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APPENDIX A

NOT PRECEDENTIAL

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

Nos. 24-1157, 24-1248, 24-1249, 24-1250, 24-1251,
24-1252, 24-1253 & 24-1254

BETH A. MCDOWELL,
Appellant in No. 24-1157

v.

BAYHEALTH MEDICAL CENTER, INC

SHARITI A. LANE,
Appellant in No. 24-1248

v.

BAYHEALTH MEDICAL CENTER, INC

DONNA L. MAHER,
Appellant in No. 24-1249

v.

BAYHEALTH MEDICAL CENTER, INC

SEAN MCCARTHY,
Appellant in No. 24-1250

v.

BAYHEALTH MEDICAL CENTER, INC

JANELLE B. CARUANO,
Appellant in No. 24-1251

v.

BAYHEALTH MEDICAL CENTER, INC

CHERYL L. HAND,
Appellant in No. 24-1252

v.

BAYHEALTH MEDICAL CENTER, INC

ANDREA L. MALONEY,
Appellant in No. 24-1253

v.

BAYHEALTH MEDICAL CENTER, INC

TAMMY M. HARVEY,
Appellant in No. 24-1254

v.

BAYHEALTH MEDICAL CENTER, INC
On Appeal from the United States District Court
for the District of Delaware

(Nos. 1-22-cv-01392, 1-23-cv-00102, 1-22-cv-01551,
1-22-cv-01336, 1-22-cv-01284, 1-22-cv-01548,
1-23-cv-00078, 1-23-cv-00092)

U.S. District Judge: Honorable Richard G. Andrews

Submitted Pursuant to Third Circuit LAR 34.1(a)
September 30, 2024

Before: SHWARTZ, MATEY, and SCIRICA,
Circuit Judges.

(Filed: November 15, 2024)

OPINION*

SHWARTZ, Circuit Judge.

Defendant Bayhealth Medical Center, Inc. (“Bayhealth”) required its employees to receive a COVID vaccine as a condition of employment, absent a religious or medical exemption. Plaintiffs, former Bayhealth employees, objected to the requirement based on their assertions that receiving the vaccine would be inconsistent with their religious beliefs, principally, their belief that their bodies are G-d’s temples. After Bayhealth denied their requested religious exemptions, Plaintiffs sued for religious discrimination under 42 U.S.C. § 2000e-2(a)(1) (“Title VII”) and, in some instances, state law. The District

* This disposition is not an opinion of the full court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Court dismissed their complaints, concluding that, despite Plaintiffs' generalized references to scripture, their concerns were medical, scientific, personal, or secular in nature, rather than religious. Because we agree with the District Court's assessment of the pleadings, we will affirm.

I¹

In religious objection cases, courts must examine whether a belief is a religious one, as opposed to a personal belief cloaked in religion. *See Wisconsin v. Yoder*, 406 U.S. 205, 215-16 (1972) (holding that where a plaintiff's asserted beliefs are based on a "subjective evaluation and rejection of the contemporary secular values accepted by the majority," a claim derived therefrom "would not rest on a religious basis"); *Africa v. Pennsylvania*, 662 F.2d 1025, 1031, 1035 (3d Cir. 1981) (concluding that plaintiffs cannot use religion to claim a "blanket privilege" or "cloak[] with religious significance" a secular belief); *see also United States v.*

¹ We exercise plenary review of an order granting a motion to dismiss for failure to state a claim. *Burtch v. Milberg Factors, Inc.*, 662 F.3d 212, 220 (3d Cir. 2011). We must determine whether the complaint, construed "in the light most favorable to the plaintiff," *Santomenno ex rel. John Hancock Tr. v. John Hancock Life Ins. Co.*, 768 F.3d 284, 290 (3d Cir. 2014) (citation omitted), "contain[s] 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)), "but we disregard rote recitals of the elements of a cause of action, legal conclusions, and mere conclusory statements," *James v. City of Wilkes-Barre*, 700 F.3d 675, 679 (3d Cir. 2012).

Seeger, 380 U.S. 163, 165 (1965) (concluding beliefs that are “essentially political, sociological, or philosophical views” are not religious); *Fallon v. Mercy Cath. Med. Ctr. of Se. Pa.*, 877 F.3d 487, 491 n.14 (3d Cir. 2017) (describing Title VII regulations as “adopting the standard in *Seeger*”). In *Fallon*, for example, we examined a Title VII religious discrimination claim where a medical center terminated an employee for refusing the flu vaccine. See 877 F.3d at 488. We concluded that the employee’s concerns with the sanctity of his own body and that the vaccine “might do more harm than good” was based on “a medical belief,” and therefore, the plaintiff’s “anti-vaccination beliefs [we]re not religious[,]” notwithstanding that he “attributed” his beliefs “to the founder of Buddhism[.]” *Id.* at 492; accord *Mason v. Gen. Brown Cent. Sch. Dist.*, 851 F.2d 47, 48-52 (2d Cir. 1988) (rejecting parental objections to school vaccine mandates based on purportedly religious beliefs that the body can heal itself and that vaccines defile one’s body because such beliefs were personal rather than religious).² The same principles

² Our dissenting colleague cites out-of-circuit cases for the proposition that Plaintiffs may survive a motion to dismiss simply by invoking scripture. See Dissent at *4 (citing *Lucky v. Landmark Med. of Mich., P.C.*, 103 F.4th 1241, 1243 (6th Cir. 2024); *Ringhofer v. Mayo Clinic*, 102 F.4th 894, 901-02 (8th Cir. 2024); *Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1009 (7th Cir. 2024)). Those opinions, however, do not address the plaintiffs’ failures to connect general religious beliefs with the conduct underlying the purported discrimination. More importantly, those courts are not bound by our precedents in *Africa* and *Fallon* that prohibit blanket religious privileges. See *infra* § II. One of our sister circuits recently cited *Fallon* and held that an employee’s

apply here.

Plaintiffs principally contend that their faith teaches that their bodies are G-d's temples, and that receiving the vaccine violates that religious teaching.³ Thus, we must decide whether Plaintiffs' objections to the vaccine are best classified as either (1) personal, secular, or medical, or (2) religious.

assertions that, among other things, she has a "religious obligation to treat her body as a 'temple'" was insufficient "to show a conflict between her religion and the" employer's COVID vaccine and testing policy. *DeVore v. Univ. of Ky. Bd. of Trs.*, -- F.4th --, 2024 WL 4471281, at *4 n.1, *5-6 (6th Cir. Oct. 11, 2024). Additionally, our colleagues' citation to *Bazinet v. Beth Israel Lahey Health, Inc.*, 113 F.4th 9 (1st Cir. 2024), is misplaced as that case involved a vaccine objection based on a plaintiff's opposition to abortion, which (1) is not present here, and (2) mirrors the types of claims the District Court allowed to proceed. *See infra* n.7.

³ See App. 214 (McDowell stating "[m]y body is the temple of the Holy Spirit who lives within me, whom I received from G[-]d. I believe that G[-]d wants me to protect and purify this body (His temple) not to cause it any harm or contamination, nor do anything to shorten it's [sic] life expectancy."); App. 218 (Lane quoting 1 Corinthians 6:19, "do you not know that your body is a temple of the Holy Spirit within you, whom you have from G[-]d?"); App. 221 (Maher quoting 2 Corinthians 6:16, "[f]or we are the temple of the living G[-]d"); App. 225 (McCarthy stating that "a Christian sincerely believes that his or her body is the living temple of the Holy Spirit of G[-]d"); App. 231 (Caruano citing scripture about "bodies [as] temples of the Holy Spirit"); App. 239 (Hand claiming "the Bible states the body is the temple of the Holy Spirit"); App. 241 (Maloney stating "Christians have a duty to honor and care for the body G[-]d has given us as a temple of the Holy Spirit"); App. 245 (Harvey citing 1 Corinthians 6:19, "your body is a temple of the Holy Spirit").

Plaintiffs assert that taking the vaccine would violate scripture because they believe the vaccine is unsafe, toxic, or harmful. **See App. 214, 217-19, 221, 225-29, 231-32, 239-45.** These beliefs, however, do not provide facts from which we can plausibly infer that Plaintiffs’ objections to the vaccine are based on religious beliefs and not on their personal, secular, and medical beliefs about the efficacy and safety of the vaccine.⁴ *See Yoder*, 406 U.S. at 216 (observing that a “subjective evaluation and rejection of the contemporary secular [and medical] values accepted by the majority” are claims that “would not rest on a religious basis”). Indeed, Plaintiffs’ allegations give rise to, at most, the “mere possibility” that Plaintiffs’ religious beliefs informed their objections to the vaccine. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009) (internal quotation marks and citation omitted). Therefore, Plaintiffs have not plausibly alleged a sufficient nexus between their religious beliefs about their bodies being G-d’s temples and their objections to

⁴ *See, e.g.*, App. 227, 229 (McCarthy stating that “I do not have a problem with putting some medicines or vaccines into my body that have been proven over time to 1) be effective and 2) to have no adverse medical effects. This vaccine has not had the time or track record, as of yet, to provide this comfort level to me I am potentially not even against this covid 19 vaccine. There has simply not been enough time and documented results of this vaccine to give me a comfort level that it is something that me, or my family should put into our bodies.”); App. 243 (Harvey stating that she is “not opposed to all vaccines/immunizations,” which suggests she makes medical/secular evaluations of which vaccines she deems acceptable).

the vaccine.⁵

Moreover, concluding that Plaintiffs state a claim by broadly invoking an overarching religious belief without directly connecting that religious belief to the objected-to employment term would impermissibly “cloak[] with religious significance” a fundamentally

⁵ Certain Plaintiffs also contend that they are created in G-d’s image with a G-d-given immune system, that G-d guides them and informs their conscience, that altering one’s DNA is contrary to their religious teachings, or some combination thereof. See App. 219 (Lane stating that “[t]he Bible states that I should visit the doctor when I am sick, not well”); App. 221 (Maher discussing her “natural immunity” and “G[-]d-given immune system”); App. 231-32 (Caruano stating humans “are made in the image of G[-]d”) and that she cannot take the vaccine because she “cannot do anything to alter” her body and the “vaccine will alter or change my immune system given to me by G[-]d”); App. 239 (Hand stating her belief that the vaccine “increases the probability that it will be integrated into your DNA”); App. 241 (Maloney stating that because she believes the vaccine has “the potential of altering my body and mind” taking the vaccine goes against her “conscious” which is “governed by G[-]d” and something she is “morally required to obey”); App. 245 (Harvey stating conclusorily that “accepting the vaccine would be a violation of my conscious and relationship with G[-]d”). These objections are likewise rooted in personal, secular, scientific, or medical views about the vaccine and its impact on their bodies in ways that are unconnected to their overarching religious beliefs, and thus, those additional allegations are, for the same reasons, insufficient under the governing precedent to support a religious discrimination claim. See *Yoder*, 406 U.S. at 216; *Africa*, 662 F.2d at 1031, 1033-34; *Fallon*, 877 F.3d at 492; see also *DeVore*, -- F.4th --, 2024 WL 4471281, at *5-6 (holding conclusory allegations were insufficient “to show a conflict between [plaintiff’s] religion and the [employer’s COVID] [p]olicy”).

secular objection to an employment term, and thereby create a “blanket privilege” whenever an employee invokes scripture. *Africa*, 662 F.2d at 1031, 1035. To allow this would be contrary to “ordered liberty,”⁶ “the very concept of [which] precludes allowing every person to make his own standards on matters of conduct in which society as a whole has important interests.” *Yoder*, 405 U.S. at 216. Indeed, to allow such generalized objections would leave “almost no limit to the accommodations that an employer would have to entertain under Title VII’s ban on religious discrimination[,]” *Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1014 (7th Cir. 2024) (Rovner, J., dissenting). Specifically, claiming one’s body is G-d’s temple is “a high-level, religiously-inspired goal: treat one’s body well[,]” *id.* (Rovner, J., dissenting). Even viewing the objection as religiously inspired, a “concern that [a] vaccine may do more harm than good [] is a medical belief, not a religious one[,]” and a “general moral commandment” drawn from religion cannot transform a medical objection into a religious one. *Fallon*, 877 F.3d at 492. For this additional reason, each Plaintiff has failed to provide a basis for relief.⁷

⁶ “Ordered liberty” is the principle that rights may be restricted in certain circumstances so long as those restrictions are not “arbitrary impositions and purposeless restraints.” *Washington v. Glucksberg*, 521 U.S. 702, 765 (1997) (Souter, J., concurring) (internal quotation marks and citation omitted).

⁷ The fact that the District Court allowed the religious discrimination complaints by other Bayhealth employees to proceed past the pleading stage demonstrates that the Court understood the pleading requirements for these claims. In those

II

For the foregoing reasons, we will affirm.⁸

MATEY, *Circuit Judge*, dissenting.

Plaintiffs allege that Bayhealth Medical Center discriminated against their religious beliefs by denying

cases, the District Court denied Bayhealth's motions to dismiss in cases where the employees' objected to taking the vaccine based upon their religious objections to abortion. The Court observed that the objection was tied to the religious belief that life begins at conception and that alleged use of fetal tissue in the development of the vaccine violated the belief about when life begins and therefore taking such a vaccine would also violate this religious belief. *See M. White v. Bayhealth Med. Ctr., Inc.*, Civ. No. 22-1518, 2024 WL 325334, at *4 (D. Del. Jan. 29, 2024); *Countey v. Bayhealth Med. Ctr., Inc.*, Civ. No. 23-616, slip op. at 4-6 (D. Del. Jan. 29, 2024); *Griffin v. Bayhealth Med. Ctr., Inc.*, Civ. No. 23-257, 2024 WL 325272, at *4 (D. Del. Jan. 29, 2024); *Thompson v. Bayhealth Med. Ctr., Inc.*, Civ. No. 22-1519, 2024 WL 325288, at *4 (D. Del. Jan. 29, 2024); *Thornton v. Bayhealth Med. Ctr., Inc.*, Civ. No. 23-944, 2024 WL 325326, at *4 (D. Del. Jan. 29, 2024); *Wharton v. Bayhealth Med. Ctr., Inc.*, Civ. No. 23-110, 2024 WL 325333, at *4 (D. Del. Jan. 29, 2024); *K. White v. Bayhealth Med. Ctr., Inc.*, Civ. No. 22-1457, 2024 WL 307692, at *4 (D. Del. Jan. 26, 2024); *Aiken v. Bayhealth Med. Ctr., Inc.*, Civ. No. 23-37, 2024 WL 278182, at *4 (D. Del. Jan. 25, 2024); *Hernandez v. Bayhealth Med. Ctr., Inc.*, Civ. No. 22-1283, 2024 WL 278180, at *4 (D. Del. Jan. 25, 2024); *Proud v. Bayhealth Med. Ctr., Inc.*, Civ. No. 22-1472, 2024 WL 278216, at *4 (D. Del. Jan. 25, 2024); *Massotti v. Bayhealth Med. Ctr., Inc.*, Civ. No. 22-1471, 2024 WL 278208, at *4 (D. Del. Jan. 25, 2024).

⁸ Plaintiffs' state law claims require the same proof as Title VII and fail for the same reasons. *See Schuster v. Derocili*, 775 A.2d 1029, 1033 (Del. 2001).

an exemption from a mandatory COVID-19 vaccine. The District Court dismissed the complaints with prejudice for failure to state a claim. But Plaintiffs have satisfied their minimal pleading burden, so I respectfully dissent.

I.

On a motion to dismiss, “we accept all factual allegations in the complaint as true and view them in the light most favorable to the plaintiff.” *Umland v. PLANCO Fin. Servs., Inc.*, 542 F.3d 59, 64 (3d Cir. 2008) (quoting *Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006)). Accordingly, if a “plaintiff may be entitled to relief” “under any reasonable reading of the complaint,” then a motion to dismiss fails. *Pinker v. Roche Holdings Ltd.*, 292 F.3d 361, 374 n.7 (3d Cir. 2002).

Plaintiffs are former Bayhealth employees and Christians of various denominations. Following the arrival of COVID-19, Bayhealth required all employees to submit to mandatory vaccine injections. Plaintiffs believe that an individual should not harm the human body because it is sacred, and requested religious exemptions “[a]fter careful discernment, prayerfully seeking God, and reading [the] Bible.” App. 231.

Bayhealth denied Plaintiffs’ requests and terminated Plaintiffs when they declined COVID-19 vaccine injections. Plaintiffs then sued Bayhealth for religious discrimination under Title VII, 42 U.S.C. § 2000e-2(a)(1), seeking monetary damages, reinstatement, and attorney’s fees. The District Court

granted Bayhealth’s motions to dismiss the complaints with prejudice, finding that Plaintiffs failed to allege facts showing that their objections to the COVID-19 vaccine were religious.

II.

Title VII “requires employers to accommodate the religious practice of their employees.” *Groff v. DeJoy*, 600 U.S. 447, 453 (2023). As defined by Title VII, “religion” “includes all aspects of religious observance and practice, as well as belief.” 42 U.S.C. § 2000e(j); see also *EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 774 (2015) (emphasizing that “religion” as defined by Title VII extends beyond “religious *belief*” to encompass “religious *practice*”). Accordingly, to state a claim for religious discrimination under Title VII based on a failure to accommodate, the employee must plausibly allege “that (1) he held a sincere religious belief that conflicted with a job requirement, (2) he informed his employer of the conflict, and (3) he was disciplined for failing to comply with the conflicting requirement.” *Fallon v. Mercy Cath. Med. Ctr. of Se. Pa.*, 877 F.3d 487, 490 (3d Cir. 2017).¹

¹ The Complaint follows the guidelines of the Equal Employment and Opportunity Commission defining religion “to include moral ethical beliefs as to what is right and wrong which are held with the strength of traditional religious views.” 29 C.F.R. § 1605.1. That standard accepts decades of judicial decisions embracing a conception of religious liberty that prioritizes “inwardness, solipsism and absolute autonomy[.]” Marc. O. DeGirolami, *The Sickness Unto Death of the First Amendment*, 42 Harv. J. L. & Pub. Pol’y 751, 779–80 (2019). But

Accepting Plaintiffs' allegations as true, Plaintiffs requested religious exemptions from the vaccination requirement, Bayhealth denied those requests, and Plaintiffs were terminated because they declined vaccination. All that remains is whether Plaintiffs pled sufficient facts to support an inference that their objections to vaccination were an "aspect[]" of their "religious observance," "practice," or "belief." 42 U.S.C. § 2000e(j). In my view, Plaintiffs have

it does not follow the traditional understanding of religion which "consists in offering service and ceremonial rites to a superior nature that men call divine." Thomas Aquinas, *Summa Theologiae*, II-II Q. 82, a. 1, s.c. (Aquinas Inst. ed., 2012) (quoting Marcus Tullius Cicero, *Rhetoric*, ii, 53); accord 2 James Madison, *Memorial and Remonstrance Against Religious Assessments*, in *The Writings of James Madison* 184 (Gaillard Hunt ed., 1901) (1785) (defining religion as "the duty which we owe to our Creator and the Manner of discharging it."). This classical correlation between the organized practice of religion and the individual duty to God animated the Founding era, see generally, Vincent Philip Munoz, *Religious Liberty and the American Founding* (2022) and endured throughout the 19th century, see *Davis v. Beason*, 133 U.S. 333, 342, 10 S. Ct. 299, 300, 33 L. Ed. 637 (1890) ("The term 'religion' has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will."), *abrogated on other grounds by Romer v. Evans*, 517 U.S. 620, 116 S. Ct. 1620, 134 L. Ed. 2d 855 (1996). Only recently have courts broadened "the definition of 'religion' to encompass more than formal doctrines of theology," a move that would "push on eventually to a legal understanding of 'religion' that was virtually indistinguishable from 'private beliefs' of any kind." Hadley Arkes, *First Things: An Inquiry into the First Principles of Morals and Justice* 192 (1986). That change in course, and its deviation from classical principles, deserves a deeper examination in a suitable case.

sufficiently alleged that their objections were tied to their religious beliefs.

Plaintiffs pled that their bodies are sacred, and that vaccination would compromise that sacrosanct quality. *See* 42 U.S.C. 2000e(j) (protecting religious beliefs regardless of faith tradition). Plaintiffs’ ground their objections in Scripture. And they allege that prayer, discernment, and Scriptural study informed their decision. These allegations connect their vaccination objections to their religious principles and raise a plausible inference of protected religious belief under Title VII. *See Lucky v. Landmark Med. of Mich., P.C.*, 103 F.4th 1241, 1243–44 (6th Cir. 2024); *Ringhofer v. Mayo Clinic, Ambulance*, 102 F.4th 894, 901–02 (8th Cir. 2024); *Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1009 (7th Cir. 2024); *Bazinet v. Beth Isr. Lahey Health, Inc.*, 113 F.4th 9, 15–18 (1st Cir. 2024).

The District Court erred by parsing Plaintiffs’ religious beliefs, stating that Plaintiffs “fail[ed] to explain how [their] religious beliefs lead to the conclusion that the COVID-19 vaccine will cause harm to [their] bod[ies].” App. 52. But further explanation is unnecessary at this stage of the case because Plaintiffs’ alleged facts “allow[] the court to draw the reasonable inference” that the beliefs in question were religious. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Rather, on a motion to dismiss, Plaintiffs’ allegations, when accepted as true, are enough to establish that their refusals to vaccinate were “aspects” of their “religious observance.” 42 U.S.C. § 2000e(j).

Likewise, the District Court erred when it

determined Plaintiffs’ objections were medical, not religious. “It is not within the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity of particular litigants’ interpretations of those creeds.” *Hernandez v. Comm’r of Internal Revenue*, 490 U.S. 680, 699 (1989). Nor may “a judge’s disbelief of a complaint’s factual allegations” “countenance” dismissal on a motion to dismiss. *Neitzke v. Williams*, 490 U.S. 319, 327 (1989). And “courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim.” *Emp. Div., Dep’t of Hum. Res. of Ore. v. Smith*, 494 U.S. 872, 887 (1990).²

Concerns that Plaintiffs’ beliefs are insincere or disingenuous attack the merits, not the sufficiency of the pleadings. For now, we consider only the “facial plausibility” of the claim, *Fowler v. UPMC Shadyside*, 578 F.3d 203, 210 (3d Cir. 2009), not “whether a *prima facie* case has been made,” which “is an evidentiary inquiry,” *id.* at 213. Accordingly, “a well-pleaded complaint may proceed even if it strikes a savvy judge

² Our decision in *Fallon* is not to the contrary. There, the objector to a flu vaccine “strongly believe[d] that the flu vaccine may do more harm than good” and alleged that accepting the injection “would violate his conscience as to what is right and what is wrong.” 877 F.3d at 492. Though he alleged he “must follow his conscience,” he did not allege “that these beliefs address fundamental and ultimate questions having to do with deep and imponderable matters.” *Id.* Such individual concerns untethered to “traditional faith” amounted to “medical belief[s],” not religion. *Id.* That is not the case here. *See id.* at 492–93. (“[I]n some circumstances,” “anti-vaccination beliefs” could “be part of a broader religious faith.”).

that actual proof of those facts is improbable, and ‘that a recovery is very remote and unlikely.’” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007) (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974)). Plaintiffs have pled with sufficient specificity so that their claims have “facial plausibility,” making dismissal improper. *Fowler*, 578 F.3d at 210. Accordingly, I respectfully dissent.

APPENDIX B

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

No. 24-1254

TAMMY M. HARVEY,
Appellant

v.

BAYHEALTH MEDICAL CENTER, INC.

On Appeal from the United States District Court
for the District of Delaware
(No. 1-23-cv-00092)

U.S. District Judge: Honorable Richard G. Andrews

Submitted Under Third Circuit L.A.R. 34.1(a)
September 30, 2024

Before: SHWARTZ, MATEY, and SCIRICA,
Circuit Judges.

JUDGMENT

This cause came to be considered on appeal from the United States District Court for the District of Delaware and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on September 30, 2024.

On consideration whereof, it is now hereby

ORDERED that the order of the District Court entered on February 5, 2024, is hereby **AFFIRMED**. Costs shall be taxed against Appellant.

All of the above in accordance with the Opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: November 15, 2024

APPENDIX C

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

No. 24-1248

SHARITI A. LANE,

Appellant

v.

BAYHEALTH MEDICAL CENTER, INC.

On Appeal from the United States District Court
for the District of Delaware
(No. 1-23-cv-00102)

U.S. District Judge: Honorable Richard G. Andrews

Submitted Under Third Circuit L.A.R. 34.1(a)
September 30, 2024

Before: SHWARTZ, MATEY, and SCIRICA,
Circuit Judges.

JUDGMENT

This cause came to be considered on appeal from the United States District Court for the District of Delaware and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on September 30, 2024.

On consideration whereof, it is now hereby

ORDERED that the order of the District Court entered on February 5, 2024, is hereby **AFFIRMED**. Costs shall be taxed against Appellant.

All of the above in accordance with the Opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: November 15, 2024

APPENDIX D

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

No. 24-1251

JANELLE B. CARUANO,
Appellant

v.

BAYHEALTH MEDICAL CENTER, INC.

On Appeal from the United States District Court
for the District of Delaware
(No. 1-23-cv-01284)

U.S. District Judge: Honorable Richard G. Andrews

Submitted Under Third Circuit L.A.R. 34.1(a)
September 30, 2024

Before: SHWARTZ, MATEY, and SCIRICA,
Circuit Judges.

JUDGMENT

This cause came to be considered on appeal from the United States District Court for the District of Delaware and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on September 30, 2024.

On consideration whereof, it is now hereby

ORDERED that the order of the District Court entered on February 2, 2024, is hereby **AFFIRMED**. Costs shall be taxed against Appellant.

All of the above in accordance with the Opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: November 15, 2024

APPENDIX E

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

No. 24-1249

DONNA L. MAHER

Appellant

v.

BAYHEALTH MEDICAL CENTER, INC.

On Appeal from the United States District Court
for the District of Delaware

(No. 1-23-cv-01551)

U.S. District Judge: Honorable Richard G. Andrews

Submitted Under Third Circuit L.A.R. 34.1(a)
September 30, 2024

Before: SHWARTZ, MATEY, and SCIRICA,
Circuit Judges.

JUDGMENT

This cause came to be considered on appeal from the United States District Court for the District of Delaware and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on September 30, 2024.

On consideration whereof, it is now hereby

ORDERED that the order of the District Court entered on February 2, 2024, is hereby **AFFIRMED**. Costs shall be taxed against Appellant.

All of the above in accordance with the Opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: November 15, 2024

APPENDIX F

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

No. 24-1250

SEAN MCCARTHY,

Appellant

v.

BAYHEALTH MEDICAL CENTER, INC.

On Appeal from the United States District Court
for the District of Delaware

(No. 1-23-cv-01336)

U.S. District Judge: Honorable Richard G. Andrews

Submitted Under Third Circuit L.A.R. 34.1(a)
September 30, 2024

Before: SHWARTZ, MATEY, and SCIRICA,
Circuit Judges.

JUDGMENT

This cause came to be considered on appeal from the United States District Court for the District of Delaware and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on September 30, 2024.

On consideration whereof, it is now hereby

ORDERED that the order of the District Court entered on February 2, 2024, is hereby **AFFIRMED**. Costs shall be taxed against Appellant.

All of the above in accordance with the Opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: November 15, 2024

APPENDIX G

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

No. 24-1252

CHERYL L. HAND,

Appellant

v.

BAYHEALTH MEDICAL CENTER, INC.

On Appeal from the United States District Court
for the District of Delaware
(No. 1-23-cv-01548)

U.S. District Judge: Honorable Richard G. Andrews

Submitted Under Third Circuit L.A.R. 34.1(a)
September 30, 2024

Before: SHWARTZ, MATEY, and SCIRICA,
Circuit Judges.

JUDGMENT

This cause came to be considered on appeal from the United States District Court for the District of Delaware and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on September 30, 2024.

On consideration whereof, it is now hereby

ORDERED that the order of the District Court entered on January 31, 2024, is hereby **AFFIRMED**. Costs shall be taxed against Appellant.

All of the above in accordance with the Opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: November 15, 2024

APPENDIX H

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

No. 24-1253

ANDREA L. MALONEY,
Appellant

v.

BAYHEALTH MEDICAL CENTER, INC.

On Appeal from the United States District Court
for the District of Delaware
(No. 1-23-cv-00078)

U.S. District Judge: Honorable Richard G. Andrews

Submitted Under Third Circuit L.A.R. 34.1(a)
September 30, 2024

Before: SHWARTZ, MATEY, and SCIRICA,
Circuit Judges.

JUDGMENT

This cause came to be considered on appeal from the United States District Court for the District of Delaware and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on September 30, 2024.

