 1,
14 and/or the FEHA when she declined to take an EUA medical product.

15 298. EMC suspended Nurse Balch without pay, and terminated her.

16 299. The exercise of a statutory right or privilege by Nurse Balch was a substantial
17 motivating reason for her suspension without pay, and her termination, by EMC.

18 300. Nurse Balch was harmed.

19 301. EMC's conduct was a substantial factor in causing the harm to Nurse Balch.

20 302. EMC's conduct was authorized, approved, and/or ratified by an officer, director,
21 and/or managing agent of EMC, and the conduct was malicious, fraudulent, and/or oppressive
22 and warrants the imposition of punitive and exemplary damages.

23 303. Nurse Balch prays for entry of judgment in her favor and against EMC for
24 compensatory damages, punitive and exemplary damages, attorney's fees for enforcement of an
25 important right affecting the public interest, attorney's fees under statute, pre-judgement interest,
costs of suit, including expert witness fees, and an injunction prohibiting EMC from imposing a
COVID-19 vaccination requirement, and other relief the court deems just and proper.

1 **Nurse Perez alleges:**

2 304. Paragraphs 1 through 47 and 95 through 118 are re-alleged.

3 305. It is a violation of public policy for an employer to discharge an employee when
4 the employee's exercise of a statutory right or privilege is a substantial motivating reason for the
5 discharge.

6 306. Nurse Perez was employed by EMC.

7 307. Nurse Perez exercised a statutory right and/or privilege under 21 United States
8 Code Section 360bbb-3, Health and Safety Code Section 24172, the Nuremberg Code, Article 1,
9 and/or the FEHA when she declined to take an EUA medical product.

10 308. EMC suspended Nurse Perez without pay, and terminated her.

11 309. The exercise of a statutory right or privilege by Nurse Perez was a substantial
12 motivating reason for her suspension without pay, and her termination, by EMC.

13 310. Nurse Perez was harmed.

14 311. EMC's conduct was a substantial factor in causing the harm to Nurse Perez.

15 312. EMC's conduct was authorized, approved, and/or ratified by an officer, director,
16 and/or managing agent of EMC, and the conduct was malicious, fraudulent, and/or oppressive
17 and warrants the imposition of punitive and exemplary damages.

18 313. Nurse Perez prays for entry of judgment in her favor and against EMC for
19 compensatory damages, punitive and exemplary damages, attorney's fees for enforcement of an
20 important right affecting the public interest, attorney's fees under statute, pre-judgement interest,
21 costs of suit, including expert witness fees, and an injunction prohibiting EMC from imposing a
22 COVID-19 vaccination requirement, and other relief the court deems just and proper.

23 **Nurse Balsiene alleges:**

24 314. Paragraphs 1 through 47 and 119 through 144 are re-alleged.

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1 315. It is a violation of public policy for an employer to discharge an employee when
2 the employee's exercise of a statutory right or privilege is a substantial motivating reason for the
3 discharge.

4 316. Nurse Balsiene was employed by EMC.

5 317. Nurse Balsiene exercised a statutory right and/or privilege under 21 United States
6 Code Section 360bbb-3, Health and Safety Code Section 24172, the Nuremberg Code, Article 1,
7 and/or the FEHA when declined to take an EUA medical product.

8 318. EMC suspended Nurse Balsiene without pay, and terminated her.

9 319. The exercise of a statutory right or privilege by Nurse Balsiene was a substantial
10 motivating reason for her suspension without pay, and her termination, by EMC.

11 320. Nurse Balsiene was harmed.

12 321. EMC's conduct was a substantial factor in causing the harm to Nurse Balsiene.

13 322. EMC's conduct was authorized, approved, and/or ratified by an officer, director,
14 and/or managing agent of EMC, and the conduct was malicious, fraudulent, and/or oppressive
15 and warrants the imposition of punitive and exemplary damages.

16 323. Nurse Balsiene prays for entry of judgment in her favor and against EMC for
17 compensatory damages, punitive and exemplary damages, attorney's fees for enforcement of an
18 important right affecting the public interest, attorney's fees under statute, pre-judgement interest,
19 costs of suit, including expert witness fees, and an injunction prohibiting EMC from imposing a
20 COVID-19 vaccination requirement, and other relief the court deems just and proper.