On consideration whereof, it is now hereby

ORDERED that the order of the District Court entered on January 31, 2024, is hereby **AFFIRMED**. Costs shall be taxed against Appellant.

All of the above in accordance with the Opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: November 15, 2024

APPENDIX I

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

No. 24-1157

BETH A. MCDOWELL,

Appellant

v.

BAYHEALTH MEDICAL CENTER, INC.

On Appeal from the United States District Court
for the District of Delaware

(No. 1-23-cv-01392)

U.S. District Judge: Honorable Richard G. Andrews

Submitted Under Third Circuit L.A.R. 34.1(a)
September 30, 2024

Before: SHWARTZ, MATEY, and SCIRICA,
Circuit Judges.

JUDGMENT

This cause came to be considered on appeal from the United States District Court for the District of Delaware and was submitted pursuant to Third Circuit L.A.R. 34.1(a) on September 30, 2024.

On consideration whereof, it is now hereby

ORDERED that the order of the District Court entered on January 25, 2024, is hereby **AFFIRMED**. Costs shall be taxed against Appellant.

All of the above in accordance with the Opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: November 15, 2024

APPENDIX J

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

TAMMY M. HARVEY,
Plaintiff,

v. Civil Action No. 23-92-RGA

BAYHEALTH MEDICAL CENTER, INC.,
Defendant.

ORDER

For the reasons stated in the accompanying Memorandum Opinion, Defendant's Motion to Dismiss (D.I. 12) is GRANTED in part and DISMISSED as moot in part.

Plaintiff's failure to accommodate claim under Title VII (Count I) is DISMISSED with prejudice.

Plaintiff's claim under DDEA (Count II) is DISMISSED without prejudice.

IT IS SO ORDERED.

Entered this 5th day of February, 2024

/s/
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

TAMMY M. HARVEY,
Plaintiff,

v. Civil Action No. 23-92-RGA

BAYHEALTH MEDICAL CENTER, INC.,
Defendant.

MEMORANDUM OPINION

Gary E. Junge (argued), SCHMITTINGER &
RODRIGUEZ, P.A., Dover, DE,
Attorney for Plaintiff.

Stacy A. Scrivani, Alexis R. Gambale, STEVENS &
LEE, P.C., Wilmington, DE; Lisa M. Scidurlo,
STEVENS & LEE, P.C., King of Prussia, PA; Michael
M. Greenfield (argued), Sasha A. Phillips, STEVENS
& LEE, P.C., Philadelphia, PA; Theresa M. Zechman,
STEVENS & LEE, P.C., Lancaster, PA,
Attorneys for Defendant.

February 5, 2024

ANDREWS, U.S. DISTRICT JUDGE

Before me is Defendant's Motion to Dismiss. (D.I. 12). I have considered the parties' briefing. (D.I. 13, 14, 16). I heard oral argument on January 4, 2024 on a group of cases, including the present action, involving religious discrimination claims with regards to

Defendant's COVID-19 vaccine policy. (Hearing Tr.).¹ For the reasons set forth below, this motion is GRANTED in part and DISMISSED as moot in part.

I. BACKGROUND

This case stems from the COVID-19 pandemic and a healthcare provider's efforts to respond to government vaccination policy. The Amended Complaint (D.I. 6) is the operative complaint and alleges the following facts.

On August 12, 2021, Governor John Carney ordered all Delaware state health care employees either to become vaccinated for the COVID-19 virus by September 30, 2021 or to submit to regular testing for the COVID-19 virus. In November 2021, the Centers for Medicare & Medicaid Services ("CMS") issued a COVID-19 vaccine mandate requiring certain health care facilities, including Defendant, to ensure their staff members were all either vaccinated against COVID-19 or had obtained medical or religious exemptions to taking the vaccine.

Pursuant to Defendant's vaccination policy, employees seeking religious exemption requests were required to submit forms explaining the religious beliefs that formed their basis of their objection to the COVID-19 vaccine. (*See* D.I. 6-1, Ex. A). Employees could attach additional materials, such as letters from

¹ Citations to the transcript of the argument are in the format "Hearing Tr. at_."

religious leaders, to support their exemption request. (*Id.*).

Employees who had their religious exemption requests rejected, and continued to refuse the COVID-19 vaccine, were terminated on February 28, 2022. Plaintiff was one of these employees. Plaintiff subsequently filed the present suit raising religious discrimination claims against Defendant under Title VII (Count I) and the Delaware Discrimination in Employment Act ("DDEA") (Count II). *See* 42 U.S.C. § 2000e; DEL. CODE ANN. tit. 19, § 711. Defendant moves to dismiss Plaintiff's claims pursuant to FED. R. CIV. P. 12(b)(6). (D.I. 12).

II. LEGAL STANDARD

A. Rule 12(b)(6)

Rule 8 requires a complainant to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). Rule 12(b)(6) allows the accused party to bring a motion to dismiss the claim for failing to meet this standard. A Rule 12(b)(6) motion may be granted only if, accepting the well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the complainant, a court concludes that those allegations "could not raise a claim of entitlement to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007).

The factual allegations do not have to be detailed, but they must provide more than labels, conclusions,

or a "formulaic recitation" of the claim elements. *Id.* at 555 ("Factual allegations must be enough to raise a right to relief above the speculative level ... on the assumption that all the allegations in the complaint are true (even if doubtful in fact)."). Moreover, there must be sufficient factual matter to state a facially plausible claim to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The facial plausibility standard is satisfied when the complaint's factual content "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* ("Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." (internal quotation marks omitted)).

B. Failure to Accommodate

Title VII makes it unlawful for an employer to discriminate against an employee based on that employee'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 to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j).

To establish a *prima facie* case of religious discrimination under Title VII based on a failure to accommodate theory, an employee must show that (1) the employee "held a sincere religious belief that

conflicted with a job requirement," (2) the employee "informed their employer of the conflict," and (3) the employee was "disciplined for failing to comply with the conflicting requirement." *Fallon v. Mercy Cath. Med. Ctr. of Se. Pa.*, 877 F.3d 487, 490 (3d Cir. 2017). "Plaintiffs are not required to establish each element to survive a motion to dismiss; they must simply allege sufficient facts to raise a reasonable expectation that discovery will uncover proof of their claims." *Finkbeiner v. Geisinger Clinic*, 623 F. Supp. 3d 458, 465 (M.D. Pa. 2022) (citing *Connelly v. Lane Constr. Corp.*, 809 F.3d 780, 789 (3d Cir. 2016)).

A district court's inquiry into whether a plaintiff has plausibly plead the first prong of a prima facie religious discrimination claim is limited to determining whether the belief is (1) "sincerely held" and (2) religious within the plaintiff's "own scheme of things." *Welsh v. United States*, 398 U.S. 333, 339 (1970) (quoting *United States v. Seeger*, 380 U.S. 163, 185 (1965)).

With respect to the first prong of this inquiry, "[w]hether a belief is sincerely held is a question of fact." *Geerlings v. Tredyffrin/Easttown Sch. Dist.*, 2021 WL 4399672, at *6 (E.D. Pa. Sept. 27, 2021) (citing *Seeger*, 380 U.S. at 185).

With respect to the second prong, determining whether a plaintiff's beliefs are religious "presents a most delicate question." *Africa v. Pennsylvania*, 662 F.2d 1025, 1031 (3d Cir. 1981). "[I]t is nonetheless incumbent upon the court to ensure that the alleged beliefs are rooted in a plaintiff's religion and are

entitled to the broad protections guaranteed thereunder." *Aliano v. Twp. of Maplewood*, 2023 WL 4398493, at *5 (D.N.J. July 7, 2023) (citing *Fallon*, 877 F.3d at 490). "The notion that all of life's activities can be cloaked with religious significance" cannot transform an otherwise secular idea into a religious belief. *Africa*, 662 F.2d at 1035. "[T]he very concept of ordered liberty" precludes allowing any individual "a blanket privilege 'to make his own standards on matters of conduct in which society as a whole has important interests.'" *Africa*, 662 F.2d at 1031 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215-16 (1972)).

The Third Circuit has adopted the three *Africa* factors to differentiate between views that are "religious in nature" and those that are "essentially political, sociological, or philosophical." *Fallon*, 877 F.3d at 490-91 (quoting *Seeger*, 380 U.S. at 164); *Africa*, 662 F.2d at 1032. A judge must determine whether the beliefs in question (1) "address fundamental and ultimate questions having to do with deep and imponderable matters," (2) "are comprehensive in nature," and (3) "are accompanied by certain formal and external signs." *Fallon*, 877 F.3d at 491 (quoting *Africa*, 662 F.2d at 1032) (cleaned up).

The *Africa* court tackled the issue of analyzing non-traditional "religious" beliefs or practices by "look[ing] to familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted 'religions.'" *Africa*, 662 F.2d at 1032 (quoting *Malnak v. Yogi*, 592 F.2d 197, 205 (3d Cir. 1979) (Adams, J.,

concurring)); *Fallon*, 877 F.3d at 491 (describing the process as considering "how a belief may occupy a place parallel to that filled by God in traditionally religious persons."). The *Africa* factors were adopted as "three 'useful indicia' to determine the existence of a religion" pursuant to this "definition by analogy" approach. *Africa*, 662 F.2d at 1032. Their applicability to a person who professes a more widely recognized, "traditional" religion is a little less obvious.² However, because individuals cannot "cloak" all personal beliefs "with religious significance," a court must still scrutinize whether a sincerely held belief, asserted by someone claiming a recognized religion, is sufficiently connected to their religion. *Id.* at 1035; see *Griffin v. Massachusetts Dep't of Revenue*, 2023 WL 4685942, at *5 (D. Mass. July 20, 2023) ("[T]he issue in this case is not whether plaintiff has asserted a plausible claim that she has a personal religious faith. . . . Plaintiff does not claim that she has suffered unlawful discrimination because she believes in God. Rather, she claims that she has suffered unlawful discrimination because she was required to comply with the COVID-19 vaccination requirement. The critical question, therefore, is whether the complaint alleges sufficient plausible facts from which it could be reasonably inferred that being vaccinated against COVID-19 violates a tenet or principle of her religious belief.").

Of course, individuals may have religious beliefs

² Plaintiff follows a recognized religion that already meets the three *Africa* factors. (See D.I. 6 ¶ 17).

which are not widely accepted within their religion. See *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 708 (1981) ("The guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect"); 29 C.F.R. § 1605.1 ("The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee."). Beliefs of this nature would, logically, fail to be sufficiently linked to the individual's claimed religion and need to satisfy the *Africa* standard to qualify as religious beliefs.

"[The DDEA] prohibits employment discrimination in statutory language nearly identical to Title VII." *Spady v. Wesley Coll.*, 2010 WL 3907357, at *3 n. 4 (D. Del. Sept. 29, 2010); see DEL. CODE ANN. tit. 19, § 711(b). "[Courts] evaluate plaintiffs' DDEA claims under the same framework used to evaluate Title VII claims." *Spady*, 2010 WL 3907357, at *3 n. 4 (citing *Witcher v. Sodexo, Inc.*, 247 F. App'x 328, 329 n. 1 (3d Cir. 2007); *Hyland v. Smyrna Sch. Dist.*, 608 F. App'x 79, 83 n. 5 (3d Cir. 2015) (instructing that "the standards under Title VII and the DDEA are generally the same").

C. Disparate Treatment

To establish a prima facie case of religious discrimination under Title VII based on a disparate treatment theory, an employee must show that (1) the employee is "a member of a protected class," (2) the

employee "suffered an adverse employment action," and (3) "nonmembers of the protected class were treated more favorably." *Abramson v. William Paterson Coll. of NJ*, 260 F.3d 265, 281-82 (3d Cir. 2001). Depending on whether the plaintiff proceeds under a pretext or mixed-motive theory, they must ultimately prove that her protected status was either a "motivating" or a "determinative" factor in the employer's challenged action. *Connelly*, 809 F.3d at 787-88.

III. DISCUSSION

A. Failure to Accommodate

At this stage of the case, only one issue exists—whether Plaintiff has sufficiently pled that the belief upon which her objection to receiving the COVID-19 vaccine was based is a religious belief. "[T]o adequately plead a 'religious belief,' a plaintiff must allege some facts regarding the nature of her belief system, as well as facts connecting her objection to that belief system." *Aliano*, 2023 WL 4398493, at *5. "In other words, she must demonstrate that her objection arises from a subjective belief that is tied to her belief system which meets the *Africa* factors." *Id.* (citing *Africa*, 662 F.2d at 1032; *Fallon*, 877 F.2d at 492-93 (concluding that the plaintiff's "anti-vaccination beliefs are not religious" but providing "[t]his is not to say that anti-vaccination beliefs cannot be part of a broader religious faith; in some circumstances, they can, and in those circumstances, they are protected")); see also *Brown v. Child.'s Hosp. of Phila.*, 794 F. App'x 226, 227 (3d Cir. 2020) ("[I]t is not sufficient merely to

hold a 'sincere opposition to vaccination'; rather, the individual must show that the 'opposition to vaccination is a religious belief.'" (quoting *Fallon*, 877 F.3d at 490)); *Griffin v. Massachusetts Dep't of Revenue*, 2023 WL 4685942, at *5 (D. Mass. July 20, 2023); *Ellison v. Inova Health Care Servs.*, 2023 WL 6038016, at *6 (E.D. Va. Sept. 14, 2023) (A plaintiff should "provide[] sufficient allegations regarding [their] subjective personal beliefs, how those beliefs are related to [their] faith, and how those beliefs form the basis of [their] objection to the COVID-19 vaccination."). Defendant argues that Plaintiff's objection to the vaccine stems from Plaintiff's personal moral code rather than from her religious beliefs.³ (D.I. 13 at 8-15; D.I. 16 at 5-9).

Plaintiff's exemption form states, "God has created my being and I choose what I introduce into my body at all times." (D.I. 6-1, Ex. A, at 4 of 4 (quoting 1 Corinthians 6:19 ("Do you not know that your body is a temple of the Holy Spirit, who is in you, whom you have received from God."))). Plaintiff

³ Defendant does not challenge Plaintiff's assertion that her religious faith of non-denominational Christianity meets the *Africa* test. Rather, Defendant argues the beliefs on which Plaintiff's objection to the vaccine is based are secular beliefs based on Plaintiff's personal moral code, as opposed to religious beliefs that form a part of Plaintiff's Christian faith. (See D.I. 13 at 8-15; D.I. 16 at 5-9). I therefore address only the questions at issue: whether Plaintiff has sufficiently connected her objection to the vaccine to a religious belief tied to her Christian faith or whether the beliefs that form the basis of Plaintiff's objection would otherwise satisfy the *Africa* standard.

asserts, "I consider my body to be a blessed and sacred gift from God and I do not believe that God would want me to receive this vaccine." (*Id.* (quoting 1 Corinthians 6:20 ("For you were bought with a price. So glorify God in your body."))). She continues, "I must honor my creator, God, with my body, mind and spirit and decide what I allow to enter my body by putting my God first." (*Id.*).

Plaintiff's objections to the COVID-19 vaccine derive from her beliefs that "God would [not] want me to receive this vaccine" and that she honors God by being the one to "choose" or "decide" what is allowed to enter her body. Plaintiff effectively claims a religiously protected right to make her own judgment about receiving the vaccine. Allowing Plaintiff this type of "God given right to make [her] own choices," *Finkbeiner*, 623 F. Supp. 3d at 465, would enable Plaintiff to "make [her] own standards on matters of conduct in which society as a whole has important interests." *Africa*, 662 F.2d at 1031 (citing *Yoder*, 406 U.S. at 215-16). "[T]he very concept of ordered liberty" precludes this result. *Africa*, 662 F.2d at 1031.

Plaintiff's assertion that she has "prayed about how to accept the COVID-19 vaccine" and believes "that accepting the vaccine would be a violation of [her] conscious and relationship with God" does not save her claim. (D .I. 6-1, Ex. A, 4 of 4; *see also id.* ("I believe in God. I believe the Holy Spirit lives in me. As in James 1:5, I believe in God's promise that 'if anyone lacks wisdom, let him ask God, who gives to all liberally.'")). Allowing Plaintiff the ability to object to anything based on the practice of "praying on it" would

again amount to the type of "blanket privilege" that does not qualify as religious belief under *Africa. Griffin*, 2023 WL 4685942, at *6-7. Several other district courts handling similar religious discrimination cases involving the COVID-19 vaccine have also found such beliefs amounting to "blanket privileges" do not qualify as religious beliefs. *See, e.g., Lucky v. Landmark Med of Mich., P.C.*, 2023 WL 7095085, at *4-7 (E.D. Mich. Oct. 26, 2023); *Ellison*, 2023 WL 6038016, at *5; *Ulrich v. Lancaster Gen. Health*, 2023 WL 2939585, at *5 (E.D. Pa. Apr. 13, 2023); *Blackwell v. Lehigh Valley Health Network*, 2023 WL 362392, at *8 (E.D. Pa. Jan. 23, 2023); *Finkbeiner*, 623 F. Supp. 3d at 465.

Plaintiff's counsel argued that whether a belief amounted to a "blanket privilege" presents an issue of sincerity that should be reserved for a jury. (Hearing Tr. at 33 :3-14). The *Africa* court, however, indicated that a principal reason that courts engaged in the practice of making "uneasy differentiations" between religious and nonreligious beliefs was to prevent any individual from retaining a "blanket privilege 'to make his own standards on matters of conduct in which society as a whole has important interests.'" *See Africa*, 662 F.2d at 1031. I find it proper to consider this question when dealing with religiosity. As noted above, other district courts have likewise examined the "blanket privilege" question at the motion to dismiss stage.

For the reasons stated above, I find Plaintiff's Complaint does not plausibly allege that Plaintiff's objection to receiving the COVID-19 vaccine was based

on a sincerely held religious belief. At oral argument, Plaintiff's counsel agreed that, in the event that I found a plaintiff had not adequately pled a religious belief, dismissal with prejudice was the proper path forward. (Hearing Tr. at 65: 1-9). I will therefore dismiss Plaintiff's failure to accommodate claim under Title VII with prejudice.

B. Disparate Treatment

Defendant argues that Plaintiff has failed to sufficiently plead a religious discrimination claim under Title VII based on disparate treatment. (D.I. 13 at 15). Plaintiff states that she has not yet pled disparate treatment. (D.I. 14 at 19-20). I agree with Defendant that Plaintiff's assertion of "differential treatment" presents some confusion about whether a disparate treatment claim has been raised. (D.I. 16 at 9 n. 21). Nevertheless, since Plaintiff states she is not now pleading disparate treatment, I accept that she is not, and I will dismiss Defendant's argument as moot.

C. Plaintiff's DDEA Claims

A federal court has supplemental jurisdiction over a state law claim when the claim "arise[s] out of a common nucleus of operative fact" with the claims over which the court has original jurisdiction. *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966); see 28 U.S.C. § 1367(a). A federal court "may decline to exercise supplemental jurisdiction over a claim ... if ... the district court has dismissed all claims over which it has original jurisdiction" 28 U.S.C. § 1367(c)(3). Given my disposition of Plaintiff's Title

VII claims, I decline to exercise supplemental jurisdiction over Plaintiff's remaining DDEA claims. I will dismiss Plaintiff's claims under Count II without prejudice.

IV. CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss (D.I. 12) is GRANTED in part and DISMISSED as moot in part.

An appropriate order will issue.

APPENDIX K

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SHARITI A. LANE,
Plaintiff,

v. Civil Action No. 23-102-RGA

BAYHEALTH MEDICAL CENTER, INC.,
Defendant.

ORDER

For the reasons stated in the accompanying Memorandum Opinion, Defendant's Motion to Dismiss (D.I. 13) is GRANTED in part and DISMISSED as moot in part.

Plaintiff's failure to accommodate claim under Title VII (Count I) is DISMISSED with prejudice.

Plaintiff's claim under DDEA (Count II) is DISMISSED without prejudice.

IT IS SO ORDERED.

Entered this 5th day of February, 2024

/s/
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SHARITI A. LANE,
Plaintiff,

v. Civil Action No. 23-102-RGA

BAYHEALTH MEDICAL CENTER, INC.,
Defendant.

MEMORANDUM OPINION

Gary E. Junge (argued), SCHMITTINGER &
RODRIGUEZ, P.A., Dover, DE,
Attorney for Plaintiff.

Stacy A. Scrivani, Alexis R. Gambale, STEVENS &
LEE, P.C., Wilmington, DE; Lisa M. Scidurlo,
STEVENS & LEE, P.C., King of Prussia, PA; Michael
M. Greenfield (argued), Sasha A. Phillips, STEVENS
& LEE, P.C., Philadelphia, PA; Theresa M. Zechman,
STEVENS & LEE, P.C., Lancaster, PA,
Attorneys for Defendant.

February 5, 2024

ANDREWS, U.S. DISTRICT JUDGE

Before me is Defendant's Motion to Dismiss. (D.I. 13). I have considered the parties' briefing. (D.I. 14, 15, 17). I heard oral argument on January 4, 2024 on a group of cases, including the present action, involving religious discrimination claims with regards to

Defendant's COVID-19 vaccine policy. (Hearing Tr.).¹ For the reasons set forth below, this motion is GRANTED in part and DISMISSED as moot in part.

I. BACKGROUND

This case stems from the COVID-19 pandemic and a healthcare provider's efforts to respond to government vaccination policy. The Amended Complaint (D.I. 7) is the operative complaint and alleges the following facts.

On August 12, 2021, Governor John Carney ordered all Delaware state health care employees either to become vaccinated for the COVID-19 virus by September 30, 2021 or to submit to regular testing for the COVID-19 virus. In November 2021, the Centers for Medicare & Medicaid Services ("CMS") issued a COVID-19 vaccine mandate requiring certain health care facilities, including Defendant, to ensure their staff members were all either vaccinated against COVID-19 or had obtained medical or religious exemptions to taking the vaccine.

Pursuant to Defendant's vaccination policy, employees seeking religious exemption requests were required to submit forms explaining the religious beliefs that formed their basis of their objection to the COVID-19 vaccine. (*See* D.I. 7-1, Ex. A). Employees could attach additional materials, such as letters from

¹ Citations to the transcript of the argument are in the format "Hearing Tr. at_."

religious leaders, to support their exemption request. (*Id.*).

Employees who had their religious exemption requests rejected, and continued to refuse the COVID-19 vaccine, were terminated on February 28, 2022. Plaintiff was one of these employees. Plaintiff subsequently filed the present suit raising religious discrimination claims against Defendant under Title VII (Count I) and the Delaware Discrimination in Employment Act ("DDEA") (Count II). *See* 42 U.S.C. § 2000e; DEL. CODE ANN. tit. 19, § 711. Defendant moves to dismiss Plaintiff's claims pursuant to FED. R. CIV. P. 12(b)(6). (D.I. 13).

II. LEGAL STANDARD

A. Rule 12(b)(6)

Rule 8 requires a complainant to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). Rule 12(b)(6) allows the accused party to bring a motion to dismiss the claim for failing to meet this standard. A Rule 12(b)(6) motion may be granted only if, accepting the well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the complainant, a court concludes that those allegations "could not raise a claim of entitlement to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007).

The factual allegations do not have to be detailed, but they must provide more than labels, conclusions,

or a "formulaic recitation" of the claim elements. *Id.* at 555 ("Factual allegations must be enough to raise a right to relief above the speculative level ... on the assumption that all the allegations in the complaint are true (even if doubtful in fact)."). Moreover, there must be sufficient factual matter to state a facially plausible claim to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The facial plausibility standard is satisfied when the complaint's factual content "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* ("Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." (internal quotation marks omitted)).

B. Failure to Accommodate

Title VII makes it unlawful for an employer to discriminate against an employee based on that employee'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 to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j).

To establish a *prima facie* case of religious discrimination under Title VII based on a failure to accommodate theory, an employee must show that (1) the employee "held a sincere religious belief that

conflicted with a job requirement," (2) the employee "informed their employer of the conflict," and (3) the employee was "disciplined for failing to comply with the conflicting requirement." *Fallon v. Mercy Cath. Med. Ctr. of Se. Pa.*, 877 F.3d 487, 490 (3d Cir. 2017). "Plaintiffs are not required to establish each element to survive a motion to dismiss; they must simply allege sufficient facts to raise a reasonable expectation that discovery will uncover proof of their claims." *Finkbeiner v. Geisinger Clinic*, 623 F. Supp. 3d 458, 465 (M.D. Pa. 2022) (citing *Connelly v. Lane Constr. Corp.*, 809 F.3d 780, 789 (3d Cir. 2016)).

A district court's inquiry into whether a plaintiff has plausibly plead the first prong of a prima facie religious discrimination claim is limited to determining whether the belief is (1) "sincerely held" and (2) religious within the plaintiff's "own scheme of things." *Welsh v. United States*, 398 U.S. 333, 339 (1970) (quoting *United States v. Seeger*, 380 U.S. 163, 185 (1965)).

With respect to the first prong of this inquiry, "[w]hether a belief is sincerely held is a question of fact." *Geerlings v. Tredyffrin/Easttown Sch. Dist.*, 2021 WL 4399672, at *6 (E.D. Pa. Sept. 27, 2021) (citing *Seeger*, 380 U.S. at 185).

With respect to the second prong, determining whether a plaintiff's beliefs are religious "presents a most delicate question." *Africa v. Pennsylvania*, 662 F.2d 1025, 1031 (3d Cir. 1981). "[I]t is nonetheless incumbent upon the court to ensure that the alleged beliefs are rooted in a plaintiff's religion and are

entitled to the broad protections guaranteed thereunder." *Aliano v. Twp. of Maplewood*, 2023 WL 4398493, at *5 (D.N.J. July 7, 2023) (citing *Fallon*, 877 F.3d at 490). "The notion that all of life's activities can be cloaked with religious significance" cannot transform an otherwise secular idea into a religious belief. *Africa*, 662 F.2d at 1035. "[T]he very concept of ordered liberty" precludes allowing any individual "a blanket privilege 'to make his own standards on matters of conduct in which society as a whole has important interests.'" *Africa*, 662 F.2d at 1031 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215-16 (1972)).

The Third Circuit has adopted the three *Africa* factors to differentiate between views that are "religious in nature" and those that are "essentially political, sociological, or philosophical." *Fallon*, 877 F.3d at 490-91 (quoting *Seeger*, 380 U.S. at 164); *Africa*, 662 F.2d at 1032. A judge must determine whether the beliefs in question (1) "address fundamental and ultimate questions having to do with deep and imponderable matters," (2) "are comprehensive in nature," and (3) "are accompanied by certain formal and external signs." *Fallon*, 877 F.3d at 491 (quoting *Africa*, 662 F.2d at 1032) (cleaned up).

The *Africa* court tackled the issue of analyzing non-traditional "religious" beliefs or practices by "look[ing] to familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted 'religions.'" *Africa*, 662 F.2d at 1032 (quoting *Malnak v. Yogi*, 592 F.2d 197, 205 (3d Cir. 1979) (Adams, J.,

concurring)); *Fallon*, 877 F.3d at 491 (describing the process as considering "how a belief may occupy a place parallel to that filled by God in traditionally religious persons."). The *Africa* factors were adopted as "three 'useful indicia' to determine the existence of a religion" pursuant to this "definition by analogy" approach. *Africa*, 662 F.2d at 1032. Their applicability to a person who professes a more widely recognized, "traditional" religion is a little less obvious.² However, because individuals cannot "cloak" all personal beliefs "with religious significance," a court must still scrutinize whether a sincerely held belief, asserted by someone claiming a recognized religion, is sufficiently connected to their religion. *Id.* at 1035; see *Griffin v. Massachusetts Dep't of Revenue*, 2023 WL 4685942, at *5 (D. Mass. July 20, 2023) ("[T]he issue in this case is not whether plaintiff has asserted a plausible claim that she has a personal religious faith. . . . Plaintiff does not claim that she has suffered unlawful discrimination because she believes in God. Rather, she claims that she has suffered unlawful discrimination because she was required to comply with the COVID-19 vaccination requirement. The critical question, therefore, is whether the complaint alleges sufficient plausible facts from which it could be reasonably inferred that being vaccinated against COVID-19 violates a tenet or principle of her religious belief.").

Of course, individuals may have religious beliefs

² Plaintiff follows a recognized religion that already meets the three *Africa* factors. (See D.I. 6 ¶ 17).

which are not widely accepted within their religion. See *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 708 (1981) ("The guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect"); 29 C.F.R. § 1605.1 ("The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee."). Beliefs of this nature would, logically, fail to be sufficiently linked to the individual's claimed religion and need to satisfy the *Africa* standard to qualify as religious beliefs.

"[The DDEA] prohibits employment discrimination in statutory language nearly identical to Title VII." *Spady v. Wesley Coll.*, 2010 WL 3907357, at *3 n. 4 (D. Del. Sept. 29, 2010); see DEL. CODE ANN. tit. 19, § 711(b). "[Courts] evaluate plaintiffs' DDEA claims under the same framework used to evaluate Title VII claims." *Spady*, 2010 WL 3907357, at *3 n. 4 (citing *Witcher v. Sodexo, Inc.*, 247 F. App'x 328, 329 n. 1 (3d Cir. 2007); *Hyland v. Smyrna Sch. Dist.*, 608 F. App'x 79, 83 n. 5 (3d Cir. 2015) (instructing that "the standards under Title VII and the DDEA are generally the same").

C. Disparate Treatment

To establish a prima facie case of religious discrimination under Title VII based on a disparate treatment theory, an employee must show that (1) the employee is "a member of a protected class," (2) the

employee "suffered an adverse employment action," and (3) "nonmembers of the protected class were treated more favorably." *Abramson v. William Paterson Coll. of NJ*, 260 F.3d 265, 281-82 (3d Cir. 2001). Depending on whether the plaintiff proceeds under a pretext or mixed-motive theory, they must ultimately prove that her protected status was either a "motivating" or a "determinative" factor in the employer's challenged action. *Connelly*, 809 F.3d at 787-88.

III. DISCUSSION

A. Failure to Accommodate

At this stage of the case, only one issue exists—whether Plaintiff has sufficiently pled that the belief upon which her objection to receiving the COVID-19 vaccine was based is a religious belief. "[T]o adequately plead a 'religious belief,' a plaintiff must allege some facts regarding the nature of her belief system, as well as facts connecting her objection to that belief system." *Aliano*, 2023 WL 4398493, at *5. "In other words, she must demonstrate that her objection arises from a subjective belief that is tied to her belief system which meets the *Africa* factors." *Id.* (citing *Africa*, 662 F.2d at 1032; *Fallon*, 877 F.2d at 492-93 (concluding that the plaintiff's "anti-vaccination beliefs are not religious" but providing "[t]his is not to say that anti-vaccination beliefs cannot be part of a broader religious faith; in some circumstances, they can, and in those circumstances, they are protected")); see also *Brown v. Child.'s Hosp. of Phila.*, 794 F. App'x 226, 227 (3d Cir. 2020) ("[I]t is not sufficient merely to

hold a 'sincere opposition to vaccination'; rather, the individual must show that the 'opposition to vaccination is a religious belief.'" (quoting *Fallon*, 877 F.3d at 490)); *Griffin v. Massachusetts Dep't of Revenue*, 2023 WL 4685942, at *5 (D. Mass. July 20, 2023); *Ellison v. Inova Health Care Servs.*, 2023 WL 6038016, at *6 (E.D. Va. Sept. 14, 2023) (A plaintiff should "provide[] sufficient allegations regarding [their] subjective personal beliefs, how those beliefs are related to [their] faith, and how those beliefs form the basis of [their] objection to the COVID-19 vaccination."). Defendant argues that Plaintiff's objection to the vaccine stems from Plaintiff's personal moral code rather than from her religious beliefs.³ (D.I. 14 at 8-15; D.I. 17 at 5-9).

Plaintiff identifies two categories of beliefs which she argues qualify as religious beliefs. (See D.I. 20 at 6 (placing Plaintiff under the "Cannot change God Given Immune System/Healing Power rests with God" and "Cannot Defile Body Because it is a Temple of the Holy Spirit" categories); D.I. 7 ¶ 19). For the following

³ Defendant does not challenge Plaintiff's assertion that her religious faith of non-denominational Christianity meets the *Africa* test. Rather, Defendant argues the beliefs on which Plaintiff's objection to the vaccine is based are secular beliefs based on Plaintiff's personal moral code, as opposed to religious beliefs that form a part of Plaintiff's Christian faith. (See D.I. 14 at 8-15; D.I. 17 at 5-9). I therefore address only the questions at issue: whether Plaintiff has sufficiently connected her objection to the vaccine to a religious belief tied to her Christian faith or whether the beliefs that form the basis of Plaintiff's objection would otherwise satisfy the *Africa* standard.

reasons, I find Plaintiff has failed to adequately plead facts that show either of these categories are religious beliefs that form the basis of her objection to the COVID-19 vaccine.

1. "God-given Immune System" Belief

Plaintiff's exemption form admits, "I have not been able to find any Scripture from the Bible stating verbatim that I should not vaccinate." (D.I. 7-1, Ex. A, at 3 of 4). She insists, however, "I understand through my translation of the Word of God that the [COVID-19] immunization is contrary to my genuine religious beliefs." (*Id.*). She provides a list of Bible verses that she interprets to "convey[] [her] strong refusal to the [COVID-19] vaccine." (*Id.* at 3-4 of 4; *see, e.g.*, Matthew 9:12 ("...those who are well have no need of a physician, but those who are sick."); 1 Timothy 5:8 ("But if anyone does not provide for his relatives, and especially for the members of his household, he has denied the faith and is worse than an unbeliever.")). Plaintiff asserts, "I do not believe that immunizations can heal, as that is God's job." (*Id.* at 4 of 4). Referencing the Bible verses, she states, "The Bible states that I should visit the doctor when I am sick, not well; therefore, if I were to receive the immunization and become ill[,] I would not be able to provide for my family, thus going against God's Word." (*Id.*).

Plaintiff's objection relies on the premise that she could "become ill" if she "were to receive the immunization." (*Id.*). Plaintiff's belief is "predicated fundamentally on her concerns with the safety of the

vaccine." *Passarella v. Aspirus, Inc.*, 2023 WL 2455681, at *5 (W.D. Wis. Mar. 10, 2023). Plaintiff does "not articulate any religious belief that would prevent her from taking the vaccine if she believed it was safe." *Id.*

The dependence of Plaintiff's objection to the COVID-19 vaccine on her scientific and medical beliefs is also clear from her stance on other vaccines. Plaintiff states, "I was brought up to follow rules and guidelines set by trained experts," and, "Most times this feels right; therefore, I have received immunizations in the past." (D.I. 7-1, Ex. A, at 3-4 of 4). It is therefore clear there is no religious belief preventing Plaintiff from receiving vaccinations in general. Plaintiff's exemption form, however, fails to describe a religious belief that would lead her to object to the COVID-19 vaccine in particular. Plaintiff instead appears to differentiate the vaccines based on whether it "feels right" to adhere to the "rules and guidelines set by trained experts" and based on her medical judgment regarding the "risks and benefits" of the vaccine.⁴ (*Id.* at 4 of 4 ("I have reviewed the facts, weighed risks and benefits, and sought God and His Word in order to help me come to a decision regarding the [COVID-19] vaccine.")). Plaintiff's medical beliefs

⁴ Plaintiff's exemption form does state, "I see a clear difference between helping a health body with medical interventions versus a sick body." (D.I. 7-1, Ex. A, at 4 of 4). I am uncertain on how this notion helps differentiate Plaintiff's stance on the COVID-19 vaccine from her stance on other vaccines, as both still fall under the category of immunizations used as part of preventative care.

do not qualify as religious beliefs under *Africa*. "It takes more than a generalized aversion to harming the body to nudge a practice over the line from medical to religious." *Geerlings*, 2021 WL 4399672, at *7; *see also Fallon*, 877 F.3d at 492. "The notion that we should not harm our bodies is ubiquitous in religious teaching, but a concern that a treatment may do more harm than good is a medical belief, not a religious one." *Geerlings*, 2021 WL 4399672, at *7 (quoting *Fallon*, 877 F.3d at 492) (cleaned up).

At oral argument, Plaintiff's counsel took the position that "[h]arming my body is the religious belief expressed by Plaintiff. (Hearing Tr. at 34: 15-35: 1 2 ("[I]f I believe [the vaccine] is going to cause long-term harm to my body, then my truly-held religious belief is that my body is a temple of the Holy Spirit, and I should put nothing in my body that's going to harm it. That's religious belief.")). Plaintiff's counsel effectively seeks to "cloak[] with religious significance" Plaintiff's concern that the vaccine will harm her body. *Africa*, 662 F.2d at 1035. The Third Circuit has already rejected such a position. *Id.* (explaining "[t]he notion that all of life's activities can be cloaked with religious significance" cannot transform an otherwise secular idea into a religious belief). Several other district courts handling similar religious discrimination cases involving the COVID-19 vaccine have also found such medical judgments do not qualify as religious beliefs. *See, e.g., McKinley v. Princeton Univ.*, 2023 WL 8374486, at *4 (D.N.J. Dec. 1, 2023); *Ellison*, 2023 WL 6038016, at *5; *Winans v. Cox Auto, Inc.*, 2023 WL 2975872, at *4 (E.D. Pa. Apr. 17, 2023); *Ulrich v. Lancaster Gen. Health*, 2023 WL 2939585, at *5 (E.D.

Pa. Apr. 13, 2023); *Passarella*, 2023 WL 2455681, at *5-7; *Geerlings*, 2021 WL 4399672, at *7; *contra*, *Aliano*, 2023 WL 4398493, at *8-9.

Plaintiff's insistence that she "sought God and His Word in order to help [her] come to a decision regarding" the vaccine does not save her claim. (D.I. 7-1, Ex. A, at 4 of 4). Allowing Plaintiff the ability to object to anything based on the practice of "praying on it" would grant her the type of "blanket privilege" that does not qualify as religious belief under *Africa Griffin*, 2023 WL 4685942, at *6-7. "[T]he very concept of ordered liberty precludes allowing' [Plaintiff], or any other person, a blanket privilege 'to make his own standards on matters of conduct in which society as a whole has important interests.'" *Id.* (citing *Yoder*, 406 U.S. at 215-16). Several other district courts handling similar religious discrimination cases involving the COVID-19 vaccine have similarly found such beliefs to amount to "blanket privileges" that do not qualify as religious beliefs. *See, e.g., Lucky*, 2023 WL 7095085, at *4-7; *Ellison*, 2023 WL 6038016, at *5; *Ulrich*, 2023 WL 2939585, at *5; *Blackwell v. Lehigh Valley Health Network*, 2023 WL 362392, at *8 (E.D. Pa. Jan. 23, 2023); *Finkbeiner*, 623 F. Supp. 3d at 465.

Plaintiff's counsel argued that whether a belief amounted to a "blanket privilege" presents an issue of sincerity that should be reserved for a jury. (Hearing Tr. at 33:3-14). The *Africa* court, however, indicated that a principal reason that courts engaged in the practice of making "uneasy differentiations" between religious and nonreligious beliefs was to prevent any individual from retaining a "blanket privilege 'to make

his own standards on matters of conduct in which society as a whole has important interests." *See Africa*, 662 F.2d at 1031. I find it proper to consider this question when dealing with religiosity. As noted above, other district courts have likewise examined the "blanket privilege" question at the motion to dismiss stage.

2. "Body is a Temple" Belief

Plaintiff's exemption form includes the quote, "Or do you not know that your body is a temple of the Holy Spirit within you, whom you have from God? You are not your own ... [.]" (D.I. 7-1, Ex. A, at 3 of 4 (citing 1 Corinthians 6:19)). Plaintiff, however, provides no information regarding how this "Body is a Temple" belief prohibits her from receiving the COVID-19 vaccine. "Plaintiff does not describe her religious beliefs or principles in any meaningful way, or how they relate to vaccines generally, or the COVID-19 vaccine specifically." *Griffin*, 2023 WL 4685942, at *7. Plaintiff "must provide more than conclusory allegations that a belief is religious; [she] must allege facts explaining how a subjective belief is religious in nature and connect [her] objection to that belief." *Ellison*, 2023 WL 6038016, at *7.

For the reasons stated above, I find Plaintiff's Complaint does not plausibly allege that Plaintiff's objection to receiving the COVID-19 vaccine was based on a sincerely held religious belief. At oral argument, Plaintiff's counsel agreed that, in the event that I found a plaintiff had not adequately pled a religious belief, dismissal with prejudice was the proper path

forward. (Hearing Tr. at 65: 1-9). I will therefore dismiss Plaintiff's failure to accommodate claim with prejudice.

B. Disparate Treatment

Defendant argues that Plaintiff has failed to sufficiently plead a religious discrimination claim under Title VII based on disparate treatment. (D.I. 14 at 15). Plaintiff states that she has not yet pled disparate treatment. (D.I. 15 at 18). I agree with Defendant that Plaintiff's assertion of "differential treatment" presents some confusion about whether a disparate treatment claim has been raised. (D.I. 17 at 9 n. 20). Nevertheless, since Plaintiff states she is not now pleading disparate treatment, I accept that she is not, and I will dismiss Defendant's argument as moot.

C. Plaintiff's DDEA Claims

A federal court has supplemental jurisdiction over a state law claim when the claim "arise[s] out of a common nucleus of operative fact" with the claims over which the court has original jurisdiction. *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966); see 28 U.S.C. § 1367(a). A federal court "may decline to exercise supplemental jurisdiction over a claim ... if ... the district court has dismissed all claims over which it has original jurisdiction" 28 U.S.C. § 1367(c)(3). Given my disposition of Plaintiff's Title VII claims, I decline to exercise supplemental jurisdiction over Plaintiff's remaining DDEA claims. I will dismiss Plaintiff's claims under Count II without prejudice.

IV. CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss (D.I. 13) is GRANTED in part and DISMISSED as moot in part.

An appropriate order will issue.

APPENDIX L

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JANELLE B. CARUANO,
Plaintiff,

v. Civil Action No. 23-1284-RGA

BAYHEALTH MEDICAL CENTER, INC.,
Defendant.

ORDER

For the reasons stated in the accompanying Memorandum Opinion, Defendant's Motion to Dismiss (D.I. 23) is GRANTED in part and DISMISSED as moot in part.

Plaintiff's failure to accommodate claim under Title VII (Count I) is DISMISSED with prejudice.

Plaintiff's claim under DDEA (Count II) is DISMISSED without prejudice.

IT IS SO ORDERED.

Entered this 2nd day of February, 2024

/s/
United States District Judge

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Plaintiff,

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BAYHEALTH MEDICAL CENTER, INC.,
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MEMORANDUM OPINION

Gary E. Junge (argued), SCHMITTINGER &
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Attorney for Plaintiff.

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& LEE, P.C., Philadelphia, PA; Theresa M. Zechman,
STEVENS & LEE, P.C., Lancaster, PA,
Attorneys for Defendant.

February 2, 2024

ANDREWS, U.S. DISTRICT JUDGE

Before me is Defendant's Motion to Dismiss. (D.I. 23). I have considered the parties' briefing. (D.I. 24, 25, 27). I heard oral argument on January 4, 2024 on a group of cases, including the present action, involving religious discrimination claims with regards to

Defendant's COVID-19 vaccine policy. (Hearing Tr.).¹ For the reasons set forth below, this motion is GRANTED in part and DISMISSED as moot in part.

I. BACKGROUND

This case stems from the COVID-19 pandemic and a healthcare provider's efforts to respond to government vaccination policy. The Amended Complaint (D.I. 21) is the operative complaint and alleges the following facts.

On August 12, 2021, Governor John Carney ordered all Delaware state health care employees either to become vaccinated for the COVID-19 virus by September 30, 2021 or to submit to regular testing for the COVID-19 virus. In November 2021, the Centers for Medicare & Medicaid Services ("CMS") issued a COVID-19 vaccine mandate requiring certain health care facilities, including Defendant, to ensure their staff members were all either vaccinated against COVID-19 or had obtained medical or religious exemptions to taking the vaccine.

Pursuant to Defendant's vaccination policy, employees seeking religious exemption requests were required to submit forms explaining the religious beliefs that formed their basis of their objection to the COVID-19 vaccine. (*See* D.I. 21-1, Ex. A). Employees could attach additional materials, such as letters from

¹ Citations to the transcript of the argument are in the format "Hearing Tr. at_."

religious leaders, to support their exemption request. (*Id.*).

Employees who had their religious exemption requests rejected, and continued to refuse the COVID-19 vaccine, were terminated on February 28, 2022. Plaintiff was one of these employees. Plaintiff subsequently filed the present suit raising religious discrimination claims against Defendant under Title VII (Count I) and the Delaware Discrimination in Employment Act ("DDEA") (Count II). *See* 42 U.S.C. § 2000e; DEL. CODE ANN. tit. 19, § 711. Defendant moves to dismiss Plaintiff's claims pursuant to FED. R. CIV. P. 12(b)(6). (D.I. 23).

II. LEGAL STANDARD

A. Rule 12(b)(6)

Rule 8 requires a complainant to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). Rule 12(b)(6) allows the accused party to bring a motion to dismiss the claim for failing to meet this standard. A Rule 12(b)(6) motion may be granted only if, accepting the well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the complainant, a court concludes that those allegations "could not raise a claim of entitlement to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007).

The factual allegations do not have to be detailed, but they must provide more than labels, conclusions,

or a "formulaic recitation" of the claim elements. *Id.* at 555 ("Factual allegations must be enough to raise a right to relief above the speculative level ... on the assumption that all the allegations in the complaint are true (even if doubtful in fact)."). Moreover, there must be sufficient factual matter to state a facially plausible claim to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The facial plausibility standard is satisfied when the complaint's factual content "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* ("Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." (internal quotation marks omitted)).

B. Failure to Accommodate

Title VII makes it unlawful for an employer to discriminate against an employee based on that employee'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 to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j).

To establish a *prima facie* case of religious discrimination under Title VII based on a failure to accommodate theory, an employee must show that (1) the employee "held a sincere religious belief that

conflicted with a job requirement," (2) the employee "informed their employer of the conflict," and (3) the employee was "disciplined for failing to comply with the conflicting requirement." *Fallon v. Mercy Cath. Med. Ctr. of Se. Pa.*, 877 F.3d 487, 490 (3d Cir. 2017). "Plaintiffs are not required to establish each element to survive a motion to dismiss; they must simply allege sufficient facts to raise a reasonable expectation that discovery will uncover proof of their claims." *Finkbeiner v. Geisinger Clinic*, 623 F. Supp. 3d 458, 465 (M.D. Pa. 2022) (citing *Connelly v. Lane Constr. Corp.*, 809 F.3d 780, 789 (3d Cir. 2016)).

A district court's inquiry into whether a plaintiff has plausibly plead the first prong of a prima facie religious discrimination claim is limited to determining whether the belief is (1) "sincerely held" and (2) religious within the plaintiff's "own scheme of things." *Welsh v. United States*, 398 U.S. 333, 339 (1970) (quoting *United States v. Seeger*, 380 U.S. 163, 185 (1965)).

With respect to the first prong of this inquiry, "[w]hether a belief is sincerely held is a question of fact." *Geerlings v. Tredyffrin/Easttown Sch. Dist.*, 2021 WL 4399672, at *6 (E.D. Pa. Sept. 27, 2021) (citing *Seeger*, 380 U.S. at 185).

With respect to the second prong, determining whether a plaintiff's beliefs are religious "presents a most delicate question." *Africa v. Pennsylvania*, 662 F.2d 1025, 1031 (3d Cir. 1981). "[I]t is nonetheless incumbent upon the court to ensure that the alleged beliefs are rooted in a plaintiff's religion and are

entitled to the broad protections guaranteed thereunder." *Aliano v. Twp. of Maplewood*, 2023 WL 4398493, at *5 (D.N.J. July 7, 2023) (citing *Fallon*, 877 F.3d at 490). "The notion that all of life's activities can be cloaked with religious significance" cannot transform an otherwise secular idea into a religious belief. *Africa*, 662 F.2d at 1035. "[T]he very concept of ordered liberty" precludes allowing any individual "a blanket privilege 'to make his own standards on matters of conduct in which society as a whole has important interests.'" *Africa*, 662 F.2d at 1031 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215-16 (1972)).

The Third Circuit has adopted the three *Africa* factors to differentiate between views that are "religious in nature" and those that are "essentially political, sociological, or philosophical." *Fallon*, 877 F.3d at 490-91 (quoting *Seeger*, 380 U.S. at 164); *Africa*, 662 F.2d at 1032. A judge must determine whether the beliefs in question (1) "address fundamental and ultimate questions having to do with deep and imponderable matters," (2) "are comprehensive in nature," and (3) "are accompanied by certain formal and external signs." *Fallon*, 877 F.3d at 491 (quoting *Africa*, 662 F.2d at 1032) (cleaned up).

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Of course, individuals may have religious beliefs

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which are not widely accepted within their religion. See *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 708 (1981) ("The guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect"); 29 C.F.R. § 1605.1 ("The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee."). Beliefs of this nature would, logically, fail to be sufficiently linked to the individual's claimed religion and need to satisfy the *Africa* standard to qualify as religious beliefs.

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C. Disparate Treatment

To establish a prima facie case of religious discrimination under Title VII based on a disparate treatment theory, an employee must show that (1) the employee is "a member of a protected class," (2) the

employee "suffered an adverse employment action," and (3) "nonmembers of the protected class were treated more favorably." *Abramson v. William Paterson Coll. of NJ*, 260 F.3d 265, 281-82 (3d Cir. 2001). Depending on whether the plaintiff proceeds under a pretext or mixed-motive theory, they must ultimately prove that her protected status was either a "motivating" or a "determinative" factor in the employer's challenged action. *Connelly*, 809 F.3d at 787-88.

III. DISCUSSION

A. Failure to Accommodate

At this stage of the case, only one issue exists—whether Plaintiff has sufficiently pled that the belief upon which her objection to receiving the COVID-19 vaccine was based is a religious belief. "[T]o adequately plead a 'religious belief,' a plaintiff must allege some facts regarding the nature of her belief system, as well as facts connecting her objection to that belief system." *Aliano*, 2023 WL 4398493, at* 5. "In other words, she must demonstrate that her objection arises from a subjective belief that is tied to her belief system which meets the *Africa* factors." *Id.* (citing *Africa*, 662 F.2d at 1032; *Fallon*, 877 F.2d at 492-93 (concluding that the plaintiff's "anti-vaccination beliefs are not religious" but providing "[t]his is not to say that anti-vaccination beliefs cannot be part of a broader religious faith; in some circumstances, they can, and in those circumstances, they are protected")); see also *Brown v. Child.'s Hosp. of Phila.*, 794 F. App'x 226, 227 (3d Cir. 2020) ("[I]t is not sufficient merely to

hold a 'sincere opposition to vaccination'; rather, the individual must show that the 'opposition to vaccination is a religious belief.'" (quoting *Fallon*, 877 F.3d at 490)); *Griffin v. Massachusetts Dep't of Revenue*, 2023 WL 4685942, at *5 (D. Mass. July 20, 2023); *Ellison v. Inova Health Care Servs.*, 2023 WL 6038016, at *6 (E.D. Va. Sept. 14, 2023) (A plaintiff should "provide[] sufficient allegations regarding [their] subjective personal beliefs, how those beliefs are related to [their] faith, and how those beliefs form the basis of [their] objection to the COVID-19 vaccination."). Defendant argues that Plaintiff's objection to the vaccine stems from Plaintiff's personal moral code rather than from her religious beliefs.³ (D.I. 24 at 8-16; D.I. 27 at 5-8).

Plaintiff identifies three categories of beliefs which she argues qualify as religious beliefs. (See D.I. 30 at 5 (placing Plaintiff under the "Created in the Image of God," "Cannot change God Given Immune System/Healing Power rests with God," "Cannot Defile Body Because it is a Temple of the Holy Spirit"

³ Defendant does not challenge Plaintiff's assertion that her religious faith of non-denominational Christianity meets the *Africa* test. Rather, Defendant argues the beliefs on which Plaintiff's objection to the vaccine is based are secular beliefs based on Plaintiff's personal moral code, as opposed to religious beliefs that form a part of Plaintiff's Christian faith. (See D.I. 24 at 8-16; D.I. 27 at 5-8). I therefore address only the questions at issue; whether Plaintiff has sufficiently connected her objection to the vaccine to a religious belief tied to her Christian faith or whether the beliefs that form the basis of Plaintiff's objection would otherwise satisfy the *Africa* standard.

categories); D.I. 21 ¶ 19). For the following reasons, I find Plaintiff has failed to adequately plead facts that show any of these categories are religious beliefs that form the basis of her objection to the COVID-19 vaccine.

1. "Body is a Temple" Belief

Plaintiff's exemption request form states:

Scripture states in 1 Corinthians 6: 19-20 (NIV Bible) "Do you not know your bodies are temples of the Holy Spirit, who is in you, whom you have received from God? You are not your own; you were bought at a price. Therefore, honor God with your bodies." By the grace of God, my salvation was purchased through the crucifixion of Jesus Christ. It is right to honor God with my body since it is his temple, by controlling what I put into it after discernment with the Lord. 1 Corinthians 3:16-17 (NIV Bible) also states: "Don't you know that you yourselves are God's temple and that God's spirit dwells in our midst? If anyone destroys God's temple, God will destroy that person; for God's temple is sacred, and you together are that temple." 2 Corinthians 7:1 (NIV Bible) "Therefore, since we have these promises, dear friends, let us purify ourselves from everything that contaminates body and spirit, perfecting holiness out of reverence for God." This teaches that we should cleanse ourselves

from every impurity of flesh and spirit.

(D.I. 21-1, Ex. A, at 3 of 4). Plaintiff fails to tie her "Body is a Temple" belief to her objection to the COVID-19 vaccine. She does not explain how her religious beliefs lead to the conclusion that the COVID-19 vaccine constitutes an "impurity."

Instead, Plaintiff argues she "cannot be compelled or shouldn't be forced to do something that goes against God's will." (*Id.*; *see id.* ("'Thy will be done,' God's will, not man's will or my will."); *id.* ("To be forced to do something that violates my beliefs is to sin against God.")). She states, "After careful discernment, prayerfully seeking God and reading Bible scripture, it is my sincere religious belief that the COVID-19 vaccine would be in direct opposition to God's power, authority, and will over my body, life and eternal soul." (*Id.*) Plaintiff asserts, "I cannot violate my Creator or conscience which has been given to me by God." (*Id.*). The letter Plaintiff submitted from her pastor similarly focuses on "the matter of conscience." (*See* D.I. 21-2, Ex. B, at 5 of 5 ("Christians are not of one mind on [the COVID-19 vaccine] issue The Apostle Paul, in his first letter to the church in Corinth (1 Corinthians 8-10), addresses the matter of conscience among individual Christians-that there are times when-without violating our Christianity, we may differ, and specifically on *things taken into the body.*")).

Allowing Plaintiff the ability to object to anything that "goes against God's will" or her "conscience" would amount to the type of "blanket privilege" that does not qualify as religious belief under *Africa*. *See Africa*, 662

F.2d at 1031. "[T]he very concept of ordered liberty precludes allowing' [Plaintiff], or any other person, a blanket privilege 'to make his own standards on matters of conduct in which society as a whole has important interests.'" *Id.* (citing *Yoder*, 406 U.S. at 215-16). Several other district courts handling similar religious discrimination cases involving the COVID-19 vaccine have similarly found such beliefs to amount to "blanket privileges" that do not qualify as religious beliefs. *See, e.g., Lucky v. Landmark Med. of Mich., P. C.*, 2023 WL 7095085, at *4-7 (E.D. Mich. Oct. 26, 2023); *Ellison*, 2023 WL 6038016, at *5; *Ulrich v. Lancaster Gen. Health*, 2023 WL 2939585, at *5 (E.D. Pa. Apr. 13, 2023); *Blackwell v. Lehigh Valley Health Network*, 2023 WL 362392, at *8 (E.D. Pa. Jan. 23, 2023); *Finkbeiner*, 623 F. Supp. 3d at 465.

Plaintiff's counsel argued that whether a belief amounted to a "blanket privilege" presents an issue of sincerity that should be reserved for a jury. (Hearing Tr. at 33:3-14). The *Africa* court, however, indicated that a principal reason that courts engaged in the practice of making "uneasy differentiations" between religious and nonreligious beliefs was to prevent any individual from retaining a "blanket privilege 'to make his own standards on matters of conduct in which society as a whole has important interests.'" *See Africa*, 662 F.2d at 1031. I find it proper to consider this question when dealing with religiosity. As noted above, other district courts have likewise examined the "blanket privilege" question at the motion to dismiss stage.

2. "Image of God" Belief

Plaintiff's exemption form states:

The Holy Scriptures state that we are made in the image of God. "So God created mankind in his own image, in the image of God he created them; male and female he created them." Genesis 1:27 (NIV Bible). We are to be image-bearers of God. "So shall we bear the image of the heavenly man." 1 Corinthians 15:49 (NIV Bible). One day, we will be called into account for all we do for all things done while on this earth, including what we do to our body. "So then, each of us will give an account of ourselves to God." Romans 14:12 (NIV Bible). "For we must all appear before the judgment seat of Christ, so that each of us may receive what is due us for the things done while in the body, whether good or bad." 2 Corinthians 5:10 (NIV Bible).