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Respectfully,

BRYAN M. GARRIE, APC
LAW OFFICE OF MATTHEW P. TYSON

Dated: April 10, 2022

By: 
BRYAN M. GARRIE
MATTHEW P. TYSON
Attorneys for Plaintiffs Cindy Balch,
LaVonne Perez, and Egle Balsiene

VERIFICATION BY CINDY BALCH

I, Cindy Balch, declare:

I am a plaintiff in this matter. The information stated in the complaint as alleged by me is based on my own personal knowledge, and in which case it is true and correct, and/or has been supplied by agents or compiled from available documents, and in which case I am informed and believe that such statements are true. I declare under penalty of perjury under California law that the foregoing is true and correct and that this was executed in La Quinta, California.

Dated: April 10, 2022

By: _____
Cindy Balch

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VERIFICATION BY LAVONNE PEREZ

I, LaVonne Perez, declare:

I am a plaintiff in this matter. The information stated in the complaint as alleged by me is based on my own personal knowledge, and in which case it is true and correct, and/or has been supplied by agents or compiled from available documents, and in which case I am informed and believe that such statements are true. I declare under penalty of perjury under California law that the foregoing is true and correct and that this was executed in La Quinta, California.

Dated: April 10, 2022

By: _____
LaVonne Perez

VERIFICATION BY EGLE BALSIE NE

I, Egle Balsiene, declare:

I am a plaintiff in this matter. The information stated in the complaint as alleged by me is based on my own personal knowledge, and in which case it is true and correct, and/or has been supplied by agents or compiled from available documents, and in which case I am informed and believe that such statements are true. I declare under penalty of perjury under California law that the foregoing is true and correct and that this was executed in Indio, California.

Dated: April 10, 2022

By: _____
Egle Balsiene

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Respectfully,

BRYAN M. GARRIE, APC
LAW OFFICE OF MATTHEW P. TYSON

Dated: April 10, 2022


By: _____
BRYAN M. GARRIE
MATTHEW P. TYSON
Attorneys for Plaintiffs Cindy Balch,
LaVonne Perez, and Egle Balsiene

VERIFICATION BY CINDY BALCH

I, Cindy Balch, declare:

I am a plaintiff in this matter. The information stated in the complaint as alleged by me is based on my own personal knowledge, and in which case it is true and correct, and/or has been supplied by agents or compiled from available documents, and in which case I am informed and believe that such statements are true. I declare under penalty of perjury under California law that the foregoing is true and correct and that this was executed in La Quinta, California.

Dated: April 10, 2022

By: 
Cindy Balch

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VERIFICATION BY LAVONNE PEREZ

I, LaVonne Perez, declare:

I am a plaintiff in this matter. The information stated in the complaint as alleged by me is based on my own personal knowledge, and in which case it is true and correct, and/or has been supplied by agents or compiled from available documents, and in which case I am informed and believe that such statements are true. I declare under penalty of perjury under California law that the foregoing is true and correct and that this was executed in La Quinta, California.

Dated: April 10, 2022

By:  _____
LaVonne Perez

VERIFICATION BY EGLE BALSIIENE

I, Egle Balsiene, declare:

I am a plaintiff in this matter. The information stated in the complaint as alleged by me is based on my own personal knowledge, and in which case it is true and correct, and/or has been supplied by agents or compiled from available documents, and in which case I am informed and believe that such statements are true. I declare under penalty of perjury under California law that the foregoing is true and correct and that this was executed in Indio, California.

Dated: April 10, 2022

By: _____
Egle Balsiene

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VERIFICATION BY LAVONNE PEREZ

I, LaVonne Perez, declare:

I am a plaintiff in this matter. The information stated in the complaint as alleged by me is based on my own personal knowledge, and in which case it is true and correct, and/or has been supplied by agents or compiled from available documents, and in which case I am informed and believe that such statements are true. I declare under penalty of perjury under California law that the foregoing is true and correct and that this was executed in La Quinta, California.

Dated: April 10, 2022

By: _____
LaVonne Perez

VERIFICATION BY EGLE BALSIIENE

I, Egle Balsiene, declare:

I am a plaintiff in this matter. The information stated in the complaint as alleged by me is based on my own personal knowledge, and in which case it is true and correct, and/or has been supplied by agents or compiled from available documents, and in which case I am informed and believe that such statements are true. I declare under penalty of perjury under California law that the foregoing is true and correct and that this was executed in Indio, California.

Dated: April 10, 2022

By: Egle Balsiene
Egle Balsiene