(D.I. 21-1, Ex. A, at 3 of 4) (cleaned up). Plaintiff fails to tie her "Image of God" belief to her objection to the COVID-19 vaccine. She does not explain how her religious beliefs lead to the conclusion that the COVID-19 vaccine constitutes doing something "bad" to her body. As discussed in the prior section, Plaintiff focuses on her beliefs that she "shouldn't be forced to do something that goes against God's will" and "cannot violate my Creator or conscience which has been given to me by God." (*Id.*). Such beliefs amount to "blanket privileges" and do not qualify as religious beliefs under *Africa*. See *supra* Section III.A. I.

3. "God-given Immune System" Belief

Plaintiff states, "Although I have had vaccines in the past, I now know that they are a sin against the body because God made me with an immune system and I cannot do anything to alter it." (D.I. 21-1, Ex. A, at 3 of 4 (quoting Psalms 139:14 (NIV Bible) ("I am fearfully and wonderfully made."))). She continues, "The COVID-19 vaccine will alter or change my immune system given to me by God, and I cannot inject a substance to change my God-given immune system." (*Id.*). Plaintiff's exemption form, however, lacks any explanation of how altering one's immune system, even if it is "God-given," is prohibited by her religious beliefs.

Furthermore, Plaintiff's refusal to take the vaccine is grounded in her understanding about the negative physical effects the vaccine would have on her body (i.e. that the vaccine "will alter or change my immune system"). Her objection is therefore predicated fundamentally on her scientific and medical concerns with the vaccine. Plaintiff does "not articulate any religious belief that would prevent her from taking the vaccine if she believed it" would not affect her immune system. *Id.* Plaintiff's medical beliefs do not qualify as religious beliefs under *Africa*. Several other district courts handling similar religious discrimination cases involving the COVID-19 vaccine have also found such scientific and medical judgments do not qualify as religious beliefs. *See, e.g., McKinley v. Princeton Univ.*, 2023 WL 8374486, at *4 (D.N.J. Dec. 1, 2023); *Ellison*, 2023 WL 6038016, at *5; *Winans v. Cox Auto, Inc.*, 2023 WL 2975872, at *4 (E.D. Pa. Apr. 17, 2023);

Ulrich, 2023 WL 2939585, at *5; *Passarella*, 2023 WL 2455681, at *5-7; *Geerlings*, 2021 WL 4399672, at *7; *contra, Aliano*, 2023 WL 4398493, at *8-9.

At oral argument, Plaintiff's counsel took the position that medical judgments could qualify as religious beliefs. (See Hearing Tr. at 34:15-35:12 ("[I]f I believe [the vaccine] is going to cause long-term harm to my body, then my truly-held religious belief is that my body is a temple of the Holy Spirit, and I should put nothing in my body that's going to harm it. That's religious belief.")). Plaintiff's counsel effectively seeks to "cloak[] with religious significance" Plaintiff's scientific and medical beliefs about the potential detrimental effects of the vaccine. *Africa*, 662 F.2d at 1035. The Third Circuit has already rejected such a position. *Id.* (explaining "[t]he notion that all of life's activities can be cloaked with religious significance" cannot transform an otherwise secular idea into a religious belief).

For the reasons stated above, I find Plaintiff's Complaint does not plausibly allege that Plaintiff's objection to receiving the COVID-19 vaccine was based on a sincerely held religious belief. At oral argument, Plaintiff's counsel agreed that, in the event that I found a plaintiff had not adequately pled a religious belief, dismissal with prejudice was the proper path forward. (Hearing Tr. at 65: 1-9). I will therefore dismiss Plaintiff's failure to accommodate claim with prejudice.

B. Disparate Treatment

Defendant argues that Plaintiff has failed to

sufficiently plead a religious discrimination claim under Title VII based on disparate treatment. (D.I. 24 at 16). Plaintiff states that she has not yet pled disparate treatment. (D.I. 25 at 20). I agree with Defendant that Plaintiff's assertion of "differential treatment" presents some confusion about whether a disparate treatment claim has been raised. (D.I. 27 at 9 n. 22). Nevertheless, since Plaintiff states she is not now pleading disparate treatment, I accept that she is not, and I will dismiss Defendant's argument as moot.

C. Plaintiff's DDEA Claims

A federal court has supplemental jurisdiction over a state law claim when the claim "arise[s] out of a common nucleus of operative fact" with the claims over which the court has original jurisdiction. *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966); see 28 U.S.C. § 1367(a). A federal court "may decline to exercise supplemental jurisdiction over a claim ... if ... the district court has dismissed all claims over which it has original jurisdiction" 28 U.S.C. § 1367(c)(3). Given my disposition of Plaintiff's Title VII claims, I decline to exercise supplemental jurisdiction over Plaintiff's remaining DDEA claims. I will dismiss Plaintiff's claims under Count II without prejudice.

IV. CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss (DJ. 23) is GRANTED in part and DISMISSED as moot in part.

An appropriate order will issue.

APPENDIX M

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DONNA L. MAHER,
Plaintiff,

v. Civil Action No. 22-1551-RGA

BAYHEALTH MEDICAL CENTER, INC.,
Defendant.

ORDER

For the reasons stated in the accompanying Memorandum Opinion, Defendant's Motion to Dismiss (D.I. 14) is GRANTED in part and DISMISSED as moot in part.

Plaintiff's failure to accommodate claim is DISMISSED with prejudice.

IT IS SO ORDERED.

Entered this 2nd day of February, 2024

/s/
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DONNA L. MAHER,
Plaintiff,

v. Civil Action No. 22-1551-RGA

BAYHEALTH MEDICAL CENTER, INC.,
Defendant.

MEMORANDUM OPINION

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STEVENS & LEE, P.C., Lancaster, PA,
Attorneys for Defendant.

February 2, 2024

ANDREWS, U.S. DISTRICT JUDGE

Before me is Defendant's Motion to Dismiss. (D.I. 14). I have considered the parties' briefing. (D.I. 15, 16, 18). I heard oral argument on January 4, 2024 on a group of cases, including the present action, involving religious discrimination claims with regards to

Defendant's COVID-19 vaccine policy. (Hearing Tr.).¹ For the reasons set forth below, this motion is GRANTED in part and DISMISSED as moot in part.

I. BACKGROUND

This case stems from the COVID-19 pandemic and a healthcare provider's efforts to respond to government vaccination policy. The Amended Complaint (D.I. 8) is the operative complaint and alleges the following facts.

On August 12, 2021, Governor John Carney ordered all Delaware state health care employees either to become vaccinated for the COVID-19 virus by September 30, 2021 or to submit to regular testing for the COVID-19 virus. In November 2021, the Centers for Medicare & Medicaid Services ("CMS") issued a COVID-19 vaccine mandate requiring certain health care facilities, including Defendant, to ensure their staff members were all either vaccinated against COVID-19 or had obtained medical or religious exemptions to taking the vaccine.

Pursuant to Defendant's vaccination policy, employees seeking religious exemption requests were required to submit forms explaining the religious beliefs that formed their basis of their objection to the COVID-19 vaccine. (*See* D.I. 6-1, Ex. A). Employees could attach additional materials, such as letters from

¹ Citations to the transcript of the argument are in the format "Hearing Tr. at_."

religious leaders, to support their exemption request. (*Id.*).

Employees who had their religious exemption requests rejected, and continued to refuse the COVID-19 vaccine, were terminated on February 28, 2022. Plaintiff was one of these employees. Plaintiff subsequently filed the present suit raising religious discrimination claims against Defendant under Title VII (Count I) and the Delaware Discrimination in Employment Act ("DDEA") (Count II). *See* 42 U.S.C. § 2000e; DEL. CODE ANN. tit. 19, § 711. Defendant moves to dismiss Plaintiff's claims pursuant to FED. R. CIV. P. 12(b)(6). (D.I. 14).

II. LEGAL STANDARD

A. Rule 12(b)(6)

Rule 8 requires a complainant to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). Rule 12(b)(6) allows the accused party to bring a motion to dismiss the claim for failing to meet this standard. A Rule 12(b)(6) motion may be granted only if, accepting the well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the complainant, a court concludes that those allegations "could not raise a claim of entitlement to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007).

The factual allegations do not have to be detailed, but they must provide more than labels, conclusions,

or a "formulaic recitation" of the claim elements. *Id.* at 555 ("Factual allegations must be enough to raise a right to relief above the speculative level ... on the assumption that all the allegations in the complaint are true (even if doubtful in fact)."). Moreover, there must be sufficient factual matter to state a facially plausible claim to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The facial plausibility standard is satisfied when the complaint's factual content "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* ("Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." (internal quotation marks omitted)).

B. Failure to Accommodate

Title VII makes it unlawful for an employer to discriminate against an employee based on that employee'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 to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j).

To establish a *prima facie* case of religious discrimination under Title VII based on a failure to accommodate theory, an employee must show that (1) the employee "held a sincere religious belief that

conflicted with a job requirement," (2) the employee "informed their employer of the conflict," and (3) the employee was "disciplined for failing to comply with the conflicting requirement." *Fallon v. Mercy Cath. Med. Ctr. of Se. Pa.*, 877 F.3d 487, 490 (3d Cir. 2017). "Plaintiffs are not required to establish each element to survive a motion to dismiss; they must simply allege sufficient facts to raise a reasonable expectation that discovery will uncover proof of their claims." *Finkbeiner v. Geisinger Clinic*, 623 F. Supp. 3d 458, 465 (M.D. Pa. 2022) (citing *Connelly v. Lane Constr. Corp.*, 809 F.3d 780, 789 (3d Cir. 2016)).

A district court's inquiry into whether a plaintiff has plausibly plead the first prong of a prima facie religious discrimination claim is limited to determining whether the belief is (1) "sincerely held" and (2) religious within the plaintiff's "own scheme of things." *Welsh v. United States*, 398 U.S. 333, 339 (1970) (quoting *United States v. Seeger*, 380 U.S. 163, 185 (1965)).

With respect to the first prong of this inquiry, "[w]hether a belief is sincerely held is a question of fact." *Geerlings v. Tredyffrin/Easttown Sch. Dist.*, 2021 WL 4399672, at *6 (E.D. Pa. Sept. 27, 2021) (citing *Seeger*, 380 U.S. at 185).

With respect to the second prong, determining whether a plaintiff's beliefs are religious "presents a most delicate question." *Africa v. Pennsylvania*, 662 F.2d 1025, 1031 (3d Cir. 1981). "[I]t is nonetheless incumbent upon the court to ensure that the alleged beliefs are rooted in a plaintiff's religion and are

entitled to the broad protections guaranteed thereunder." *Aliano v. Twp. of Maplewood*, 2023 WL 4398493, at *5 (D.N.J. July 7, 2023) (citing *Fallon*, 877 F.3d at 490). "The notion that all of life's activities can be cloaked with religious significance" cannot transform an otherwise secular idea into a religious belief. *Africa*, 662 F.2d at 1035. "[T]he very concept of ordered liberty" precludes allowing any individual "a blanket privilege 'to make his own standards on matters of conduct in which society as a whole has important interests.'" *Africa*, 662 F.2d at 1031 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215-16 (1972)).

The Third Circuit has adopted the three *Africa* factors to differentiate between views that are "religious in nature" and those that are "essentially political, sociological, or philosophical." *Fallon*, 877 F.3d at 490-91 (quoting *Seeger*, 380 U.S. at 164); *Africa*, 662 F.2d at 1032. A judge must determine whether the beliefs in question (1) "address fundamental and ultimate questions having to do with deep and imponderable matters," (2) "are comprehensive in nature," and (3) "are accompanied by certain formal and external signs." *Fallon*, 877 F.3d at 491 (quoting *Africa*, 662 F.2d at 1032) (cleaned up).

The *Africa* court tackled the issue of analyzing non-traditional "religious" beliefs or practices by "look[ing] to familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted 'religions.'" *Africa*, 662 F.2d at 1032 (quoting *Malnak v. Yogi*, 592 F.2d 197, 205 (3d Cir. 1979) (Adams, J.,

concurring)); *Fallon*, 877 F.3d at 491 (describing the process as considering "how a belief may occupy a place parallel to that filled by God in traditionally religious persons."). The *Africa* factors were adopted as "three 'useful indicia' to determine the existence of a religion" pursuant to this "definition by analogy" approach. *Africa*, 662 F.2d at 1032. Their applicability to a person who professes a more widely recognized, "traditional" religion is a little less obvious.² However, because individuals cannot "cloak" all personal beliefs "with religious significance," a court must still scrutinize whether a sincerely held belief, asserted by someone claiming a recognized religion, is sufficiently connected to their religion. *Id.* at 1035; see *Griffin v. Massachusetts Dep't of Revenue*, 2023 WL 4685942, at *5 (D. Mass. July 20, 2023) ("[T]he issue in this case is not whether plaintiff has asserted a plausible claim that she has a personal religious faith. . . . Plaintiff does not claim that she has suffered unlawful discrimination because she believes in God. Rather, she claims that she has suffered unlawful discrimination because she was required to comply with the COVID-19 vaccination requirement. The critical question, therefore, is whether the complaint alleges sufficient plausible facts from which it could be reasonably inferred that being vaccinated against COVID-19 violates a tenet or principle of her religious belief.").

Of course, individuals may have religious beliefs

² Plaintiff follows a recognized religion that already meets the three *Africa* factors. (See D.I. 8 ¶ 13).

which are not widely accepted within their religion. See *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 708 (1981) ("The guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect"); 29 C.F.R. § 1605.1 ("The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee."). Beliefs of this nature would, logically, fail to be sufficiently linked to the individual's claimed religion and need to satisfy the *Africa* standard to qualify as religious beliefs.

"[The DDEA] prohibits employment discrimination in statutory language nearly identical to Title VII." *Spady v. Wesley Coll.*, 2010 WL 3907357, at *3 n. 4 (D. Del. Sept. 29, 2010); see DEL. CODE ANN. tit. 19, § 711(b). "[Courts] evaluate plaintiffs' DDEA claims under the same framework used to evaluate Title VII claims." *Spady*, 2010 WL 3907357, at *3 n. 4 (citing *Witcher v. Sodexo, Inc.*, 247 F. App'x 328, 329 n. 1 (3d Cir. 2007); *Hyland v. Smyrna Sch. Dist.*, 608 F. App'x 79, 83 n. 5 (3d Cir. 2015) (instructing that "the standards under Title VII and the DDEA are generally the same").

C. Disparate Treatment

To establish a prima facie case of religious discrimination under Title VII based on a disparate treatment theory, an employee must show that (1) the employee is "a member of a protected class," (2) the

employee "suffered an adverse employment action," and (3) "nonmembers of the protected class were treated more favorably." *Abramson v. William Paterson Coll. of NJ*, 260 F.3d 265, 281-82 (3d Cir. 2001). Depending on whether the plaintiff proceeds under a pretext or mixed-motive theory, they must ultimately prove that her protected status was either a "motivating" or a "determinative" factor in the employer's challenged action. *Connelly*, 809 F.3d at 787-88.

III. DISCUSSION

A. Failure to Accommodate

At this stage of the case, only one issue exists—whether Plaintiff has sufficiently pled that the belief upon which her objection to receiving the COVID-19 vaccine was based is a religious belief. "[T]o adequately plead a 'religious belief,' a plaintiff must allege some facts regarding the nature of her belief system, as well as facts connecting her objection to that belief system." *Aliano*, 2023 WL 4398493, at *5. "In other words, she must demonstrate that her objection arises from a subjective belief that is tied to her belief system which meets the *Africa* factors." *Id.* (citing *Africa*, 662 F.2d at 1032; *Fallon*, 877 F.2d at 492-93 (concluding that the plaintiff's "anti-vaccination beliefs are not religious" but providing "[t]his is not to say that anti-vaccination beliefs cannot be part of a broader religious faith; in some circumstances, they can, and in those circumstances, they are protected")); *see also Brown v. Child.'s Hosp. of Phila.*, 794 F. App'x 226, 227 (3d Cir. 2020) ("[I]t is not sufficient merely to hold a 'sincere

opposition to vaccination'; rather, the individual must show that the 'opposition to vaccination is a religious belief.'" (quoting *Fallon*, 877 F.3d at 490)); *Griffin v. Massachusetts Dep't of Revenue*, 2023 WL 4685942, at *5 (D. Mass. July 20, 2023); *Ellison v. Inova Health Care Servs.*, 2023 WL 6038016, at *6 (E.D. Va. Sept. 14, 2023) (A plaintiff should "provide[] sufficient allegations regarding [their] subjective personal beliefs, how those beliefs are related to [their] faith, and how those beliefs form the basis of [their] objection to the COVID-19 vaccination."). Defendant argues that Plaintiff's objection to the vaccine stems from Plaintiff's personal moral code rather than from her religious beliefs.³ (D.I. 15 at 7-15; D.I. 18 at 5-9).

Plaintiff identifies two categories of beliefs which she argues qualify as religious beliefs. (See D.I. 21 at 5 (placing Plaintiff under the "Cannot change God Given Immune System/Healing Power rests with God" and "Cannot Defile Body Because it is a Temple of the Holy Spirit" categories); D.I. 8 ¶ 19). For the following reasons, I find Plaintiff has failed to adequately plead facts that either of these categories are religious

³ Defendant does not challenge Plaintiff's assertion that her religious faith of non-denominational Christianity meets the *Africa* test. Rather, Defendant argues the beliefs on which Plaintiff's objection to the vaccine is based are secular beliefs based on Plaintiff's personal moral code, as opposed to religious beliefs that form a part of Plaintiff's Christian faith. (See D.I. 15 at 7-15; D.I. 18 at 5-9). I therefore address only the questions at issue: whether Plaintiff has sufficiently connected her objection to the vaccine to a religious belief tied to her Christian faith or whether the beliefs that form the basis of Plaintiff's objection would otherwise satisfy the *Africa* standard.

beliefs that form the basis of her objection to the COVID-19 vaccine.

1. "God-given Immune System" Belief

Plaintiff's exemption form states, "I have a natural immunity to Covid, and belief that I do not need to be vaccinated against a virus that my body has proven to naturally overcome." (D.I. 8-1, Ex. A, at 3 of 3). She continues, "I have a God-give[n] immune system, supported by healthy lifestyle choices and for these reasons I have declined to take this vaccine." (*Id.*). Plaintiff, however, fails to explain why her religious beliefs prohibit her from receiving the vaccine. Plaintiff's viewpoint is essentially that "the vaccine is unnecessary for her because" she has "a natural immunity to Covid." *Brown*, 794 F. App'x at 247. "But any 'concern that the [COVID-19] vaccine may do more harm than good ... is a medical belief, not a religious one.'" *Id.* (quoting *Fallon*, 877 F.3d at 492).

At oral argument, Plaintiff's counsel took the position that medical judgments could qualify as religious beliefs. (*See* Hearing Tr. at 34:15-35:12 ('[I]f I believe [the vaccine] is going to cause long-term harm to my body, then my truly-held religious belief is that my body is a temple of the Holy Spirit, and I should put nothing in my body that's going to harm it. That's religious belief.')). Plaintiff's counsel effectively seeks to "cloak[] with religious significance" Plaintiff's medical judgment about her body's ability to combat the COVID-19 virus. *Africa*, 662 F.2d at 1035. The Third Circuit has already rejected such a position. *Id.* (explaining "[t]he notion that all of life's activities can

be cloaked with religious significance" cannot transform an otherwise secular idea into a religious belief). Several other district courts handling similar religious discrimination cases involving the COVID-19 vaccine have also found such medical judgments do not qualify as religious beliefs. *See, e.g., McKinley v. Princeton Univ.*, 2023 WL I 8374486, at *4 (D.N.J. Dec. 1, 2023); *Ellison*, 2023 WL 6038016, at *5; *Winans v. Cox Auto, Inc.*, 2023 WL 2975872, at *4 (E.D. Pa. Apr. 17, 2023); *Ulrich v. Lancaster Gen. Health*, 2023 WL 2939585, at *5 (E.D. Pa. Apr. 13, 2023); *Passarella v. Aspirus, Inc.*, 2023 WL 2455681, at *5-7 (W.D. Wis. Mar. 10, 2023); *Geerlings*, 2021 WL 4399672, at *7; *contra, Aliano*, 2023 WL 4398493, at *8-9.

Plaintiff states, "I have made the decision for my life, to manage food/fuel intake, my thought life, and emotions in ways that are beneficial to my health." (D.I. 8-1, Ex. A, at 3 of 3). She asserts, "These choices have been guided and directed through the spiritual guidance of my belief in the teachings of the Holy Bible and Jesus Christ." (*Id.*). Plaintiff's insistence that "Bible verses ... guide [her] life choices for creating and maintaining a healthy mind, emotional state, and body" do not save her claim. (D.I. 8-1, Ex. A, at 3 of 3 (quoting 2 Timothy 1:7 ("For God did not give us a spirit of timidity (of cowardice, of craven and cringing and fawning fear), but [He has given us a spirit] of power and of love and of calm and well-balanced mind and discipline and self-control." (alterations in original)); Ephesians 5:29 ("For no man ever hated his own flesh, but nourishes and carefully protects and cherishes it, as Christ does the church."); 2 Corinthians 6:16 ("For we are the temple of the living

God."); 2 Corinthians 7:1 ("[L]et us purify ourselves from everything that contaminates body and spirit, perfecting holiness out of reverence for God."); Galatians 5:6-23 (" ... walk and live [habitually] in the [Holy] Spirit [responsive to and controlled and guided by the Spirit]; then you will certainly not ratify the cravings and desires of the flesh (of human nature without God)." (alterations in original))). Plaintiff does not explain how her religious beliefs, based on the Bible verses that "guide [her] life choices," prohibit her from receiving the vaccine. "[T]he notion that all of life's activities can be cloaked with religious significance" cannot transform an otherwise secular idea into a religious belief. *Africa*, 662 F.2d at 1035. Plaintiff's decisions about what choices are "health promoting" and what choices are "disease causing" are medical judgments, not religious beliefs. (D.I. 8-1, Ex. A, at 3 of 3 ("The way we cho[ose] to think, eat, and care for ourselves has consequences that will either be health promoting o(r) disease causing.")). "[I]t would be a step too far to count everything she believes about healthy living as a religious practice." *Geerlings*, 2021 WL 4399672, at *7.

2. "Body is a Temple" Belief

Aside from citing Bible verses, Plaintiff provides no information about her "Body is a Temple" belief or how it is connected to her objection to the COVID-19 vaccine. In looking at the entirety of the exemption form, it is possible that Plaintiff is asserting that the vaccine "contaminates" the body because it is "disease causing" or contains "toxic substances." (D.I. 8-1, Ex. A, at 3 of 3). Even with this interpretation, however,

Plaintiff's pleadings fail to lay out the religious beliefs that lead her to this conclusion. Plaintiff's belief is "predicated fundamentally on her concerns with the safety of the vaccine." *Passarella*, 2023 WL 2455681, at *5. She does "not articulate any religious belief that would prevent her from taking the vaccine if she believed it was safe." *Id.* Plaintiff's medical beliefs do not qualify as religious beliefs under *Africa*. "It takes more than a generalized aversion to harming the body to nudge a practice over the line from medical to religious." *Geerlings*, 2021 WL 4399672, at *7; *see also Fallon*, 877 F.3d at 492. "The notion that we should not harm our bodies is ubiquitous in religious teaching, but a concern that a treatment may do more harm than good is a medical belief, not a religious one." *Geerlings*, 2021 WL 4399672, at *7 (quoting *Fallon*, 877 F.3d at 492) (cleaned up).

For the reasons stated above, I find Plaintiff's Complaint does not plausibly allege that Plaintiff's objection to receiving the COVID-19 vaccine was based on a sincerely held religious belief. At oral argument, Plaintiff's counsel agreed that, in the event that I found a plaintiff had not adequately pled a religious belief, dismissal with prejudice was the proper path forward. (Hearing Tr. at 65: 1- 9). I will therefore dismiss Plaintiff's failure to accommodate claim with prejudice.

B. Disparate Treatment

Defendant argues that Plaintiff has failed to sufficiently plead a religious discrimination claim under Title VII based on disparate treatment. (D.I. 15

at 15). Plaintiff states that she has not yet pled disparate treatment. (D.I. 16 at 19). I agree with Defendant that Plaintiff's assertion of "differential treatment" presents some confusion about whether a disparate treatment claim has been raised. (D.I. 18 at 10 n. 21). Nevertheless, since Plaintiff states she is not now pleading disparate treatment, I accept that she is not, and I will dismiss Defendant's argument as moot.

IV. CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss (D.I. 14) is GRANTED in part and DISMISSED as moot in part.

An appropriate order will issue.

APPENDIX N

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SEAN MCCARTHY,
Plaintiff,

v. Civil Action No. 23-1336-RGA

BAYHEALTH MEDICAL CENTER, INC.,
Defendant.

ORDER

For the reasons stated in the accompanying Memorandum Opinion, Defendant's Motion to Dismiss (D.I. 20) is GRANTED in part and DISMISSED as moot in part.

Plaintiff's failure to accommodate claim is DISMISSED with prejudice.

IT IS SO ORDERED.

Entered this 2nd day of February, 2024

/s/
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SEAN MCCARTHY,
Plaintiff,

v. Civil Action No. 23-1336-RGA

BAYHEALTH MEDICAL CENTER, INC.,
Defendant.

MEMORANDUM OPINION

Gary E. Junge (argued), SCHMITTINGER &
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STEVENS & LEE, P.C., Lancaster, PA,
Attorneys for Defendant.

February 2, 2024

ANDREWS, U.S. DISTRICT JUDGE

Before me is Defendant's Motion to Dismiss. (D.I. 20). I have considered the parties' briefing. (D.I. 21, 22, 24). I heard oral argument on January 4, 2024 on a group of cases, including the present action, involving religious discrimination claims with regards to

Defendant's COVID-19 vaccine policy. (Hearing Tr.).¹ For the reasons set forth below, this motion is GRANTED in part and DISMISSED as moot in part.

I. BACKGROUND

This case stems from the COVID-19 pandemic and a healthcare provider's efforts to respond to government vaccination policy. The Amended Complaint (D.I. 20) is the operative complaint and alleges the following facts.

On August 12, 2021, Governor John Carney ordered all Delaware state health care employees either to become vaccinated for the COVID-19 virus by September 30, 2021 or to submit to regular testing for the COVID-19 virus. In November 2021, the Centers for Medicare & Medicaid Services ("CMS") issued a COVID-19 vaccine mandate requiring certain health care facilities, including Defendant, to ensure their staff members were all either vaccinated against COVID-19 or had obtained medical or religious exemptions to taking the vaccine.

Pursuant to Defendant's vaccination policy, employees seeking religious exemption requests were required to submit forms explaining the religious beliefs that formed their basis of their objection to the COVID-19 vaccine. (*See* D.I. 18-1, Ex. A). Employees could attach additional materials, such as letters from

¹ Citations to the transcript of the argument are in the format "Hearing Tr. at_."

religious leaders, to support their exemption request. (*Id.*).

Employees who had their religious exemption requests rejected, and continued to refuse the COVID-19 vaccine, were terminated on February 28, 2022. Plaintiff was one of these employees. Plaintiff subsequently filed the present suit raising religious discrimination claims against Defendant under Title VII (Count I) and the Delaware Discrimination in Employment Act ("DDEA") (Count II). *See* 42 U.S.C. § 2000e; DEL. CODE ANN. tit. 19, § 711. Defendant moves to dismiss Plaintiff's claims pursuant to FED. R. CIV. P. 12(b)(6). (D.I. 20).

II. LEGAL STANDARD

A. Rule 12(b)(6)

Rule 8 requires a complainant to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). Rule 12(b)(6) allows the accused party to bring a motion to dismiss the claim for failing to meet this standard. A Rule 12(b)(6) motion may be granted only if, accepting the well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the complainant, a court concludes that those allegations "could not raise a claim of entitlement to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007).

The factual allegations do not have to be detailed, but they must provide more than labels, conclusions,

or a "formulaic recitation" of the claim elements. *Id.* at 555 ("Factual allegations must be enough to raise a right to relief above the speculative level ... on the assumption that all the allegations in the complaint are true (even if doubtful in fact)."). Moreover, there must be sufficient factual matter to state a facially plausible claim to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The facial plausibility standard is satisfied when the complaint's factual content "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* ("Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." (internal quotation marks omitted)).

B. Failure to Accommodate

Title VII makes it unlawful for an employer to discriminate against an employee based on that employee'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 to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j).

To establish a *prima facie* case of religious discrimination under Title VII based on a failure to accommodate theory, an employee must show that (1) the employee "held a sincere religious belief that

conflicted with a job requirement," (2) the employee "informed their employer of the conflict," and (3) the employee was "disciplined for failing to comply with the conflicting requirement." *Fallon v. Mercy Cath. Med. Ctr. of Se. Pa.*, 877 F.3d 487, 490 (3d Cir. 2017). "Plaintiffs are not required to establish each element to survive a motion to dismiss; they must simply allege sufficient facts to raise a reasonable expectation that discovery will uncover proof of their claims." *Finkbeiner v. Geisinger Clinic*, 623 F. Supp. 3d 458, 465 (M.D. Pa. 2022) (citing *Connelly v. Lane Constr. Corp.*, 809 F.3d 780, 789 (3d Cir. 2016)).

A district court's inquiry into whether a plaintiff has plausibly plead the first prong of a prima facie religious discrimination claim is limited to determining whether the belief is (1) "sincerely held" and (2) religious within the plaintiff's "own scheme of things." *Welsh v. United States*, 398 U.S. 333, 339 (1970) (quoting *United States v. Seeger*, 380 U.S. 163, 185 (1965)).

With respect to the first prong of this inquiry, "[w]hether a belief is sincerely held is a question of fact." *Geerlings v. Tredyffrin/Easttown Sch. Dist.*, 2021 WL 4399672, at *6 (E.D. Pa. Sept. 27, 2021) (citing *Seeger*, 380 U.S. at 185).

With respect to the second prong, determining whether a plaintiff's beliefs are religious "presents a most delicate question." *Africa v. Pennsylvania*, 662 F.2d 1025, 1031 (3d Cir. 1981). "[I]t is nonetheless incumbent upon the court to ensure that the alleged beliefs are rooted in a plaintiff's religion and are

entitled to the broad protections guaranteed thereunder." *Aliano v. Twp. of Maplewood*, 2023 WL 4398493, at *5 (D.N.J. July 7, 2023) (citing *Fallon*, 877 F.3d at 490). "The notion that all of life's activities can be cloaked with religious significance" cannot transform an otherwise secular idea into a religious belief. *Africa*, 662 F.2d at 1035. "[T]he very concept of ordered liberty" precludes allowing any individual "a blanket privilege 'to make his own standards on matters of conduct in which society as a whole has important interests.'" *Africa*, 662 F.2d at 1031 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215-16 (1972)).

The Third Circuit has adopted the three *Africa* factors to differentiate between views that are "religious in nature" and those that are "essentially political, sociological, or philosophical." *Fallon*, 877 F.3d at 490-91 (quoting *Seeger*, 380 U.S. at 164); *Africa*, 662 F.2d at 1032. A judge must determine whether the beliefs in question (1) "address fundamental and ultimate questions having to do with deep and imponderable matters," (2) "are comprehensive in nature," and (3) "are accompanied by certain formal and external signs." *Fallon*, 877 F.3d at 491 (quoting *Africa*, 662 F.2d at 1032) (cleaned up).

The *Africa* court tackled the issue of analyzing non-traditional "religious" beliefs or practices by "look[ing] to familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted 'religions.'" *Africa*, 662 F.2d at 1032 (quoting *Malnak v. Yogi*, 592 F.2d 197, 205 (3d Cir. 1979) (Adams, J.,

concurring)); *Fallon*, 877 F.3d at 491 (describing the process as considering "how a belief may occupy a place parallel to that filled by God in traditionally religious persons."). The *Africa* factors were adopted as "three 'useful indicia' to determine the existence of a religion" pursuant to this "definition by analogy" approach. *Africa*, 662 F.2d at 1032. Their applicability to a person who professes a more widely recognized, "traditional" religion is a little less obvious.² However, because individuals cannot "cloak" all personal beliefs "with religious significance," a court must still scrutinize whether a sincerely held belief, asserted by someone claiming a recognized religion, is sufficiently connected to their religion. *Id.* at 1035; see *Griffin v. Massachusetts Dep't of Revenue*, 2023 WL 4685942, at *5 (D. Mass. July 20, 2023) ("[T]he issue in this case is not whether plaintiff has asserted a plausible claim that she has a personal religious faith. . . . Plaintiff does not claim that she has suffered unlawful discrimination because she believes in God. Rather, she claims that she has suffered unlawful discrimination because she was required to comply with the COVID-19 vaccination requirement. The critical question, therefore, is whether the complaint alleges sufficient plausible facts from which it could be reasonably inferred that being vaccinated against COVID-19 violates a tenet or principle of her religious belief.").

Of course, individuals may have religious beliefs

² Plaintiff follows a recognized religion that already meets the three *Africa* factors. (See D.I. 18 ¶ 17).

which are not widely accepted within their religion. See *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 708 (1981) ("The guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect"); 29 C.F.R. § 1605.1 ("The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee."). Beliefs of this nature would, logically, fail to be sufficiently linked to the individual's claimed religion and need to satisfy the *Africa* standard to qualify as religious beliefs.

"[The DDEA] prohibits employment discrimination in statutory language nearly identical to Title VII." *Spady v. Wesley Coll.*, 2010 WL 3907357, at *3 n. 4 (D. Del. Sept. 29, 2010); see DEL. CODE ANN. tit. 19, § 711(b). "[Courts] evaluate plaintiffs' DDEA claims under the same framework used to evaluate Title VII claims." *Spady*, 2010 WL 3907357, at *3 n. 4 (citing *Witcher v. Sodexo, Inc.*, 247 F. App'x 328, 329 n. 1 (3d Cir. 2007); *Hyland v. Smyrna Sch. Dist.*, 608 F. App'x 79, 83 n. 5 (3d Cir. 2015) (instructing that "the standards under Title VII and the DDEA are generally the same").

C. Disparate Treatment

To establish a prima facie case of religious discrimination under Title VII based on a disparate treatment theory, an employee must show that (1) the employee is "a member of a protected class," (2) the

employee "suffered an adverse employment action," and (3) "nonmembers of the protected class were treated more favorably." *Abramson v. William Paterson Coll. of NJ*, 260 F.3d 265, 281-82 (3d Cir. 2001). Depending on whether the plaintiff proceeds under a pretext or mixed-motive theory, they must ultimately prove that her protected status was either a "motivating" or a "determinative" factor in the employer's challenged action. *Connelly*, 809 F.3d at 787-88.

III. DISCUSSION

A. Failure to Accommodate

At this stage of the case, only one issue exists—whether Plaintiff has sufficiently pled that the belief upon which his objection to receiving the COVID-19 vaccine was based is a religious belief. "[T]o adequately plead a 'religious belief,' a plaintiff must allege some facts regarding the nature of [his] belief system, as well as facts connecting [his] objection to that belief system." *Aliano*, 2023 WL 4398493, at *5. "In other words, [he] must demonstrate that [his] objection arises from a subjective belief that is tied to [his] belief system which meets the *Africa* factors." *Id.* (citing *Africa*, 662 F.2d at 1032; *Fallon*, 877 F.2d at 492-93 (concluding that the plaintiffs "anti-vaccination beliefs are not religious" but providing "[t]his is not to say that anti-vaccination beliefs cannot be part of a broader religious faith; in some circumstances, they can, and in those circumstances, they are protected")); see also *Brown v. Child.'s Hosp. of Phila.*, 794 F. App'x 226, 227 (3d Cir. 2020) ("[I]t is not sufficient merely to

hold a 'sincere opposition to vaccination'; rather, the individual must show that the 'opposition to vaccination is a religious belief.'" (quoting *Fallon*, 877 F.3d at 490)); *Griffin v. Massachusetts Dep't of Revenue*, 2023 WL 4685942, at * 5 (D. Mass. July 20, 2023); *Ellison v. Inova Health Care Servs.*, 2023 WL 6038016, at *6 (E.D. Va. Sept. 14, 2023) (A plaintiff should "provide[] sufficient allegations regarding [their] subjective personal beliefs, how those beliefs are related to [their] faith, and how those beliefs form the basis of [their] objection to the COVID-19 vaccination."). Defendant argues that Plaintiff's objection to the vaccine stems from Plaintiff's personal moral code rather than from his religious beliefs.³ (DJ. 21 at 7-15; DJ. 24 at 5-9).

Plaintiff's exemption request form states, "[A] Christian sincerely believes that his or her body is the living temple of the Holy Spirit of God," and that "we are commanded to present our bodies as a living sacrifice, which is to be holy and pleasing to God. (D.I. 18-2, Ex. A, at 5-6 of 9 (citing 1 Corinthians 6:19 ("Do you not know that your bodies are temples of the Holy

³ Defendant does not challenge Plaintiff's assertion that his religious faith of Christianity meets the *Africa* test. Rather, Defendant argues the beliefs on which Plaintiff's objection to the vaccine is based are secular beliefs based on Plaintiff's personal moral code, as opposed to religious beliefs that form a part of Plaintiff's Christian faith. (See D.I. 21 at 7-15; D.I. 24 at 5-9). I therefore address only the questions at issue: whether Plaintiff has sufficiently connected his objection to the vaccine to a religious belief tied to his Christian faith or whether the beliefs that form the basis of Plaintiff's objection would otherwise satisfy the *Africa* standard.

Spirit, who is in you, whom you have received from God? You are not your own."); Romans 12:1 ("Therefore, I urge you, brothers and sisters, in view of God's mercy, to offer your bodies as a living sacrifice, holy and pleasing to God")). He asserts that "presenting and keeping our bodies in this way, is quite literally, part of how we worship our God." (*Id.* at 6 of 9). He argues, "[F]or someone to ask us to put something into our body that we are uncomfortable with, is antithetical to the very core belief system that we hold." (*Id.* at 6-7 of 9). Plaintiff explains that Christians "are to allow [our] inner peace to 'rule in our hearts' at all times" and "are to make decisions that do not violate that leading of peace." (*Id.* at 8 of 9 (citing Colossians 3:15 ("Let the peace of Christ rule in your hearts, since as members of one body you were called to peace. And be thankful."))). He continues, "If there is something that makes us uncomfortable, and we don't have a peace about it in our hearts, we are to avoid that thing." (*Id.*). With respect to the COVID-19 vaccine, Plaintiff states, "I do not have peace about it whatsoever" and "[b]ecause of that, I simply [cannot] place this vaccine inside of my body, which I believe is the temple of the Holy Spirit of God." (*Id.*)

Plaintiff's belief that he is forbidden from doing something Plaintiff himself is "uncomfortable with" is akin to asserting the type of "blanket privilege" that does not qualify as a religious belief under *Africa*. "[T]he very concept of ordered liberty" requires this result. *Africa*, 662 F.2d at 1031. Plaintiff's analogy to "asking a Muslim man to put pork in his body" is inapt. (D.I. 18-1, Ex. A, at 7 of 9). The specific prohibition against the intake of meat of one particular

animal presented by this tenet of Islam does not rise to the level of allowing an individual 'to make his own standards on matters of conduct in which society as a whole has important interests.'" *Africa*, 662 F.2d at 1031 (quoting *Yoder*, 406 U.S. at 215-16). Several other district courts handling similar religious discrimination cases involving the COVID-19 vaccine have found beliefs similar to the one Plaintiff expresses to amount to "blanket privileges" that do not qualify as religious beliefs. *See, e.g., Lucky v. Landmark Med. of Mich., P.C.*, 2023 WL 7095085, at *4-7 (E.D. Mich. Oct. 26, 2023); *Ellison*, 2023 WL 6038016, at *5; *Ulrich v. Lancaster Gen. Health*, 2023 WL 2939585, at *5 (E.D. Pa. Apr. 13, 2023); *Blackwell v. Lehigh Valley Health Network*, 2023 WL 362392, at *8 (E.D. Pa. Jan. 23, 2023); *Finkbeiner*, 623 F. Supp. 3d at 465.

Plaintiff's counsel argued that whether a belief amounted to a "blanket privilege" presents an issue of sincerity that should be reserved for a jury. (Hearing Tr. at 33:3-14). The *Africa* court, however, indicated that a principal reason that courts engaged in the practice of making "uneasy differentiations" between religious and nonreligious beliefs was to prevent any individual from retaining a "blanket privilege 'to make his own standards on matters of conduct in which society as a whole has important interests.'" *See Africa*, 662 F.2d at 1031. I find it proper to consider this question when dealing with religiosity. As noted above, other district courts have likewise examined the "blanket privilege" question at the motion to dismiss stage.

Plaintiff's claim is not saved by his exposition of the underlying cause of his discomfort regarding the vaccine:

My wife, my five young children and I, have taken other vaccines, but I have been able to make that decision with the ability to evaluate years, and in fact, many decades[,] of the effectiveness of those vaccines. I do not have a problem with putting some medicines or vaccines into my body that have been proven over time to 1) be effective and 2) to have no adverse medical effects. This vaccine has not had the time or track record, as of yet, to provide this comfort level to me. IN fact, I personally know multiple people who have had very adverse reactions to this vaccine. One person in particular is a close family friend of mine that had no prior health issues, but after receiving the [COVID-19] vaccine, was diagnosed with Pericarditis. He and his family have had, and are still having[,] multiple severe difficulties in their life as a result of this. This man is of similar age to me....

....

I will summarize a practical articulation as to where I stand on this issue. I am not against vaccines in general. I am potentially not even against this [COVID-19] vaccine. There simply has not been

enough time and documented results of this vaccine to give me a comfort level that it is something that me, or my family[,] should put into our bodies. As such, I [cannot], in good conscience, receive this vaccine into my body.

(DJ. 18-1, Ex. A, at 7-9 of 9). Plaintiff's statement that he is ~•potentially not even against this [COVID-19] vaccine" demonstrates that his religious beliefs do not contain a teaching prohibiting him for receiving the vaccine. (*Id.* at 9 of 9). Plaintiff's objection is "predicated fundamentally on [his] concerns with the safety of the vaccine." *Passarella v. Aspirus, Inc.*, 2023 WL 2455681, at *5 (W.D. Wis. Mar. 10, 2023). Plaintiff does "not articulate any religious belief that would prevent [him] from taking the vaccine if [he]' believed it was safe." *Id.* Plaintiff's medical beliefs do not qualify as religious beliefs under *Africa*. "It takes more than a generalized aversion to harming the body to nudge a practice over the line from medical to religious." *Geerlings*, 2021 WL 4399672, at *7; *see also Fallon*, 877 F.3d at 492. "The notion that we should not harm our bodies is ubiquitous in religious teaching, but a concern that a treatment may do more harm than good is a medical belief, not a religious one." *Geerlings*, 2021 WL 4399672, at *7 (quoting *Fallon*, 877 F.3d at 492) (cleaned up).

At oral argument, Plaintiff's counsel took the position that "[h]arming my body is the religious belief expressed by Plaintiff. (Hearing Tr. at 34:15-35:12 ("[I]f I believe [the vaccine] is going to cause long-term harm to my body, then my truly-held religious belief is

that my body is a temple of the Holy Spirit, and I should put nothing in my body that's going to harm it. That's religious belief.")). Plaintiff's counsel effectively seeks to "cloak[] with religious significance" Plaintiff's concern that the vaccine may harm his body. *Africa*, 662 F.2d at 1035. The Third Circuit has already rejected such a position. *Id.* (explaining "[T]he notion that all of life's activities can be cloaked with religious significance" cannot transform an otherwise secular idea into a religious belief). Several other district courts handling similar religious discrimination cases involving the COVID-19 vaccine have also found such medical judgments do not qualify as religious beliefs. *See, e.g., McKinley v. Princeton Univ.*, 2023 WL 8374486, at *4 (D.N.J. Dec. 1, 2023); *Ellison*, 2023 WL 6038016, at *5; *Winans v. Cox Auto, Inc.*, 2023 WL 2975872, at *4 (E.D. Pa. Apr. 17, 2023); *Ulrich*, 2023 WL 2939585, at *5; *Passarella*, 2023 WL 2455681, at *5-7; *Geerlings*, 2021 WL 4399672, at *7; *contra, Aliano*, 2023 WL 4398493, at *8-9.

For the reasons stated above, I find Plaintiff's Complaint does not plausibly allege that Plaintiff's objection to receiving the COVID-19 vaccine was based on a sincerely held religious belief. At oral argument, Plaintiff's counsel agreed that, in the event that I found a plaintiff had not adequately pled a religious belief, dismissal with prejudice was the proper path forward. (Hearing Tr. at 65:1-9). I will therefore dismiss Plaintiff's failure to accommodate claim with prejudice.

B. Disparate Treatment

Defendant argues that Plaintiff has failed to sufficiently plead a religious discrimination claim under Title VII based on disparate treatment. (D.I. 21 at 15). Plaintiff states that he has not yet pled disparate treatment. (D.I. 22 at 20). I agree with Defendant that Plaintiff's assertion of "differential treatment" presents some confusion about whether a disparate treatment claim has been raised. (D.I. 24 at 9 n. 22). Nevertheless, since Plaintiff states he is not now pleading disparate treatment, I accept that he is not, and I will dismiss Defendant's argument as moot.

IV. CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss (D.I. 20) is **GRANTED** in part and **DISMISSED** as moot in part.

An appropriate order will issue.

APPENDIX O

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CHERYL L. HAND,
Plaintiff,

v. Civil Action No. 23-1548-RGA

BAYHEALTH MEDICAL CENTER, INC.,
Defendant.

ORDER

For the reasons stated in the accompanying Memorandum Opinion, Defendant's Motion to Dismiss (D.I. 14) is GRANTED in part and DISMISSED as moot in part.

Plaintiff's failure to accommodate claim is DISMISSED with prejudice.

IT IS SO ORDERED.

Entered this 31st day of January, 2024

/s/
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CHERYL L. HAND,
Plaintiff,

v. Civil Action No. 23-1548-RGA

BAYHEALTH MEDICAL CENTER, INC.,
Defendant.

MEMORANDUM OPINION

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January 31, 2024

ANDREWS, U.S. DISTRICT JUDGE

Before me is Defendant's Motion to Dismiss. (D.I. 14). I have considered the parties' briefing. (D.I. 15, 16, 19). I heard oral argument on January 4, 2024 on a group of cases, including the present action, involving religious discrimination claims with regards to

Defendant's COVID-19 vaccine policy. (Hearing Tr.).¹ For the reasons set forth below, this motion is GRANTED in part and DISMISSED as moot in part.

I. BACKGROUND

This case stems from the COVID-19 pandemic and a healthcare provider's efforts to respond to government vaccination policy. The Amended Complaint (D.I. 8) is the operative complaint and alleges the following facts.

On August 12, 2021, Governor John Carney ordered all Delaware state health care employees either to become vaccinated for the COVID-19 virus by September 30, 2021 or to submit to regular testing for the COVID-19 virus. In November 2021, the Centers for Medicare & Medicaid Services ("CMS") issued a COVID-19 vaccine mandate requiring certain health care facilities, including Defendant, to ensure their staff members were all either vaccinated against COVID-19 or had obtained medical or religious exemptions to taking the vaccine.

Pursuant to Defendant's vaccination policy, employees seeking religious exemption requests were required to submit forms explaining the religious beliefs that formed their basis of their objection to the COVID-19 vaccine. (*See* D.I. 8-1, Ex. A). Employees could attach additional materials, such as letters from

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religious leaders, to support their exemption request. (*Id.*).

Employees who had their religious exemption requests rejected, and continued to refuse the COVID-19 vaccine, were terminated on February 28, 2022. Plaintiff was one of these employees. Plaintiff subsequently filed the present suit raising religious discrimination claims against Defendant under Title VII (Count I) and the Delaware Discrimination in Employment Act ("DDEA") (Count II). *See* 42 U.S.C. § 2000e; DEL. CODE ANN. tit. 19, § 711. Defendant moves to dismiss Plaintiff's claims pursuant to FED. R. CIV. P. 12(b)(6). (D.I. 14).

II. LEGAL STANDARD

A. Rule 12(b)(6)

Rule 8 requires a complainant to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). Rule 12(b)(6) allows the accused party to bring a motion to dismiss the claim for failing to meet this standard. A Rule 12(b)(6) motion may be granted only if, accepting the well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the complainant, a court concludes that those allegations "could not raise a claim of entitlement to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007).

The factual allegations do not have to be detailed, but they must provide more than labels, conclusions,

or a "formulaic recitation" of the claim elements. *Id.* at 555 ("Factual allegations must be enough to raise a right to relief above the speculative level ... on the assumption that all the allegations in the complaint are true (even if doubtful in fact)."). Moreover, there must be sufficient factual matter to state a facially plausible claim to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The facial plausibility standard is satisfied when the complaint's factual content "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* ("Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." (internal quotation marks omitted)).

B. Failure to Accommodate

Title VII makes it unlawful for an employer to discriminate against an employee based on that employee'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 to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j).

To establish a *prima facie* case of religious discrimination under Title VII based on a failure to accommodate theory, an employee must show that (1) the employee "held a sincere religious belief that

conflicted with a job requirement," (2) the employee "informed their employer of the conflict," and (3) the employee was "disciplined for failing to comply with the conflicting requirement." *Fallon v. Mercy Cath. Med. Ctr. of Se. Pa.*, 877 F.3d 487, 490 (3d Cir. 2017). "Plaintiffs are not required to establish each element to survive a motion to dismiss; they must simply allege sufficient facts to raise a reasonable expectation that discovery will uncover proof of their claims." *Finkbeiner v. Geisinger Clinic*, 623 F. Supp. 3d 458, 465 (M.D. Pa. 2022) (citing *Connelly v. Lane Constr. Corp.*, 809 F.3d 780, 789 (3d Cir. 2016)).

A district court's inquiry into whether a plaintiff has plausibly plead the first prong of a prima facie religious discrimination claim is limited to determining whether the belief is (1) "sincerely held" and (2) religious within the plaintiff's "own scheme of things." *Welsh v. United States*, 398 U.S. 333, 339 (1970) (quoting *United States v. Seeger*, 380 U.S. 163, 185 (1965)).

With respect to the first prong of this inquiry, "[w]hether a belief is sincerely held is a question of fact." *Geerlings v. Tredyffrin/Easttown Sch. Dist.*, 2021 WL 4399672, at *6 (E.D. Pa. Sept. 27, 2021) (citing *Seeger*, 380 U.S. at 185).

With respect to the second prong, determining whether a plaintiff's beliefs are religious "presents a most delicate question." *Africa v. Pennsylvania*, 662 F.2d 1025, 1031 (3d Cir. 1981). "[I]t is nonetheless incumbent upon the court to ensure that the alleged beliefs are rooted in a plaintiff's religion and are

entitled to the broad protections guaranteed thereunder." *Aliano v. Twp. of Maplewood*, 2023 WL 4398493, at *5 (D.N.J. July 7, 2023) (citing *Fallon*, 877 F.3d at 490). "The notion that all of life's activities can be cloaked with religious significance" cannot transform an otherwise secular idea into a religious belief. *Africa*, 662 F.2d at 1035. "[T]he very concept of ordered liberty" precludes allowing any individual "a blanket privilege 'to make his own standards on matters of conduct in which society as a whole has important interests.'" *Africa*, 662 F.2d at 1031 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215-16 (1972)).

The Third Circuit has adopted the three *Africa* factors to differentiate between views that are "religious in nature" and those that are "essentially political, sociological, or philosophical." *Fallon*, 877 F.3d at 490-91 (quoting *Seeger*, 380 U.S. at 164); *Africa*, 662 F.2d at 1032. A judge must determine whether the beliefs in question (1) "address fundamental and ultimate questions having to do with deep and imponderable matters," (2) "are comprehensive in nature," and (3) "are accompanied by certain formal and external signs." *Fallon*, 877 F.3d at 491 (quoting *Africa*, 662 F.2d at 1032) (cleaned up).

The *Africa* court tackled the issue of analyzing non-traditional "religious" beliefs or practices by "look[ing] to familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted 'religions.'" *Africa*, 662 F.2d at 1032 (quoting *Malnak v. Yogi*, 592 F.2d 197, 205 (3d Cir. 1979) (Adams, J.,

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Of course, individuals may have religious beliefs

² Plaintiff follows a recognized religion that already meets the three *Africa* factors. (See D.I. 8 ¶ 13).

which are not widely accepted within their religion. *See Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 708 (1981) ("The guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect"); 29 C.F.R. § 1605.1 ("The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee."). Beliefs of this nature would, logically, fail to be sufficiently linked to the individual's claimed religion and need to satisfy the *Africa* standard to qualify as religious beliefs.

C. Disparate Treatment

To establish a prima facie case of religious discrimination under Title VII based on a disparate treatment theory, an employee must show that (1) the employee is "a member of a protected class," (2) the employee "suffered an adverse employment action," and (3) "nonmembers of the protected class were treated more favorably." *Abramson v. William Paterson Coll. of N.J.*, 260 F.3d 265, 281-82 (3d Cir. 2001). Depending on whether the plaintiff proceeds under a pretext or mixed-motive theory, they must ultimately prove that her protected status was either a "motivating" or a "determinative" factor in the employer's challenged action. *Connelly*, 809 F.3d at 787-88.

III. DISCUSSION

A. Failure to Accommodate

At this stage of the case, only one issue exists—whether Plaintiff has sufficiently pled that the belief upon which her objection to receiving the COVID-19 vaccine was based is a religious belief. "[T]o adequately plead a 'religious belief,' a plaintiff must allege some facts regarding the nature of her belief system, as well as facts connecting her objection to that belief system." *Aliano*, 2023 WL 4398493, at *5. "In other words, she must demonstrate that her objection arises from a subjective belief that is tied to her belief system which meets the *Africa* factors." *Id.* (citing *Africa*, 662 F.2d at 1032; *Fallon*, 877 F.2d at 492-93 (concluding that the plaintiff's "anti-vaccination beliefs are not religious" but providing "[t]his is not to say that anti-vaccination beliefs cannot be part of a broader religious faith; in some circumstances, they can, and in those circumstances, they are protected")); see also *Brown v. Child.'s Hosp. of Phila.*, 794 F. App'x 226, 227 (3d Cir. 2020) ("[I]t is not sufficient merely to hold a 'sincere opposition to vaccination'; rather, the individual must show that the 'opposition to vaccination is a religious belief.'" (quoting *Fallon*, 877 F.3d at 490)); *Griffin v. Massachusetts Dep't of Revenue*, 2023 WL 4685942, at *5 (D. Mass. July 20, 2023); *Ellison v. Inova Health Care Servs.*, 2023 WL 6038016, at *6 (E.D. Va. Sept. 14, 2023) (A plaintiff should "provide[] sufficient allegations regarding [their] subjective personal beliefs, how those beliefs are related to [their] faith, and how those beliefs form the basis of [their] objection to the COVID-19 vaccination."). Defendant argues that Plaintiff's objection to the vaccine stems from Plaintiff's personal

moral code rather than from her religious beliefs.³ (D.I.15 at 7-15; D.I.19 at 5-8).

Plaintiff identifies two categories of beliefs that she argues qualify as religious beliefs. (See D.I. 22 at 5 (placing Plaintiff under the "Cannot Defile Body Because it is a Temple of the Holy Spirit" and "mRNA changing DNA that God created us with" categories); D.I. 8 ¶ 19). For the following reasons, I find Plaintiff has failed to adequately plead facts that show any of these categories are religious beliefs that form the basis of her objection to the COVID-19 vaccine.

1. "Body is a Temple" Belief

Plaintiff's exemption form maintains that "[t]he Bible states the body is the temple of the Holy Spirit—we are to take care of our bodies and not to defile it, and certainly we should not introduce something into our body willingly, that could potentially harm it." (D.I. 8-1, Ex. A, at 4 of 5 (citing 1 Corinthians 3:16-17 ("Do you not know that you are the temple of God and that the spirit dwells in you? If

³ Defendant does not challenge Plaintiff's assertion that her religious faith of non-denominational Christianity meets the *Africa* test. Rather, Defendant argues the beliefs on which Plaintiff's objection to the vaccine is based are secular beliefs based on Plaintiff's personal moral code, as opposed to religious beliefs that form a part of Plaintiff's Christian faith. (See D.I. 15 at 7-15; D.I. 19 at 5-8). I therefore address only the questions at issue: whether Plaintiff has sufficiently connected her objection to the vaccine to a religious belief tied to her Christian faith or whether the beliefs that form the basis of Plaintiff's objection would otherwise satisfy the *Africa* standard.

anyone defiles the temple of God, God will destroy him. For the temple of God is holy, which temple you are."))). Plaintiff's statement makes clear that her objection relies on a belief that the COVID-19 vaccine "could potentially harm" her body. Plaintiff, however, fails to explain how her religious beliefs lead to the conclusion that the COVID-19 vaccine will cause harm to her body.

Plaintiff's belief is "predicated fundamentally on her concerns with the safety of the vaccine." *Passarella v. Aspirus, Inc.*, 2023 WL 2455681, at *5 (W.D. Wis. Mar. 10, 2023). Plaintiff does "not articulate any religious belief that would prevent her from taking the vaccine if she believed it was safe." *Id.* Plaintiff's medical beliefs do not qualify as religious beliefs under *Africa*. "It takes more than a generalized aversion to harming the body to nudge a practice over the line from medical to religious." *Geerlings*, 2021 WL 4399672, at *7; *see also Fallon*, 877 F.3d at 492. "The notion that we should not harm our bodies is ubiquitous in religious teaching, but a concern that a treatment may do more harm than good is a medical belief, not a religious one." *Geerlings*, 2021 WL 4399672, at *7 (quoting *Fallon*, 877 F.3d at 492) (cleaned up).

At oral argument, Plaintiff's counsel took the position that "[h]arming my body is the religious belief" expressed by Plaintiff. (Hearing Tr. at 34:15-35:12 ("[I]f I believe [the vaccine] is going to cause long-term harm to my body, then my truly-held religious belief is that my body is a temple of the Holy Spirit, and I should put nothing in my body that's

going to harm it. That's religious belief.")). Plaintiff's counsel effectively seeks to "cloak[] with religious significance" Plaintiff's concern that the vaccine will harm her body. *Africa*, 662 F.2d at 1035. The Third Circuit has already rejected such a position. *Id.* (explaining "[t]he notion that all of life's activities can be cloaked with religious significance" cannot transform an otherwise secular idea into a religious belief). Several other district courts handling similar religious discrimination cases involving the COVID-19 vaccine have also found such medical judgments do not qualify as religious beliefs. *See, e.g., McKinley v. Princeton Univ.*, 2023 WL 8374486, at *4 (D.N.J. Dec. 1, 2023); *Ellison*, 2023 WL 6038016, at *5; *Winans v. Cox Auto, Inc.*, 2023 WL 2975872, at *4 (E.D. Pa. Apr. 17, 2023); *Ulrich v. Lancaster Gen. Health*, 2023 WL 2939585, at *5 (E.D. Pa. Apr. 13, 2023); *Passarella*, 2023 WL 2455681, at *5-7; *Geerlings*, 2021 WL 4399672, at *7; *contra, Aliano*, 2023 WL 4398493, at *8-9.

Plaintiff's insistence that she "would be going against God and the Holy Spirit's convictions" if she received the vaccine does not save her claim. (D.I. 8-1, Ex. A, at 4 of 5). Plaintiff asserts, "I believe the Holy Spirit lives within me and leads me and guides me," and "I have prayed and asked God for wisdom and guidance and I believe the Holy Spirit has moved on my heart and consci[ence] not to take the vaccine." (*Id.* at 4-5 of 5 (citing John 16:13 ("However, when He, the Spirit of truth, has come, He will guide you into all truth; for He will not speak on His own authority, but whatever He hears. He will speak; and He will tell you things to come."))). Forcing Defendant to "unfailingly

respect" any decisions Plaintiff makes by "pray[ing] and ask[ing] God for wisdom and guidance" would grant her the type of "blanket privilege" that does not qualify as religious belief under *Africa. Finkbeiner*, 623 F. Supp. 3d at 465; see *Lucky v. Landmark Med of Mich., P.C.*, 2023 WL 7095085, at *4-7 (E.D. Mich. Oct. 26, 2023); *Ellison*, 2023 WL 6038016, at *5; *Griffin*, 2023 WL 4685942, at *6-7. "[T]he very concept of ordered liberty precludes allowing' [Plaintiff], or any other person, a blanket privilege 'to make his own standards on matters of conduct in which society as a whole has important interests.'" *Id.* (citing *Yoder*, 406 U.S. at 215-16). Several other district courts handling similar religious discrimination cases involving the COVID-19 vaccine have similarly found such beliefs to amount to "blanket privileges" that do not qualify as religious beliefs. See, e.g., *Lucky*, 2023 WL 7095085, at *4-7; *Ellison*, 2023 WL 6038016, at *5; *Ulrich*, 2023 WL 2939585, at *5; *Blackwell v. Lehigh Valley Health Network*, 2023 WL 362392, at *8 (E.D. Pa. Jan. 23, 2023); *Finkbeiner*, 623 F. Supp. 3d at 465.

Plaintiff's counsel argued that whether a belief amounted to a "blanket privilege" presents an issue of sincerity that should be reserved for a jury. (Hearing Tr. at 33:3-14). The *Africa* court, however, indicated that a principal reason that courts engaged in the practice of making "uneasy differentiations" between religious and nonreligious beliefs was to prevent any individual from retaining a "blanket privilege 'to make his own standards on matters of conduct in which society as a whole has important interests.'" See *Africa*, 662 F.2d at 1031. I find it proper to consider this question when dealing with religiosity. As noted

above, other district courts have likewise examined the "blanket privilege" question at the motion to dismiss stage.

2. "mRNA changing DNA" Belief

Plaintiff's exemption form states:

The COVID-19 vaccines are the first mRNA vaccines. They do not act in the same way as traditional vaccines. Instead of using a fragment of dead viruses as an adjunct to an immune response, the COVID-19 vaccine products are genetic coding instructions that instruct the body to produce a spike protein that is not natural to our own human genetic system. There are studies that have shown the protein will stay around your cells much longer than the actual virus and is also engineered such that it is efficient at being transferred into protein which increases the probability that it will be integrated into your DNA, thus altering the DNA that God created us with.

(D.I. 8-1, Ex. A, at 4 of 5). Plaintiff's refusal to take the vaccine is grounded in her understanding about the negative physical effects the vaccine might have on her body, which in turn stems from studies she has read regarding how the vaccine functions. Plaintiff's objection is therefore based fundamentally on her scientific and medical beliefs about the vaccine. Such medical and scientific judgments do not qualify as

religious beliefs. *See supra* pp. 9-10.

Furthermore, Plaintiff's exemption form lacks any explanation of how altering one's DNA, even if it is the one "God created us with," is prohibited by her religious beliefs. In looking at the surrounding sentences in Plaintiff's form, it is possible that Plaintiff is asserting that altering her DNA would constitute harming her body (as prohibited by Plaintiff's "Body is a Temple" belief). Even with this interpretation, however, Plaintiff's pleadings fail to lay out the religious beliefs that lead her to this conclusion. Plaintiff's aversion to harming her body appears to be a medical belief that she attempts to "cloak[] with religious significance." *Africa*, 662 F.2d at 1035; *see supra* pp. 9-10.

For the reasons stated above, I find Plaintiff's Complaint does not plausibly allege that Plaintiff's objection to receiving the COVID-19 vaccine was based on a sincerely held religious belief. At oral argument, Plaintiff's counsel agreed that, in the event that I found a plaintiff had not adequately pled a religious belief, dismissal with prejudice was the proper path forward. (Hearing Tr. at 65:1-9). I will therefore dismiss Plaintiff's failure to accommodate claim with prejudice.

B. Disparate Treatment

Defendant argues that Plaintiff has failed to sufficiently plead a religious discrimination claim under Title VII based on disparate treatment. (D.I. 15 at 15). Plaintiff states that she has not yet pled

disparate treatment. (D.I. 16 at 18-19). I agree with Defendant that Plaintiff's assertion of "differential treatment" presents some confusion about whether a disparate treatment claim has been raised. (D .I. 19 at 8 n. 21). Nevertheless, since Plaintiff states she is not now pleading disparate treatment, I accept that she is not, and I **will** dismiss Defendant's argument as moot.

IV. CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss (D.I. 14) is **GRANTED** in part and **DISMISSED** as moot in part.

An appropriate order will issue.

APPENDIX P

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ANDREA L. MALONEY,
Plaintiff,

v. Civil Action No. 23-78-RGA

BAYHEALTH MEDICAL CENTER, INC.,
Defendant.

ORDER

For the reasons stated in the accompanying Memorandum Opinion, Defendant's Motion to Dismiss (D.I. 14) is GRANTED in part and DISMISSED as moot in part.

Plaintiff's failure to accommodate claim under Title VII (Count I) is DISMISSED with prejudice.

Plaintiff's claim under DDEA (Count II) is DISMISSED without prejudice.

IT IS SO ORDERED.

Entered this 31st day of January, 2024

/s/
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ANDREA L. MALONEY,
Plaintiff,

v. Civil Action No. 23-78-RGA

BAYHEALTH MEDICAL CENTER, INC.,
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MEMORANDUM OPINION

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& LEE, P.C., Philadelphia, PA; Theresa M. Zechman,
STEVENS & LEE, P.C., Lancaster, PA,
Attorneys for Defendant.

January 31, 2024

ANDREWS, U.S. DISTRICT JUDGE

Before me is Defendant's Motion to Dismiss. (D.I. 14). I have considered the parties' briefing. (D.I. 15, 16, 18). I heard oral argument on January 4, 2024 on a group of cases, including the present action, involving religious discrimination claims with regards to

Defendant's COVID-19 vaccine policy. (Hearing Tr.).¹ For the reasons set forth below, this motion is GRANTED in part and DISMISSED as moot in part.

I. BACKGROUND

This case stems from the COVID-19 pandemic and a healthcare provider's efforts to respond to government vaccination policy. The Amended Complaint (D.I. 8) is the operative complaint and alleges the following facts.

On August 12, 2021, Governor John Carney ordered all Delaware state health care employees either to become vaccinated for the COVID-19 virus by September 30, 2021 or to submit to regular testing for the COVID-19 virus. In November 2021, the Centers for Medicare & Medicaid Services ("CMS") issued a COVID-19 vaccine mandate requiring certain health care facilities, including Defendant, to ensure their staff members were all either vaccinated against COVID-19 or had obtained medical or religious exemptions to taking the vaccine.

Pursuant to Defendant's vaccination policy, employees seeking religious exemption requests were required to submit forms explaining the religious beliefs that formed their basis of their objection to the COVID-19 vaccine. (*See* D.I. 6-1, Ex. A). Employees could attach additional materials, such as letters from

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religious leaders, to support their exemption request. (*Id.*).

Employees who had their religious exemption requests rejected, and continued to refuse the COVID-19 vaccine, were terminated on February 28, 2022. Plaintiff was one of these employees. Plaintiff subsequently filed the present suit raising religious discrimination claims against Defendant under Title VII (Count I) and the Delaware Discrimination in Employment Act ("DDEA") (Count II). *See* 42 U.S.C. § 2000e; DEL. CODE ANN. tit. 19, § 711. Defendant moves to dismiss Plaintiff's claims pursuant to FED. R. CIV. P. 12(b)(6). (D.I. 12).

II. LEGAL STANDARD

A. Rule 12(b)(6)

Rule 8 requires a complainant to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). Rule 12(b)(6) allows the accused party to bring a motion to dismiss the claim for failing to meet this standard. A Rule 12(b)(6) motion may be granted only if, accepting the well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the complainant, a court concludes that those allegations "could not raise a claim of entitlement to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007).

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Of course, individuals may have religious beliefs

² Plaintiff follows a recognized religion that already meets the three *Africa* factors. (See D.I. 8 ¶ 17).

which are not widely accepted within their religion. See *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 708 (1981) ("The guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect"); 29 C.F.R. § 1605.1 ("The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee."). Beliefs of this nature would, logically, fail to be sufficiently linked to the individual's claimed religion and need to satisfy the *Africa* standard to qualify as religious beliefs.

"[The DDEA] prohibits employment discrimination in statutory language nearly identical to Title VII." *Spady v. Wesley Coll.*, 2010 WL 3907357, at *3 n. 4 (D. Del. Sept. 29, 2010); see DEL. CODE ANN. tit. 19, § 711(b). "[Courts] evaluate plaintiffs' DDEA claims under the same framework used to evaluate Title VII claims." *Spady*, 2010 WL 3907357, at *3 n. 4 (citing *Witcher v. Sodexo, Inc.*, 247 F. App'x 328, 329 n. 1 (3d Cir. 2007); *Hyland v. Smyrna Sch. Dist.*, 608 F. App'x 79, 83 n. 5 (3d Cir. 2015) (instructing that "the standards under Title VII and the DDEA are generally the same").

C. Disparate Treatment

To establish a prima facie case of religious discrimination under Title VII based on a disparate treatment theory, an employee must show that (1) the employee is "a member of a protected class," (2) the

employee "suffered an adverse employment action," and (3) "nonmembers of the protected class were treated more favorably." *Abramson v. William Paterson Coll. of NJ*, 260 F.3d 265, 281-82 (3d Cir. 2001). Depending on whether the plaintiff proceeds under a pretext or mixed-motive theory, they must ultimately prove that her protected status was either a "motivating" or a "determinative" factor in the employer's challenged action. *Connelly*, 809 F.3d at 787-88.

III. DISCUSSION

A. Failure to Accommodate

At this stage of the case, only one issue exists—whether Plaintiff has sufficiently pled that the belief upon which her objection to receiving the COVID-19 vaccine was based is a religious belief. "[T]o adequately plead a 'religious belief,' a plaintiff must allege some facts regarding the nature of her belief system, as well as facts connecting her objection to that belief system." *Aliano*, 2023 WL 4398493, at *5. "In other words, she must demonstrate that her objection arises from a subjective belief that is tied to her belief system which meets the *Africa* factors." *Id.* (citing *Africa*, 662 F.2d at 1032; *Fallon*, 877 F.2d at 492-93 (concluding that the plaintiff's "anti-vaccination beliefs are not religious" but providing "[t]his is not to say that anti-vaccination beliefs cannot be part of a broader religious faith; in some circumstances, they can, and in those circumstances, they are protected")); *see also Brown v. Child.'s Hosp. of Phila.*, 794 F. App'x 226, 227 (3d Cir. 2020) ("[I]t is not sufficient merely to hold a 'sincere

opposition to vaccination'; rather, the individual must show that the 'opposition to vaccination is a religious belief.'" (quoting *Fallon*, 877 F.3d at 490)); *Griffin v. Massachusetts Dep't of Revenue*, 2023 WL 4685942, at *5 (D. Mass. July 20, 2023); *Ellison v. Inova Health Care Servs.*, 2023 WL 6038016, at *6 (E.D. Va. Sept. 14, 2023) (A plaintiff should "provide [] sufficient allegations regarding [their] subjective personal beliefs, how those beliefs are related to [their] faith, and how those beliefs form the basis of [their] objection to the COVID-19 vaccination."). Defendant argues that Plaintiff's objection to the vaccine stems from Plaintiff's personal moral code rather than from her religious beliefs.³ (D.I. 15 at 7-15; D.I. 18 at 5-10).

Plaintiff identifies two categories of beliefs which she argues qualify as religious beliefs. (See D.I. 21 at 5 (placing Plaintiff under the "Created in the Image of God" and "Cannot Defile Body Because it is a Temple of the Holy Spirit" categories); D.I. 8 ¶ 19). For the following reasons, I find Plaintiff has failed to adequately plead facts that show either of these

³ Defendant does not challenge Plaintiff's assertion that her Methodist faith meets the *Africa* test. Rather, Defendant argues the beliefs on which Plaintiff's objection to the vaccine is based are secular beliefs based on Plaintiff's personal moral code, as opposed to religious beliefs that form apart of Plaintiff's Methodist faith. (See D.I. 15 at 7-15; D.I. 18 at 5-10). I therefore address only the questions at issue: whether Plaintiff has sufficiently connected her objection to the vaccine to a religious belief tied to her Methodist faith or whether the beliefs that form the basis of Plaintiff's objection would otherwise satisfy the *Africa* standard.

categories I are religious beliefs that form the basis of her objection to the COVID-19 vaccine.

1. "Body is a Temple" Belief

Plaintiff's exemption request form states, "Christians have a duty to honor and care for the body God has given us as a temple of the Holy Spirit." (D I. 8-1, Ex. A, at 2 of 3 (citing Romans 12:1 ("Therefore, I urge you, brothers and sisters, in view of God's mercy, to offer your bodies as a living sacrifice, holy and pleasing to God—this is your true and proper worship."); 1 Corinthians 3:16 ("Don't you know that you yourselves are God's temple and that God's Spirit dwells in your midst?"); 1 Corinthians 6:20 ("You were bought at a price. Therefore honor God with your bodies."); 1 Corinthians 10:31 ("So whether you eat or drink or whatever you do, do it all for the glory of God."))). Plaintiff maintains that it is her "God given responsibility to protect the integrity of [her] body and mind against anything unclean." (*Id.*). Plaintiff asserts the "mandated vaccine has various additives that have the potential of altering my body and mind." (*Id.*). Plaintiff does not expand on the meaning of "altering my body and mind," but this sentence suggests Plaintiff's refusal to take the vaccine is grounded in her understanding about the negative physical effects the vaccine might have on her body.

Plaintiff's belief is "predicated fundamentally on her concerns with the safety of the vaccine." *Passarella v. Aspirus, Inc.*, 2023 WL 2455681, at *5 (W.D. Wis. Mar. 10, 2023). Plaintiff does "not articulate any religious belief that would prevent her from taking the

vaccine if she believed it was safe." *Id.* "It takes more than a generalized aversion to harming the body to nudge a practice over the line from medical to religious." *Geerlings*, 2021 WL 4399672, at *7; *see also Fallon*, 877 F.3d at 492. "The notion that we should not harm our bodies is ubiquitous in religious teaching, but a concern that a treatment may do more harm than good is a medical belief, not a religious one." *Geerlings*, 2021 WL 4399672, at *7 (quoting *Fallon*, 877 F.3d at 492) (cleaned up).

At oral argument, Plaintiff's counsel took the position that "[h]arming my body is the religious belief" expressed by Plaintiff. (Hearing Tr. at 34:15-35:12 ("[I]f I believe [the vaccine] is going to cause long-term harm to my body, then my truly-held religious belief is that my body is a temple of the Holy Spirit, and I should put nothing in my body that's going to harm it. That's religious belief.")). Plaintiff's counsel effectively seeks to "cloak[] with religious significance" Plaintiff's concern that the vaccine will harm her body. *Africa*, 662 F.2d at 1035. The Third Circuit has already rejected such a position. *Id.* (explaining "[t]he notion that all of life's activities can be cloaked with religious significance" cannot transform an otherwise secular idea into a religious belief). Several other district courts handling similar religious discrimination cases involving the COVID-19 vaccine have similarly found that such medical judgments do not qualify as religious beliefs. *See, e.g., McKinley v. Princeton Univ.*, 2023 WL 8374486, at *4 (D.N.J. Dec. 1, 2023); *Ellison*, 2023 WL 6038016, at *5; *Winans v. Cox Auto, Inc.*, 2023 WL 2975872, at *4 (E.D. Pa. Apr. 17, 2023); *Ulrich v. Lancaster Gen.*

Health, 2023 WL 2939585, at *5 (E.D. Pa. Apr. 13, 2023); *Passarella*, 2023 WL 2455681, at *5-7; *Geerlings*, 2021 WL 4399672, at *7; *contra, Aliano*, 2023 WL 4398493, at *8-9.

Furthermore, Plaintiff's exemption form contains no information about what guideposts her religious beliefs provide for determining what materials are "unclean." Nor does it explain how altering one's body and mind is prohibited by her religious beliefs. Plaintiff instead focuses on her beliefs that a "person is morally required to obey his or her conscience" and "to force or coerce a person to administer a substance into their body against their will is a violation of their personhood." (D.I. 8-1, Ex. A, at 2 of 3 (citing Romans 9:1 ("I say the truth in Christ, I lie not, my conscience also bearing me witness in the Holy Ghost."))), Her exemption form states, "My consci[ence] is governed by God and the mandate that is imposed goes against any beliefs I have." (*Id.*). She goes on to say, "Forced or coerced vaccination is also a violation of the dignity of the human person because freedom of religion and freedom of conscience are fundamental to human dignity." (*Id.*).

Allowing Plaintiff the ability to object to anything that goes against her "conscience" or "will" would amount to the type of "blanket privilege" that does not qualify as religious belief under *Africa*. See *Lucky v. Landmark Med. of Mich., P. C.*, 2023 WL 7095085, at *4-7 (E.D. Mich. Oct. 26, 2023); *Ellison*, 2023 WL 6038016, at *5; *Griffin*, 2023 WL 4685942, at *6-7. "[T]he very concept of ordered liberty precludes allowing' [Plaintiff], or any other person, a blanket

privilege 'to make his own standards on matters of conduct in which society as a whole has important interests.'" *Id.* (citing *Yoder*, 406 U.S. at 215-16). Several other district courts handling similar religious discrimination cases involving the COVID-19 vaccine have similarly found that beliefs amounting to "blanket privileges" do not qualify as religious beliefs. *See, e.g., Lucky*, 2023 WL 7095085, at *4-7; *Ellison*, 2023 WL 6038016, at *5; *Ulrich*, 2023 WL 2939585, at *5; *Blackwell v. Lehigh Valley Health Network*, 2023 WL 362392, at *8 (E.D. Pa. Jan. 23, 2023); *Finkbeiner*, 623 F. Supp. 3d at 465.

Plaintiff's counsel argued that whether a belief amounted to a "blanket privilege" presents an issue of sincerity that should be reserved for a jury. (Hearing Tr. at 33:3-14). The *Africa* court, however, indicated that a principal reason that courts engaged in the practice of making "uneasy differentiations" between religious and nonreligious beliefs was to prevent any individual from retaining a "blanket privilege 'to make his own standards on matters of conduct in which society as a whole has important interests.'" *See Africa*, 662 F.2d at 1031. I find it proper to consider this question when dealing with religiosity. As noted above, other district courts have likewise examined the "blanket privilege" question at the motion to dismiss stage.

2. "Image of God" Belief

Plaintiff's exemption form states, "Humans are made in the image and likeness of God." (D.I. 8-1, Ex. A, at 2 of 3 (citing Genesis 1 :26 ("Then God said, "Let

us make mankind in our image, in our likeness, so that they may rule over the fish in the sea and the birds in the sky, over the livestock and all the wild animals, and over all the creatures that move along the ground.")). Aside from this one sentence, Plaintiff gives no further information on this belief or how it is connected to her objection to the COVID-19 vaccine. To the extent that Plaintiff's "Image of God" belief is connected to statements already discussed in relation to her "Body is a Temple" belief, such as her assertions regarding the vaccine's "potential for altering my body and mind" or the requirement to "obey ... her conscience," I adopt the corresponding rationale and conclusion from the above section. *See supra* Section III.A.1.

For the reasons stated above, I find Plaintiff's Complaint does not plausibly allege that Plaintiff's objection to receiving the COVID-19 vaccine was based on a sincerely held religious belief. At oral argument, Plaintiff's counsel agreed that, in the event that I found a plaintiff had not adequately pled a religious belief, dismissal with prejudice was the proper path forward. (Hearing Tr. at 65:1-9). I will therefore dismiss Plaintiff's failure to accommodate claim with prejudice.

B. Disparate Treatment

Defendant argues that Plaintiff has failed to sufficiently plead a religious discrimination claim under Title VII based on disparate treatment. (D.I. 15 at 15). Plaintiff states that she has not yet pled disparate treatment. (D.I. 16 at 20). I agree with

Defendant that Plaintiff's assertion of "differential treatment" presents some confusion about whether a disparate treatment claim has been raised. (D.I. 18 at 10 n. 22). Nevertheless, since Plaintiff states she is not now pleading disparate treatment, I accept that she is not, and I will dismiss Defendant's argument as moot.

C. Plaintiff's DDEA Claims

A federal court has supplemental jurisdiction over a state law claim when the claim "arise[s] out of a common nucleus of operative fact" with the claims over which the court has original jurisdiction. *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966); see 28 U.S.C. § 1367(a). A federal court "may decline to exercise supplemental jurisdiction over a claim ... if ... the district court has dismissed all claims over which it has original jurisdiction" 28 U.S.C. § 1367(c)(3). Given my disposition of Plaintiff's Title VII claims, I decline to exercise supplemental jurisdiction over Plaintiff's remaining DDEA claims. I will dismiss Plaintiff's claims under Count II without prejudice.

IV. CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss (D.I. 14) is GRANTED in part and DISMISSED as moot in part.

An appropriate order will issue.

APPENDIX Q

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BETH A. MCDOWELL,
Plaintiff,

v. Civil Action No. 23-1392-RGA

BAYHEALTH MEDICAL CENTER, INC.,
Defendant.

ORDER

For the reasons stated in the accompanying Memorandum Opinion, Defendant's Motion to Dismiss (D.I. 21) is GRANTED in part and DISMISSED as moot in part.

Plaintiff's failure to accommodate claim under Title VII (Count I) is DISMISSED with prejudice.

Plaintiff's claim under DDEA (Count II) is DISMISSED without prejudice.

IT IS SO ORDERED.

Entered this 25th day of January, 2024

/s/
United States District Judge

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BETH A. MCDOWELL,
Plaintiff,

v. Civil Action No. 23-1392-RGA

BAYHEALTH MEDICAL CENTER, INC.,
Defendant.

MEMORANDUM OPINION

Gary E. Junge (argued), SCHMITTINGER &
RODRIGUEZ, P.A., Dover, DE,
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STEVENS & LEE, P.C., Lancaster, PA,
Attorneys for Defendant.

January 25, 2024

ANDREWS, U.S. DISTRICT JUDGE

Before me is Defendant's Motion to Dismiss. (D.I. 21). I have considered the parties' briefing. (D.I. 22, 23, 25). I heard oral argument on January 4, 2024 on a group of cases, including the present action, involving religious discrimination claims with regards to

Defendant's COVID-19 vaccine policy. (Hearing Tr.).¹ For the reasons set forth below, this motion is GRANTED in part and DISMISSED as moot in part.

I. BACKGROUND

This case stems from the COVID-19 pandemic and a healthcare provider's efforts to respond to government vaccination policy. The Amended Complaint (D.I. 19) is the operative complaint and alleges the following facts.

On August 12, 2021, Governor John Carney ordered all Delaware state health care employees either to become vaccinated for the COVID-19 virus by September 30, 2021 or to submit to regular testing for the COVID-19 virus. In November 2021, the Centers for Medicare & Medicaid Services ("CMS") issued a COVID-19 vaccine mandate requiring certain health care facilities, including Defendant, to ensure their staff members were all either vaccinated against COVID-19 or had obtained medical or religious exemptions to taking the vaccine.

Pursuant to Defendant's vaccination policy, employees seeking religious exemption requests were required to submit forms explaining the religious beliefs that formed their basis of their objection to the COVID-19 vaccine. (*See* D.I. 6-1, Ex. A). Employees could attach additional materials, such as letters from

¹ Citations to the transcript of the argument are in the format "Hearing Tr. at_."

religious leaders, to support their exemption request. (*Id.*).

Employees who had their religious exemption requests rejected, and continued to refuse the COVID-19 vaccine, were terminated on February 28, 2022. Plaintiff was one of these employees. Plaintiff subsequently filed the present suit raising religious discrimination claims against Defendant under Title VII (Count I) and the Delaware Discrimination in Employment Act ("DDEA") (Count II). *See* 42 U.S.C. § 2000e; DEL. CODE ANN. tit. 19, § 711. Defendant moves to dismiss Plaintiff's claims pursuant to FED. R. CIV. P. 12(b)(6). (D.I. 21).

II. LEGAL STANDARD

A. Rule 12(b)(6)

Rule 8 requires a complainant to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). Rule 12(b)(6) allows the accused party to bring a motion to dismiss the claim for failing to meet this standard. A Rule 12(b)(6) motion may be granted only if, accepting the well-pleaded allegations in the complaint as true and viewing them in the light most favorable to the complainant, a court concludes that those allegations "could not raise a claim of entitlement to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007).

The factual allegations do not have to be detailed, but they must provide more than labels, conclusions,

or a "formulaic recitation" of the claim elements. *Id.* at 555 ("Factual allegations must be enough to raise a right to relief above the speculative level ... on the assumption that all the allegations in the complaint are true (even if doubtful in fact)."). Moreover, there must be sufficient factual matter to state a facially plausible claim to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The facial plausibility standard is satisfied when the complaint's factual content "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* ("Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." (internal quotation marks omitted)).

B. Failure to Accommodate

Title VII makes it unlawful for an employer to discriminate against an employee based on that employee'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 to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j).

To establish a *prima facie* case of religious discrimination under Title VII based on a failure to accommodate theory, an employee must show that (1) the employee "held a sincere religious belief that

conflicted with a job requirement," (2) the employee "informed their employer of the conflict," and (3) the employee was "disciplined for failing to comply with the conflicting requirement." *Fallon v. Mercy Cath. Med. Ctr. of Se. Pa.*, 877 F.3d 487, 490 (3d Cir. 2017). "Plaintiffs are not required to establish each element to survive a motion to dismiss; they must simply allege sufficient facts to raise a reasonable expectation that discovery will uncover proof of their claims." *Finkbeiner v. Geisinger Clinic*, 623 F. Supp. 3d 458, 465 (M.D. Pa. 2022) (citing *Connelly v. Lane Constr. Corp.*, 809 F.3d 780, 789 (3d Cir. 2016)).

A district court's inquiry into whether a plaintiff has plausibly plead the first prong of a prima facie religious discrimination claim is limited to determining whether the belief is (1) "sincerely held" and (2) religious within the plaintiff's "own scheme of things." *Welsh v. United States*, 398 U.S. 333, 339 (1970) (quoting *United States v. Seeger*, 380 U.S. 163, 185 (1965)).

With respect to the first prong of this inquiry, "[w]hether a belief is sincerely held is a question of fact." *Geerlings v. Tredyffrin/Easttown Sch. Dist.*, 2021 WL 4399672, at *6 (E.D. Pa. Sept. 27, 2021) (citing *Seeger*, 380 U.S. at 185).

With respect to the second prong, determining whether a plaintiff's beliefs are religious "presents a most delicate question." *Africa v. Pennsylvania*, 662 F.2d 1025, 1031 (3d Cir. 1981). "[I]t is nonetheless incumbent upon the court to ensure that the alleged beliefs are rooted in a plaintiff's religion and are

entitled to the broad protections guaranteed thereunder." *Aliano v. Twp. of Maplewood*, 2023 WL 4398493, at *5 (D.N.J. July 7, 2023) (citing *Fallon*, 877 F.3d at 490). "The notion that all of life's activities can be cloaked with religious significance" cannot transform an otherwise secular idea into a religious belief. *Africa*, 662 F.2d at 1035. "[T]he very concept of ordered liberty" precludes allowing any individual "a blanket privilege 'to make his own standards on matters of conduct in which society as a whole has important interests.'" *Africa*, 662 F.2d at 1031 (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 215-16 (1972)).

The Third Circuit has adopted the three *Africa* factors to differentiate between views that are "religious in nature" and those that are "essentially political, sociological, or philosophical." *Fallon*, 877 F.3d at 490-91 (quoting *Seeger*, 380 U.S. at 164); *Africa*, 662 F.2d at 1032. A judge must determine whether the beliefs in question (1) "address fundamental and ultimate questions having to do with deep and imponderable matters," (2) "are comprehensive in nature," and (3) "are accompanied by certain formal and external signs." *Fallon*, 877 F.3d at 491 (quoting *Africa*, 662 F.2d at 1032) (cleaned up).

The *Africa* court tackled the issue of analyzing non-traditional "religious" beliefs or practices by "look[ing] to familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted 'religions.'" *Africa*, 662 F.2d at 1032 (quoting *Malnak v. Yogi*, 592 F.2d 197, 205 (3d Cir. 1979) (Adams, J.,

concurring)); *Fallon*, 877 F.3d at 491 (describing the process as considering "how a belief may occupy a place parallel to that filled by God in traditionally religious persons."). The *Africa* factors were adopted as "three 'useful indicia' to determine the existence of a religion" pursuant to this "definition by analogy" approach. *Africa*, 662 F.2d at 1032. Their applicability to a person who professes a more widely recognized, "traditional" religion is a little less obvious.² However, because individuals cannot "cloak" all personal beliefs "with religious significance," a court must still scrutinize whether a sincerely held belief, asserted by someone claiming a recognized religion, is sufficiently connected to their religion. *Id.* at 1035; see *Griffin v. Massachusetts Dep't of Revenue*, 2023 WL 4685942, at *5 (D. Mass. July 20, 2023) ("[T]he issue in this case is not whether plaintiff has asserted a plausible claim that she has a personal religious faith. . . . Plaintiff does not claim that she has suffered unlawful discrimination because she believes in God. Rather, she claims that she has suffered unlawful discrimination because she was required to comply with the COVID-19 vaccination requirement. The critical question, therefore, is whether the complaint alleges sufficient plausible facts from which it could be reasonably inferred that being vaccinated against COVID-19 violates a tenet or principle of her religious belief.").

Of course, individuals may have religious beliefs

² Plaintiff follows a recognized religion that already meets the three *Africa* factors. (See D.I. 19 ¶ 13).

which are not widely accepted within their religion. See *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 708 (1981) ("The guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect"); 29 C.F.R. § 1605.1 ("The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee."). Beliefs of this nature would, logically, fail to be sufficiently linked to the individual's claimed religion and need to satisfy the *Africa* standard to qualify as religious beliefs.

"[The DDEA] prohibits employment discrimination in statutory language nearly identical to Title VII." *Spady v. Wesley Coll.*, 2010 WL 3907357, at *3 n. 4 (D. Del. Sept. 29, 2010); see DEL. CODE ANN. tit. 19, § 711(b). "[Courts] evaluate plaintiffs' DDEA claims under the same framework used to evaluate Title VII claims." *Spady*, 2010 WL 3907357, at *3 n. 4 (citing *Witcher v. Sodexo, Inc.*, 247 F. App'x 328, 329 n. 1 (3d Cir. 2007); *Hyland v. Smyrna Sch. Dist.*, 608 F. App'x 79, 83 n. 5 (3d Cir. 2015) (instructing that "the standards under Title VII and the DDEA are generally the same").

C. Disparate Treatment

To establish a prima facie case of religious discrimination under Title VII based on a disparate treatment theory, an employee must show that (1) the employee is "a member of a protected class," (2) the

employee "suffered an adverse employment action," and (3) "nonmembers of the protected class were treated more favorably." *Abramson v. William Paterson Coll. of NJ*, 260 F.3d 265, 281-82 (3d Cir. 2001). Depending on whether the plaintiff proceeds under a pretext or mixed-motive theory, they must ultimately prove that her protected status was either a "motivating" or a "determinative" factor in the employer's challenged action. *Connelly*, 809 F.3d at 787-88.

III. DISCUSSION

A. Failure to Accommodate

At this stage of the case, only one issue exists—whether Plaintiff has sufficiently pled that the belief upon which her objection to receiving the COVID-19 vaccine was based is a religious belief. "[T]o adequately plead a 'religious belief,' a plaintiff must allege some facts regarding the nature of her belief system, as well as facts connecting her objection to that belief system." *Aliano*, 2023 WL 4398493, at *5. "In other words, she must demonstrate that her objection arises from a subjective belief that is tied to her belief system which meets the *Africa* factors." *Id.* (citing *Africa*, 662 F.2d at 1032; *Fallon*, 877 F.2d at 492-93 (concluding that the plaintiff's "anti-vaccination beliefs are not religious" but providing "[t]his is not to say that anti-vaccination beliefs cannot be part of a broader religious faith; in some circumstances, they can, and in those circumstances, they are protected")); see also *Brown v. Child.'s Hosp. of Phila.*, 794 F. App'x 226, 227 (3d Cir. 2020) ("[I]t is not sufficient merely to

hold a 'sincere opposition to vaccination'; rather, the individual must show that the 'opposition to vaccination is a religious belief.'" (quoting *Fallon*, 877 F.3d at 490)); *Griffin v. Massachusetts Dep't of Revenue*, 2023 WL 4685942, at *5 (D. Mass. July 20, 2023); *Ellison v. Inova Health Care Servs.*, 2023 WL 6038016, at *6 (E.D. Va. Sept. 14, 2023) (A plaintiff should "provide[] sufficient allegations regarding [their] subjective personal beliefs, how those beliefs are related to [their] faith, and how those beliefs form the basis of [their] objection to the COVID-19 vaccination."). Defendant argues that Plaintiff's objection to the vaccine stems from Plaintiff's personal moral code rather than from her religious beliefs.³ (D.I. 22 at 8-15; D.I. 25 at 5-9).

Plaintiff's exemption form states, "God has created my being and I choose what I introduce into my body at all times." (D.I. 19-1, Ex. A, at 4 of 4 (quoting 1 Corinthians 6:19 ("Do you not know that your body is a temple of the Holy Spirit, who is in you, whom you have received from God."))). Plaintiff

³ Defendant does not challenge Plaintiff's assertion that her religious faith of non-denominational Christianity meets the *Africa* test. Rather, Defendant argues the beliefs on which Plaintiff's objection to the vaccine is based are secular beliefs based on Plaintiff's personal moral code, as opposed to religious beliefs that form a part of Plaintiff's Christian faith. (See D.I. 22 at 7-15; D.I. 25 at 5-9). I therefore address only the questions at issue: whether Plaintiff has sufficiently connected her objection to the vaccine to a religious belief tied to her Christian faith or whether the beliefs that form the basis of Plaintiff's objection would otherwise satisfy the *Africa* standard.

asserts, "I consider my body to be a blessed and sacred gift from God and I do not believe that God would want me to receive this vaccine." (*Id.* (quoting 1 Corinthians 6:20 ("For you were bought with a price. So glorify God in your body.))). She continues, "I must honor my creator, God, with my body, mind and spirit and decide what I allow to enter my body by putting my God first." (*Id.*).

Plaintiff, however, fails to explain how her religious beliefs lead to the conclusion that the COVID-19 vaccine will cause harm to her body. The letter from Plaintiff's religious leader, submitted in support of her exemption request, also fails to support this connection. The letter states that "the Word of God forbids us to accept certain things and entities into our bodies, as our bodies are the living temple of the Holy Spirit," but does not describe any religious belief that guides followers in determining which "certain things and entities" should not be accepted into their body. (*Id.* at 5). Plaintiff's personal conception of what is harmful cannot qualify as a religious belief under *Africa*; concluding otherwise would grant Plaintiff "the type of 'blanket privilege' that undermines our system of ordered liberty." *Ellison*, 2023 WL 6038016, at *5 (citing *Africa* 663, F.2d at 1031).⁴

⁴ Plaintiff's counsel argued that whether a belief amounted to a "blanket privilege" presents an issue of sincerity that should be reserved for a jury. (Hearing Tr. at 33 :3-14). The *Africa* court, however, indicated that a principal reason that courts engaged in the practice of making "uneasy differentiations" between religious and nonreligious beliefs was to prevent any individual from retaining a "blanket privilege 'to make his own

Plaintiff's objection is "predicated fundamentally on her concerns with the safety of the vaccine." *Passarella v. Aspirus, Inc.*, 2023 WL 2455681, at *5 (W.D. Wis. Mar. 10, 2023). Plaintiff does "not articulate any religious belief that would prevent her from taking the vaccine if she believed it was safe." *Id.* Plaintiff's references to "harm," "contamination," and "shorten[ing] [her body's] life expectancy" shows her focus on the vaccine's supposed detrimental effects to her body. Plaintiff's religious leader's letter further demonstrates the medical basis of her objection. The letter focuses on the uncertainty surrounding "the long-term consequences of the Covid Vaccine" and "its long-term effects on our bodies (God[']s Holy Temple)." (D.I. 19-1, Ex. A at 6 of 6). Plaintiff's medical beliefs do not qualify as religious beliefs under *Africa*. "It takes more than a generalized aversion to harming the body to nudge a practice over the line from medical to religious." *Geerlings*, 2021 WL 4399672, at *7; *see also Fallon*, 877 F.3d at 492. "The notion that we should not harm our bodies is ubiquitous in religious teaching, but a concern that a treatment may do more harm than good is a medical believe, not a religious one." *Geerlings*, 2021 WL 4399672, at *7 (quoting

standards on matters of conduct in which society as a whole has important interests." *See Africa*, 662 F.2d at 1031. I find it proper to consider this question when dealing with religiosity. Other district courts have likewise examined the "blanket privilege" question at the motion to dismiss stage. *See, e.g., Landmark Med. of Mich., P. C.*, 2023 WL 7095085, at *4-7 (E.D. Mich. Oct. 26, 2023); *Ellison*, 2023 WL 6038016, at *5; *Ulrich v. Lancaster Gen. Health*, 2023 WL 2939585, at *5 (E.D. Pa. Apr. 13, 2023); *Blackwell v. Lehigh Valley Health Network*, 2023 WL 362392, at *8 (E.D. Pa. Jan. 23, 2023); *Finkbeiner*, 623 F. Supp. 3d at 465.

Fallon, 877 F.3d at 492) (cleaned up).

At oral argument, Plaintiff's counsel took the position that "[h]arming my body is the religious belief" expressed by Plaintiff. (Hearing Tr. at 34:15-35:12 ("[I]f I believe [the vaccine] is going to cause long-term harm to my body, then my truly-held religious belief is that my body is a temple of the Holy Spirit, and I should put nothing in my body that's going to harm it. That's religious belief.")). Plaintiff's counsel effectively seeks to "cloak[] with religious significance" Plaintiff's concern that the vaccine will harm her body. *Africa* 662 F.2d at 1035. The Third Circuit has already rejected such a position. *Id.* (explaining "[t]he notion that all of life's activities can be cloaked with religious significance" cannot transform an otherwise secular idea into a religious belief). Several other district courts handling similar religious discrimination cases involving the COVID-19 vaccine have also found such medical judgments do not qualify as religious beliefs. *See, e.g., McKinley v. Princeton Univ.*, 2023 WL 8374486, at *4 (D.N.J. Dec. 1, 2023); *Ellison*, 2023 WL 6038016, at *5; *Winans v. Cox Auto, Inc.*, 2023 WL 2975872, at *4 (E.D. Pa. Apr. 17, 2023); *Ulrich*, 2023 WL 2939585, at *5; *Passarella*, 2023 WL 2455681, at *5-7; *Geerlings*, 2021 WL 4399672, at *7; *contra, Aliano*, 2023 WL 4398493, at *8-9.

For the reasons stated above, I find Plaintiff's Complaint does not plausibly allege that Plaintiff's objection to receiving the COVID-19 vaccine was based on a sincerely held religious belief. At oral argument, Plaintiff's counsel agreed that, in the event that I

found a plaintiff had not adequately pled a religious belief, dismissal with prejudice was the proper path forward. (Hearing Tr. at 65: 1-9). I will therefore dismiss Plaintiff's failure to accommodate claim under Title VII with prejudice.

B. Disparate Treatment

Defendant argues that Plaintiff has failed to sufficiently plead a religious discrimination claim under Title VII based on disparate treatment. (D.I. 22 at 15). Plaintiff states that she has not yet pled disparate treatment. (D.I. 23 at 20). I agree with Defendant that Plaintiff's assertion of "differential treatment" presents some confusion about whether a disparate treatment claim has been raised. (D.I. 25 at 10 n. 22). Nevertheless, since Plaintiff states she is not now pleading disparate treatment, I accept that she is not, and I will dismiss Defendant's argument as moot.

C. Plaintiff's DDEA Claims

A federal court has supplemental jurisdiction over a state law claim when the claim "arise[s] out of a common nucleus of operative fact" with the claims over which the court has original jurisdiction. *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966); see 28 U.S.C. § 1367(a). A federal court "may decline to exercise supplemental jurisdiction over a claim ... if ... the district court has dismissed all claims over which it has original jurisdiction" 28 U.S.C. § 1367(c)(3). Given my disposition of Plaintiff's Title VII claims, I decline to exercise supplemental jurisdiction over Plaintiff's remaining DDEA claims. I

will dismiss Plaintiff's claims under Count II without prejudice.

IV. CONCLUSION

For the foregoing reasons, Defendant's motion to dismiss (D.I. 21) is GRANTED in part and DISMISSED as moot in part.

An appropriate order will issue.

APPENDIX R

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

Nos. 24-1157, 24-1248, 24-1249, 24-1250, 24-1251,
24-1252, 24-1253 & 24-1254

BETH A. MCDOWELL,
Appellant in No. 24-1157

v.

BAYHEALTH MEDICAL CENTER, INC

SHARITI A. LANE,
Appellant in No. 24-1248

v.

BAYHEALTH MEDICAL CENTER, INC

DONNA L. MAHER,
Appellant in No. 24-1249

v.

BAYHEALTH MEDICAL CENTER, INC

SEAN MCCARTHY,
Appellant in No. 24-1250

v.

BAYHEALTH MEDICAL CENTER, INC

JANELLE B. CARUANO,
Appellant in No. 24-1251

v.

BAYHEALTH MEDICAL CENTER, INC

CHERYL L. HAND,
Appellant in No. 24-1252

v.

BAYHEALTH MEDICAL CENTER, INC

ANDREA L. MALONEY,
Appellant in No. 24-1253

v.

BAYHEALTH MEDICAL CENTER, INC

TAMMY M. HARVEY,
Appellant in No. 24-1254

v.

BAYHEALTH MEDICAL CENTER, INC

(D.C. Civil Action No. 1-22-cv-01392; 1-23-cv-00102;
1-22-cv-01551; 1-22-cv-01336; 1-22-cv-01284;
1-22-cv-01548; 1-23-cv-00078 and 1-23-cv-00092)

SUR PETITION FOR REHEARING

Present: CHAGARES, Chief Judge, JORDAN,
HARDIMAN, SHWARTZ, KRAUSE, RESTREPO,
BIBAS, PORTER, MATEY, PHIPPS, FREEMAN,
MONTGOMERY-REEVES, CHUNG, and *SCIRICA,
Circuit Judges

The petition for rehearing filed by Appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/Patty Shwartz
Circuit Judge

Dated:

[FILED: December 17, 2024]

* Hon. Anthony J. Scirica vote is limited to panel rehearing only.

APPENDIX S

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

TAMMY M. HARVEY,
Plaintiff,

v. C.A. No.: 1:23-cv-00092-RGA

BAYHEALTH MEDICAL CENTER, INC.,
Defendant.

TRIAL BY JURY DEMANDED

AMENDED COMPLAINT

1. Plaintiff Tammy M. Harvey ("Harvey" or "Plaintiff") is a resident of the State of Delaware residing at 219 Topaz Lane, Camden, DE 19934.

2. Defendant Bayhealth Medical Center ("Bayhealth" or "Defendant") is a Delaware corporation whose registered agent for service of process is Bay health Medical Center, Inc., 640 South State Street, Dover, Delaware 19901.

3. Defendant is an employer within the State of Delaware and within the jurisdictional coverage of Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, *et seq.* ("Title VII") and the Delaware Discrimination in Employment Act ("DDEA"), 19 *Del. C.* § 710, *et seq.*

4. Jurisdiction is conferred on this Court by 42 U.S.C. § 2000e-5(f)(3), 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 1367.

5. Venue for all causes of action stated herein lies in the District of Delaware pursuant to 28 U.S.C. § 1391(b), as the acts alleged as the basis for these claims took place within the boundaries of that District.

6. Plaintiff brings this action under Title VII of the Civil Rights Act of 1964, as amended, and under the Delaware Discrimination in Employment Act to redress the wrongs done to her by Defendant's discrimination against her on the basis of her religion.

7. Plaintiff timely submitted a complaint of discrimination based on her religion to the Delaware Department of Labor ("DDOL") and the Equal Employment Opportunity Commission ("EEOC").

8. Plaintiff has received a Notice of Right to Sue for the above referenced charge from the EEOC.

9. Plaintiff has timely filed this Complaint within ninety (90) days of her receipt of the EEOC Notice of Right to Sue.

10. Plaintiff was hired by Defendant as a Registered Nurse on or about November 6, 1995.

11. Plaintiff held the position of Lead Registered Nurse at the time of her discharge.

12. At all times relevant to this Complaint, Plaintiff was qualified for her job position and satisfactorily performed all duties of her job position.

13. On August 12, 2021, Governor John Carney ordered that all Delaware state health care employees, which included Defendant's employees, to either become vaccinated or submit to regular testing for the COVID-19 virus by September 30, 2021.

14. On November 5, 2021, the Centers for Medicare and Medicaid Services ("CMS") issued a COVID-19 vaccine mandate.

15. The CMS vaccine mandate required that health care facilities ensure their covered staff were vaccinated against COVID-19, but also required that such facilities offer medical and religious exemptions.

16. Pursuant to the CMS mandate, a facility was considered 100% compliant when all of its staff were either vaccinated or had a medical or religious waiver.

17. Plaintiff is a **non-denominational Christian who** holds a sincere religious belief that prevents her from being inoculated with the COVID-19 vaccine.

18. On November 17, 2021, Plaintiff submitted a request for an exemption to the COVID-19 immunization based on her sincerely held religious beliefs. **A copy of Plaintiff's COVID-19 Religious Request for Immunization Exemption explains Plaintiff's objections in detail and is attached**

hereto as Exhibit "A".

19. The request detailed the basis for Plaintiff's sincerely held religious belief, specifically noting, *inter alia*, her belief that her body is a temple for the Holy Spirit, and she must honor God by deciding what enters her body. She believes accepting the COVID-19 vaccination would violate the Bible's command to honor the Lord with her body.

20. On December 14, 2021, Defendant informed Plaintiff via letter that her request for a religious exemption was denied without providing a reason for the denial.

21. On January 24, 2022, Plaintiff emailed Defendant's Human Resources department requesting Defendant reconsider her request for a religious exemption for the COVID-19 Vaccine.

22. On January 25, 2022, Defendant's Human Resources department responded by email to Plaintiff stating each exemption was thoroughly reviewed and that Plaintiff's exemption request was denied because it was not evident that her religion had a theological opposition to vaccinations.

23. By a letter dated January 26, 2022, a Delaware attorney wrote Terry M. Murphy, President and CEO of Defendant, on behalf of ninety Bay health employees, including Plaintiff, requesting Defendant reconsider the denied exemption requests and to comply with its obligations under Title VII.

24. Plaintiff's employment with Defendant was terminated on February 28, 2022.

25. By failing to reconsider Plaintiff's exemption request, and by failing to allow an appeal or otherwise engage in any type of substantive communication regarding Plaintiff's request for an exemption, Defendant failed to engage in an interactive process to determine whether an exemption was warranted or whether a reasonable accommodation was available.

26. Plaintiff was subjected to differential treatment on the basis of her sincerely held religious beliefs by agents of the Defendant, including but not limited to ~~retaliation and~~ termination of her employment.

27. The reason proffered by Defendant for Plaintiff's termination, i.e., denial of her request for a religious exemption because Defendant believed her religion had no theological opposition to vaccines, failed to comply with federal and state laws prohibiting discrimination ~~and retaliation~~ based on sincerely held religious beliefs.

28. Defendant is liable for the actions of its agents as set forth in this complaint under the principles of agency and the doctrine of *respondeat superior* and pursuant to the ratification of the agents' actions by Defendant.

29. The wrongful acts committed by the Defendant, as stated hereinabove, were willful, wanton, and committed in bad faith.

COUNT I-TITLE VII

30. Plaintiff restates and hereby incorporates by reference paragraphs 1 through 29 hereinabove.

31. By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has discriminated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 42 U.S.C. § 2000e *et seq.*

~~32. By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has retaliated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 42 U.S.C. § 2000e *et seq.*~~

~~33:32.~~ As a direct result of the discriminatory; ~~retaliatory~~; and wrongful conduct of the Defendant, Plaintiff has suffered damages, including, but not limited to, severe emotional distress, pain and suffering, mental anguish, humiliation, and lost wages.

WHEREFORE, Plaintiff demands judgment against the Defendant for:

- a. back pay, including interest;
- b. reinstatement, if feasible, or in the alternative, front pay;
- c. compensatory damages, including damages for emotional and physical pain and

suffering, inconvenience, mental anguish, loss of enjoyment of life, and all other non-pecuniary damages;

- d. punitive damages;
- e. pre-judgment and post-judgment interest;
- f. attorney's fees; and
- g. any other relief that this Court deems just.

COUNT II - DDEA

~~34.33.~~ Plaintiff hereby restates and incorporates by reference paragraphs 1 through ~~3332~~ hereinabove.

~~35.34.~~ By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has discriminated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 19 *Del. C.* § 710, *et seq.*

~~36.~~ ~~By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has retaliated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 19 *Del. C.* § 710, *et seq.*~~

~~37.35.~~ As a direct result of the discriminatory, retaliatory, and wrongful conduct of the Defendant, Plaintiff has suffered damages, including, but not limited to, severe emotional distress, pain and suffering, mental anguish, humiliation, and lost

wages. WHEREFORE, Plaintiff demands judgment against the Defendant for:

- a. back pay, including interest;
- b. reinstatement, if feasible, or in the alternative, front pay;
- c. compensatory damages, including damages for emotional and physical pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and all other non-pecuniary damages;
- d. punitive damages;
- e. pre-judgment and post-judgment interest;
- f. attorney's fees; and
- g. any other relief that this Court deems just.

SCHMITTINGER & RODRIGUEZ, P.A.

By: */s/ Gary E. Junge*
GARY E. JUNGE, ESQUIRE
Bar I.D. # 6169
414 South State Street
P.O. Box 497
Dover, Delaware 19903-0497
(302) 674-0140
Attorney for Plaintiff

Dated: April 27, 2023

EXHIBIT A

[BAYHEALTH LOGO]

[DATE STAMP]
NOV 18 2021AM 9:16

**COVID-19 Religious Request for
Immunization Exemption**

Employee Name:
Tammy Harvey

Employee ID:
105269

Request Date:
11-17-2021

Position/Title
Lead RN

Supervisor's Name:
Lynn Truitt

On November 4, 2021, OSHA issued an Emergency Temporary Standard ("ETS") mandating COVID-19 vaccines for all employers with over 100 employees. As per the ETS all employees must be vaccinated against COVID-19, with exceptions only as required by law. In certain circumstances, an employee who has a religious objection to the COVID-19 vaccination requirement to an exemption from that requirement, in which case the employee would instead comply with

alternative health and safety protocols. Bayhealth is committed to respecting the important legal protections for religious liberty. The purpose of this form is to determine whether you may be eligible for an exemption.

Please explain in your own words why you are seeking religious exemption, the religious principles that guide your objection to immunization, and please indicate whether you are opposed to all immunizations, and if not, the religious basis on which you object to COVID-19 immunizations. (You may use space on page 3 and attach additional written pages or other supporting materials if you so choose. Some examples of supporting materials are listed on page 2.)

Dear Bayhealth Medical Center, I'm respectfully submitting my request for religious exemption to the COVID 19 vaccine as I explain many of my personal reasons in the attached letter. I would like to add that I am not opposed to all vaccines/immunizations but my belief in the scriptures leads me to have faith in the effective alternatives and choose what I allow to enter my blessed and sacred gift from God – my body. By my belief, I will keep my wholesome relationship with God. Sincerely, Tammy Harvey

I certify that the information I am submitting in support of my request for an accommodation is complete and accurate to the best of my knowledge, and I understand that any intentional misrepresentation contained in this request may result in disciplinary actions, up to and including termination. I understand that my request for accommodation will not be granted

or may be withdrawn if it is unreasonable, if it poses a direct threat to the health and/or safety of others in the workplace, of it creates an undue hardship.

Tammy Harvey	/s/	11-17-2021
Print Name	Signature	Date

THIS FORM NEEDS TO BE COMPLETED AND RECEIVED IN HUMAN RESOURCES BY 4:30 P.M. ON NOVEMBER 18, 2021. LATE SUBMISSIONS WILL NOT BE ACCEPTED.

SPACE FOR SUPPLEMENTAL INFORMATION

Name: Tammy Harvey

Employee I.D.: 105269

Please refer to attached letter.

Thank you,

Tammy Harvey

Dear Bayhealth Medical Center,

I am writing this letter to formally and respectfully request a religious exemption from Bayhealth's COVID 19 vaccine mandate. I respectfully ask that this request be kept confidential since I am disclosing many beliefs and values that I consider to be personal information that I usually do not share With others outside of my personal circle. I come from a large family that is tied together by a strong religious bond

that has been built by our belief in our all mighty creator – God. I am providing my reasons why I feel that the mandated COVID 19 vaccine will violate aspects of my Christian faith and why I am asking for a religious exemption.

As a Christian, my life is guided by the many scriptures within the Bible and the precious work of God. In 1 Corinthians 6:19 "Do you not know that your body is a temple of the Holy Spirit, who is in you, whom you have received from God? My belief in this scriptures speaks to me by telling me that God has created my being and I choose what I introduce into my body at all times. In 2 Timothy 3:16 "All scripture is God-breathed and is useful". Being created by God, I am obligated to follow scriptures. In 1 Corinthians 6:20 "for you were bought with a price. So glorify God in your body". I consider my body to be a blessed and sacred gift from God and I do not believe that God would want me to receive this vaccine.

The above scriptures are just a few examples of my beliefs. I must honor my creator, God, with my body, mind and spirit and decide what I allow to enter my body by putting my God first. As a Christian, I must take care of my body, the one created by God, by using all other options available that are considered effective alternatives to the COVID 19 vaccine. By utilizing all alternatives, I will stay true to my Christian faith. Title VII of the Civil Rights Act of 1964 applies to me as an employee in the workforce. It is a law that prevents employers from discriminating against an employee on the basis their religion/religious beliefs/religious practices.

In summary, I am a Christian. I believe in God. I believe the Holy Spirit lives in me. As in James 1:5, I believe in God's promise that "if anyone lacks wisdom, let him ask God, who gives to all liberally". I have prayed about how to accept the COVID 19 vaccine in light of my religious beliefs and I believe that accepting the vaccine would be a violation of my conscious and relationship with God.

I would like to thank you in advance for honoring my sincere religious beliefs and my decision to be exempt from the COVID 19 vaccine.

Sincerely,

/s/

Tammy Harvey

11/17/2021

APPENDIX T

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SHARITI A. LANE,
Plaintiff,

v. C.A. No.: 1:23-cv-00102-RGA

BAYHEALTH MEDICAL CENTER, INC.,
Defendant.

TRIAL BY JURY DEMANDED

AMENDED COMPLAINT

1. Plaintiff Shariti A. Lane ("Lane" or "Plaintiff") is a resident of the State of Delaware residing at 2976 Mud Mill Road, Camden-Wyoming, DE 19934.

2. Defendant Bayhealth Medical Center ("Bayhealth" or "Defendant") is a Delaware corporation whose registered agent for service of process is Bay health Medical Center, 640 South State Street, Dover, Delaware 19901.

3. Defendant is an employer within the State of Delaware and within the jurisdictional coverage of Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, *et seq.* ("Title VII") and the Delaware Discrimination in Employment Act ("DDEA"), 19 *Del. C.* § 710, *et seq.*

4. Jurisdiction is conferred on this Court by 42 U.S.C. § 2000e-5(f)(3), 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 1367.

5. Venue for all causes of action stated herein lies in the District of Delaware pursuant to 28 U.S.C. § 1391(b), as the acts alleged as the basis for these claims took place within the boundaries of that District.

6. Plaintiff brings this action under Title VII of the Civil Rights Act of 1964, as amended, and under the Delaware Discrimination in Employment Act to redress the wrongs done to her by Defendant's discrimination against her on the basis of her religion.

7. Plaintiff timely submitted a complaint of discrimination based on her religion to the Delaware Department of Labor ("DDOL") and the Equal Employment Opportunity Commission ("EEOC").

8. Plaintiff has received a Notice of Right to Sue for the above referenced charge from the EEOC.

9. Plaintiff has timely filed this Complaint within ninety (90) days of her receipt of the aforementioned Notice of Right to Sue.

10. Plaintiff was hired by Defendant as a registered nurse on or about January 6, 2003.

11. Plaintiff held the position of registered nurse – care manager at the time of her discharge.

12. At all times relevant to this Complaint,

Plaintiff was qualified for her job position and satisfactorily performed all duties of her job position.

13. On August 12, 2021, Governor John Carney ordered that all Delaware state health care employees, which included Defendant employees, to either become vaccinated or submit to regular testing for the COVID-19 virus by September 30, 2021.

14. On November 5, 2021, the Centers for Medicare and Medicaid Services ("CMS") issued a COVID-19 vaccine mandate.

15. The CMS vaccine mandate required that health care facilities ensure that their covered staff were vaccinated against COVID-19, but also required that such facilities offer medical and religious exemptions.

16. Pursuant to the CMS mandate, a facility was considered 100% compliant when all of its staff were either vaccinated or had a medical or religious waiver.

17. **Plaintiff is a non-denominational Christian who regularly attends the Love of Christ Church in Bear, Delaware and** holds a sincere religious belief that prevents her from taking the COVID-19 vaccine.

18. On November 11, 2021, Plaintiff submitted a request for an exemption to the COVID-19 immunization based on her sincerely held religious beliefs. **A copy of Plaintiff's COVID-19 Religious Request for Immunization Exemption explains**

Plaintiff's objections in detail and is attached hereto as Exhibit "A".

19. The request detailed the basis for Plaintiff's sincerely held religious belief, specifically noting, *inter alia*, her religious upbringing, her belief that her body is a temple, that her decision was guided by God, and that her Bible holds there is no need of a physician unless one is sick.

20. On December 14, 2021, Defendant informed Plaintiff via letter that her request for a religious exemption was denied.

21. On December 16, 2022, Plaintiff emailed Defendant Human Resources asking for an explanation as to why her religious exemption was denied and to ask if it was possible to submit a revised exemption request.

22. On the same date, Defendant responded by email to Plaintiff stating her letter presented no theological opposition to vaccinations and that no revisions would be accepted.

23. By a letter dated January 26, 2022, a Delaware attorney wrote Terry M. Murphy, President and CEO of Defendant, on behalf of ninety Bay health employees, including Plaintiff, requesting Defendant reconsider the denied exemption requests and to comply with its obligations under Title VII.

24. Plaintiff's employment with Defendant was terminated on February 28, 2022.

25. By failing to allow an appeal or otherwise engage in any type of substantive communication regarding Plaintiff's request for an exemption, Defendant failed to engage in an interactive process to determine whether an exemption was warranted or whether a reasonable accommodation was available.

26. Plaintiff was subjected to differential treatment on the basis of her sincerely held religious beliefs by agents of the Defendant, including but not limited to ~~retaliation~~ ~~and~~ termination of her employment.

27. The reason proffered by Defendant for Plaintiff's termination, i.e., denial of her request for a religious exemption because Defendant believed her religion had no theological opposition to vaccines, failed to comply with federal and state laws prohibiting discrimination ~~and retaliation~~ based on sincerely held religious beliefs.

28. Defendant is liable for the actions of its agents as set forth in this complaint under the principles of agency and the doctrine of respondeat superior and pursuant to the ratification of the agents' actions by Defendant.

29. The wrongful acts committed by the Defendant, as stated hereinabove, were willful, wanton, and committed in bad faith.

COUNT I - TITLE VII

30. Plaintiff restates and hereby incorporates by

reference paragraphs 1 through 29 hereinabove.

31. By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has discriminated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 42 U.S.C. § 2000e *et seq.*

~~32. By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has retaliated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 42 U.S.C. § 2000e *et seq.*~~

~~33.32.~~ As a direct result of the discriminatory, retaliatory, and wrongful conduct of the Defendant, Plaintiff has suffered damages, including, but not limited to, severe emotional distress, pain and suffering, mental anguish, humiliation, and lost wages.

WHEREFORE, Plaintiff demands judgment against the Defendant for:

- a. back pay, including interest;
- b. reinstatement, if feasible, or in the alternative, front pay;
- c. compensatory damages, including damages for emotional and physical pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and all other non-pecuniary damages;

- d. punitive damages;
- e. pre-judgment and post-judgment interest;
- f. attorney's fees; and
- g. any other relief that this Court deems just.

COUNT II - DDEA

~~34.33.~~ Plaintiff hereby restates and incorporates by reference paragraphs 1 through ~~3332~~ hereinabove.

~~35.34.~~ By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has discriminated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 19 *Del. C.* § 710, *et seq.*

~~36. By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has retaliated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 19 *Del. C.* § 710, *et seq.*~~

~~37.35.~~ As a direct result of the discriminatory, retaliatory, and wrongful conduct of the Defendant, Plaintiff has suffered damages, including, but not limited to, severe emotional distress, pain and suffering, mental anguish, humiliation, and lost wages.

WHEREFORE, Plaintiff demands judgment against the Defendant for:

- a. back pay, including interest;
- b. reinstatement, if feasible, or in the alternative, front pay;
- c. compensatory damages, including damages for emotional and physical pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and all other non-pecuniary damages;
- d. punitive damages;
- e. pre-judgment and post-judgment interest;
- f. attorney's fees; and
- g. any other relief that this Court deems just.

SCHMITTINGER & RODRIGUEZ, P.A.

By: */s/ Gary E. Junge*
GARY E. JUNGE
Bar I.D. # 6169
414 South State Street
P.O. Box 497
Dover, Delaware 19903-0497
(302) 674-0140
Attorney for Plaintiff

Dated: April 27, 2023

EXHIBIT A

Shariti Lane
2976 Mud Mill Rd.
Camden-Wyoming, DE 19934
302-233-4405

Bayhealth
640 S. State St.
Dover, DE 19901

November 11, 2021

To Whom It May Concern,

I am writing to respectfully and formally apply for a religious exemption to the covid 19 vaccine.

My request is based on religious grounds. I am adhering to the Delaware Discrimination in Employment Act (DDEA) which states

... prohibits employers from discriminating against individuals because of their religion in hiring, firing, and other terms of conditions of employment.

I am notarizing this letter of religious belief as I hold sincere and genuine beliefs that forbids me from receiving the covid 19 vaccine.

I understand that the law allows for my personal religious beliefs and that I do not have to be a member of an organized religion, or a member of any religion at

all. I also understand that refusing immunization does not have to be directive of a particular religion that I may follow. I also understand that I do not have to submit a letter from a religious figure.

With all due respect, I request this application be kept confidential and its contents be shared on an as-needed basis only; that is, only those charged with approving the application should read my words as they are of a personal nature.

In order for the reader(s) of this document to understand my religious perspective and how I came to my decision to reject the covid 19 immunization I would like to offer a history of how I was raised and my religious development.

I was raised in a Christian home. We attended non-denominational Christian services weekly. My siblings and I were raised to believe in and to make God a part of our daily lives, not just on Sunday. We were taught about God's love, forgiveness, faithfulness, grace, mercy, and healing. We were reared according to God's principles explicitly spelled out in the Bible.

I accepted Jesus as my personal Lord and Savior when I was just five years old. I have continued to serve God and live according to His Word since the day I invited Him into my life. I have a personal relationship with God as I know without Him my life, nor my eternity, would be the same without Him.

I have not been able to find any Scripture from the Bible stating verbatim that I should not vaccinate.

However, I understand through my translation of the Word of God that the covid 19 immunization is contrary to my genuine religious beliefs and my First Amendment Freedom of Religion.

Below are verses from the Holy Bible that conveys my strong refusal to the covid 19 vaccine:

"Or do you not know that your body is a temple of the Holy Spirit within you, whom you have from God? You are not your own ... " I Corinthians 6:19

"It is better to take refuge in the Lord than to trust in man." Psalm 118:8

"For God gave us a spirit not of fear but of power and love and self-control." 2 Timothy 1:17

"There is always a way that seems right to a man, but it ends in the way to death." Proverbs 14:12

"If any of you lacks wisdom, let him ask God, who gives generously to all, without reproach, and it will be given him." James 1:15

"... our God forever and ever. He will guide us forever." Psalm 48:14

"... we must obey God rather than men." Acts 5:29

"... those who are well have no need of a physician, but those who are sick." Matthew 9:12

"But if anyone does not provide for his relatives, and

especially for the members of his household, he has denied the faith and is worse than an unbeliever." 1 Timothy 5:8

"Show me the path where I should go, O lord, show me the right road for me to walk." Psalm 25:4

My trust is in my God, not in man. God has provided for me and my family and will continue to do so. I do not believe that immunizations can heal, as that is God's job. The Bible states that I should visit the doctor when I am sick, not well; therefore, if I were to receive the immunization and become ill I would not be able to provide for my family, thus going against God's Word.

I was brought up to follow rules and guidelines set by trained experts. Most times this feels right; therefore, I have received immunizations in the past. However, I see a clear difference between helping a healthy body with medical interventions versus a sick body. I have reviewed the facts, weighed risks and benefits, and sought God and His Word in order to help me come to a decision regarding the covid 19 vaccine. My decisions adhere to my personal belief in God and instructions found in His Word. While I am declining the covid 19 vaccine I am not turning my back on all modern medicine along with its philosophies and practices.

The above is an explanation of my personal religious beliefs. I hope I was able to explain them sufficiently. They are my thoughts, experiences, and personal translations. I do not expect anyone else to agree. But, under Delaware Discrimination Employment Act, I

respectfully request they are honored as truthful and legally permissible. Based on the information I have shared I ask this waiver be approved.

Respectfully,

Shariti A. Lane

APPENDIX U

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JANELLE B. CARUANO
Plaintiff,

v. C.A. No.: 1 :22-cv-01284-RGA

BAYHEALTH MEDICAL CENTER, INC.,
Defendant.

TRIAL BY JURY DEMANDED

AMENDED COMPLAINT

1. Plaintiff Janelle Caruano ("Caruano" or "Plaintiff") is a resident of the State of Delaware residing at 40 Country Field Drive, Camden, DE 19934.

2. Defendant Bayhealth Medical Center (~~"Defendant Bayhealth"~~ or "Defendant") is a Delaware corporation whose registered agent for service of process is Bayhealth Medical Center, 640 South State Street, Dover, Delaware 19901.

3. Defendant is an employer within the State of Delaware and within the jurisdictional coverage of Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, *et seq.* ("Title VII") and the Delaware Discrimination in Employment Act ("DDEA"), 19 *Del.*

C. § 710, *et seq.*

4. Jurisdiction is conferred on this Court by 42 U.S.C. § 2000e-5(f)(3), 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 1367.

5. Venue for all causes of action stated herein lies in the District of Delaware pursuant to 28 U.S.C. § 1391(b), as the acts alleged as the basis for these claims took place within the boundaries of that District.

6. Plaintiff brings this action under Title VII of the Civil Rights Act of 1964, as amended, and under the Delaware Discrimination in Employment Act to redress the wrongs done to her by Defendant's discrimination against her on the basis of her religion.

7. Plaintiff timely submitted a complaint of discrimination based on her religion to the Delaware Department of Labor ("DDOL") and the Equal Employment Opportunity Commission ("EEOC").

8. Plaintiff has received a Notice of Right to Sue for the above referenced charge from the EEOC.

9. Plaintiff has timely filed this Complaint within ninety (90) days of her receipt of the aforementioned Notice of Right to Sue.

10. Plaintiff was hired by Defendant as a pharmacist on or about July 14, 2008.

11. Plaintiff held the position of Clinical

Pharmacist at the time of her discharge.

12. At all times relevant to this Complaint, Plaintiff was qualified for her job position and satisfactorily performed all duties of her job position.

13. Plaintiff is a **non-denominational Christian who regularly attends services of the Three Stones Church** and holds a sincere religious belief that prevents her from taking the COVID-19 vaccine.

14. On August 12, 2021, Governor John Carney ordered that all Delaware state health care employees, which included Defendant employees, to either become vaccinated or submit to regular testing for the COVID-19 virus by September 30, 2021.

15. On November 5, 2021, the Centers for Medicare and Medicaid Services ("CMS") issued a COVID-19 vaccine mandate.

16. The CMS vaccine mandate required that health care facilities ensure that their covered staff were vaccinated against COVID-19, but also required that such facilities offer medical and religious exemptions.

17. Pursuant to the CMS mandate, a facility was considered 100% compliant when all of its staff were either vaccinated or had a medical or religious waiver.

18. On November 12, 2021, Plaintiff submitted a COVID-19 Religious Request for Immunization

Exemption form to Defendant. **A copy of Plaintiff's COVID-19 Religious Request for Immunization Exemption explains Plaintiff's objections in detail and is attached hereto as Exhibit "A".**

19. The request detailed the basis for Plaintiff's sincerely held religious belief, **specifically noting, *inter alia*, that her body is a temple for the Holy Spirit and it is against God's word to put anything into her body that would alter her God-given immune system.**

20. On November 15, 2021, Defendant requested from Plaintiff additional information in the form of a letter from a religious/spiritual leader, or a person with knowledge of the religious organization Plaintiff attended.

21. On November 17, 2021, Plaintiff inquired as to the deadline for submitting the additional information.

22. On the same date, Defendant answered that the additional information was due the next day by 4:30 p.m.

23. On November 18, 2021, Plaintiff provided a letter from her Pastor supporting her request for an exemption. **A copy of emails related to Bayhealth's request and the letter from her Pastor are attached hereto as Exhibit "B".**

24. On December 13, 2021, Defendant informed Plaintiff via letter that her request for a religious

exemption was denied.

25. On December 17, 2022, Plaintiff emailed Defendant Human Resources with inquiries into the appeal process.

26. On the same date, Defendant responded by email to Plaintiff stating that there was no appeal process.

27. Plaintiff's employment with Defendant was terminated on February 28, 2022.

28. By failing to allow an appeal or otherwise engage in any type of substantive communication regarding Plaintiff's request for an exemption, Defendant failed to engage in an interactive process to determine whether an exemption was warranted or whether a reasonable accommodation was available.

29. Plaintiff was subjected to differential treatment on the basis of her sincerely held religious beliefs by agents of the Defendant, including but not limited to ~~retaliation~~ **and** termination of her employment.

30. The reason proffered by Defendant for Plaintiff's termination, i.e., denial of her request for a religious exemption because Defendant believed her religion had no theological opposition to vaccines, failed to comply with federal and state laws prohibiting discrimination ~~and retaliation~~ based on sincerely held religious beliefs.

31. Defendant is liable for the actions of its agents as set forth in this complaint under the principles of agency and the doctrine of respondeat superior and pursuant to the ratification of the agents' actions by Defendant.

32. The wrongful acts committed by the Defendant, as stated hereinabove, were willful, wanton, and committed in bad faith.

COUNT I - TITLE VII

33. Plaintiff restates and hereby incorporates by reference paragraphs 1 through **32** hereinabove.

34. By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has discriminated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 42 U.S.C. § 2000e *et seq.*

~~**35. By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has retaliated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 42 U.S.C. § 2000e *et seq.***~~

~~**36:35.**~~ As a direct result of the discriminatory; ~~**retaliatory;**~~ and wrongful conduct of the Defendant, Plaintiff has suffered damages, including, but not limited to, severe emotional distress, pain and suffering, mental anguish, humiliation, and lost wages.

WHEREFORE, Plaintiff demands judgment against the Defendant for:

- a. back pay, including interest;
- b. reinstatement, if feasible, or in the alternative, front pay;
- c. compensatory damages, including damages for emotional and physical pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and all other non-pecuniary damages;
- d. punitive damages;
- e. pre-judgment and post-judgment interest;
- f. attorney's fees; and
- g. any other relief that this Court deems just.

COUNT II - DDEA

37:36. Plaintiff hereby restates and incorporates by reference paragraphs 1 through 35 hereinabove.

38:37. By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has discriminated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 19 *Del. C.* § 710, *et seq.*

39. ~~By committing the aforementioned acts,~~

~~including Plaintiff's subsequent termination, Defendant has retaliated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 19 Del. C. § 710, et seq.~~

~~40.38.~~ As a direct result of the discriminatory, ~~retaliatory~~, and wrongful conduct of the Defendant, Plaintiff has suffered damages, including, but not limited to, severe emotional distress, pain and suffering, mental anguish, humiliation, and lost wages.

WHEREFORE, Plaintiff demands judgment against the Defendant for:

- h. back pay, including interest;
- i. reinstatement, if feasible, or in the alternative, front pay;
- j. compensatory damages, including damages for emotional and physical pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and all other non-pecuniary damages;
- k. punitive damages;
- l. pre-judgment and post-judgment interest;
- m. attorney's fees; and
- n. any other relief that this Court deems just.

SCHMITTINGER & RODRIGUEZ, P.A.

By: /s/ Gary E. Junge
GARY E. JUNGE
Bar I.D. # 6169
414 South State Street
P.O. Box 497
Dover, Delaware 19903-0497
(302) 674-0140
Attorney for Plaintiff

Dated: April 18, 2023

EXHIBIT A

[BAYHEALTH LOGO]

COVID-19 Religious Request for Immunization Exemption

Employee Name:
Janelle Caruano

Employee ID:
125996

Request Date:
11-12-21

Position/Title
Clinical Pharmacist

Supervisor's Name:
Carl Popelas

On November 4, 2021, OSHA issued an Emergency Temporary Standard ("ETS") mandating COVID-19 vaccines for all employers with over 100 employees. As per the ETS all employees must be vaccinated against COVID-19, with exceptions only as required by law. In certain circumstances, an employee who has a religious objection to the COVID-19 vaccination requirement to an exemption from that requirement, in which case the employee would instead comply with alternative health and safety protocols. Bayhealth is committed to respecting the important legal protections for religious liberty. The purpose of this

form is to determine whether you may be eligible for an exemption.

Please explain in your own words why you are seeking religious exemption, the religious principles that guide your objection to immunization, and please indicate whether you are opposed to all immunizations, and if not, the religious basis on which you object to COVID-19 immunizations. (You may use space on page 3 and attach additional written pages or other supporting materials if you so choose. Some examples of supporting materials are listed on page 2.)

See attached email letter

I certify that the information I am submitting in support of my request for an accommodation is complete and accurate to the best of my knowledge, and I understand that any intentional misrepresentation contained in this request may result in disciplinary actions, up to and including termination. I understand that my request for accommodation will not be granted or may be withdrawn if it is unreasonable, if it poses a direct threat to the health and/or safety of others in the workplace, or if it creates an undue hardship.

Janelle Caruano	/s/	11-12-21
Print Name	Signature	Date

THIS FORM NEEDS TO BE COMPLETED AND RECEIVED IN HUMAN RESOURCES BY 4:30 P.M. ON NOVEMBER 18, 2021. LATE SUBMISSIONS WILL NOT BE ACCEPTED.

Emailed to: Lauren Brittingham

Lauren Brittingham

From: Janelle Caruano
Sent: Friday, November 12, 2021 8:52 PM
To: Lauren Brittingham
Subject: religious exemption letter

To whom it may concern:

I am seeking a religious exemption for the COVID-19 immunizations based on my current sincerely held religious beliefs. My Christian values, sincerely held beliefs, and the faith I continue to follow, does not allow me to receive a COVID-19 vaccine. My beliefs are an all-encompassing guide to my daily life choices and while I am not perfect, I strive to honor God in all I do.

I believe the Bible is the inspired, inerrant, and infallible word of God and has ultimate authority and sovereignty over my body and my life. Scripture states in 1 Corinthians 6:19-20 (NIV Bible) "Do you not know your bodies are temples of the Holy Spirit, who is in you, whom you have received from God? You are not your own; you were bought at a price. Therefore, honor God with your bodies." By the grace of God, my salvation was purchased through the crucifixion of Jesus Christ. It is right to honor God with my body since it is his temple, by controlling what I put into it after discernment with the Lord. 1 Corinthians 3:16-17 (NIV Bible) also states: "Don't you know that you yourselves are God's temple and that God's spirit dwells in your midst? If anyone destroys God's temple,

God will destroy that person; for God's temple is sacred, and you together are that temple." 2 Corinthians 7:1 (NIV Bible) "Therefore, since we have these promises, dear friends, let us purify ourselves from everything that contaminates body and spirit, perfecting holiness out of reverence for God." This teaches that we should cleanse ourselves from every impurity of flesh and spirit.

"Thy will be done," God's will, not man's will or my will. Therefore, I cannot be compelled or shouldn't be forced to do something that goes against God's will. I trust in the Lord. Ephesians 6:10-18 directs us to "Put on the full armor of God," so that we can be equipped with truth, righteousness, peace and faith. God teaches us to not be afraid and that we have divine protection. My trust is in God and Jesus Christ.

The Holy Scriptures state that we are made in the image of God. "So God created mankind in his own image, in the image of God he created them ; male and female he created them." (Genesis 1:27 NIV Bible) We are to be image-bearers of God. "So shall we bear the image of the heavenly man." 1 Corinthians 15:49 (NIV Bible). One day, we will be called into account for all we do for all things done while on this earth, including what we do to our body. "So then, each of us will give an account of ourselves to God." Romans 14:12 (NIV Bible) "For we must all appear before the judgement seat of Christ, so that each of us may receive what is due us for the things done while in the body, whether good or bad." 2 Corinthians 5:10 (NIV Bible). To be forced to do something that violates my beliefs is to sin against God. After careful discernment, prayerfully

seeking God, and reading Bible scripture, it is my sincere religious belief that the COVID-19 vaccine would be in direct opposition to God's power, authority, and will over my body, life and eternal soul. Therefore, for the aforementioned reasons and supporting Holy Scriptures, I cannot receive the COVID-19 vaccine under any circumstances.

Throughout the pandemic I have been working according to your policies and measures required of Bayhealth employees. The law, however, requires accommodations be offered for religious exemptions. My sincerely held ethical, moral and religious beliefs are universal, encompassing my belief and faith in God. I cannot violate my Creator or conscience which has been given to me by God.

Although I have had vaccines in the past, I now know that they are a sin against the body because God made me with an immune system and I cannot do anything to alter it. "I am fearfully and wonderfully made" Psalms 139:14 (NIV Bible). The COVID-19 vaccine will alter or change my immune system given to me by God, and I cannot inject a substance to change my God-given immune system. Therefore, I have not received any vaccines for many years now, including the influenza vaccine, because of my sincerely held religious belief as described above. I have been convicted by the Holy Spirit and have been ashamed of what I did in the past but am being redeemed by Jesus Christ and repented of what I have done in the past.

I am available to answer additional questions if needed, provided they are a "reasonable inquiry," as

allowed for by law. I want to emphasize these are *my* sincerely held religious beliefs. The law does not recognize the need for employers to consult "religious scholars" or examine "church doctrine" regarding the vaccine. A religious exemption request is made by *each individual* based on the *individual's* sincerely held religious, ethical and/or moral beliefs, not the tenets or beliefs of a church, doctrine, religion or religious scholars.

Thank you for your time.

Sincerely,

Janelle Caruano, PharmD, BCIDP
Bayhealth Kent General
Clinical Pharmacist
302-744-6006

EXHIBIT B

Mariah Gebhart

From: Mariah Gebhart
Sent: Wednesday, November 17, 2021 10:57 AM
To: Janelle Caruano
Subject: RE: COVID-19 Religious Request for
Immunization Exemption
Tracking:

Recipient
Janelle Caruano

Read
Read: 11/17/2021 5:13 PM

Hi Janelle,

Tomorrow 11/18 by 4:30 pm.

Mariah A. Gebhart
Employee Relations Manager
Bayhealth Medical Center
Direct: (302) 744-7191
Fax: (302) 744-7469
rnariah_gebhart@bayhealth.org

From: Janelle Caruano
<Janelle_Caruano@bayhealth.org>
Sent: Wednesday, November 17, 2021 10:56 AM
To: Mariah Gebhart
<Mariah_Gebhart@bayheafth.org>

Subject: Re: COVID-19 Religious Request for
Immunization Exemption

Hi Mariah,

Yes, I can provide a letter from my Pastor. I would like to know what the deadline is for this additional information request? Thank you

Kindest regards,

Janelle Caruano, PharmD, BCIDP
Bayhealth Kent General
Pharmacy
302-744-6006

* * *

From: Mariah Gebhart
<Mariah Gebhart@bayhealth.org>
Sent: Monday, November 15, 2021 5:31 PM
To: Janelle Caruano
<Janelle Caruano@bayhealth.org>
Subject: COVID-19 Religious Request for
Immunization Exemption

Hi Janelle,

We are in receipt of your request, but need additional information.

Could you please provide a letter from a religious/spiritual leader, member or person with personal knowledge from the religious organization

you attend to explain the doctrine/beliefs that prohibit all immunizations and or COVID-19 immunization; or Literature from the religious organization or other writings and sources upon which the requester has relied in formulating their religious beliefs that prohibit all immunizations and/or the COVID-19 immunization.

Thank you.

Mariah A. Gebhart
Employee Relations Manager
Bayhealth Medical Center
Direct: (302) 744-7191
Fax: (302) 744-7469
mariah.gebhart@bayhealth.org

* * *

Mariah Gebhart

From: Janelle Caruano
Sent: Thursday, November 18, 2021 11:06 AM
To: Mariah Gebhart; Lauren Brittingham
Subject: Re: COVID-19 Religious Request for Immunization Exemption
Attachments: Doc-by-Scan-Shot.pdf
Importance: High

To whom it may concern:

Even though I am complying with your request for additional information as stated to me, "Could you please provide a letter from a religious/spiritual

leader, member or person with personal knowledge from the religious organization *you attend* to explain the doctrine/beliefs ... ," I would like to reiterate that this criterion is in contradiction to Title VII of the U.S. Civil Rights Act of 1964 and not required by law. Religion includes not only traditional, organized religions such as Christianity, Judaism, Islam, Hinduism, Sikhism, and Buddhism, but also religious beliefs that are new, uncommon, *not part of a formal church or sect*, only subscribed to by a small number of people, or that seem illogical or unreasonable to others. However, as I do regularly attend Three Stones Church led by Pastor Jim Dorton, I have attached a letter from him.

I am notifying you again, of my legal, federal, religious exemption, and as my employer you are required to make a reasonable accommodation. I am only required by law to express my religious objection and express my sincerely held religious belief. My religious exemption and belief has been clearly stated in my prior sent letter and supported by the letter attachment from Pastor Jim Dorton. The reasonable accommodation I am requesting is to continue working my job exactly as I have been with my continued compliance to masking since the start of the pandemic as well as the additional weekly testing for these past couple months, for which it has not been an "undue hardship" and did not "pose a direct threat to the health and/or safety of others in the workplace."

Thank you for your time.

Kindest regards,

Janelle Caruano, PharmD, BCIDP

* * *

From: Mariah Gebhart
<Mariah_Gebhart@bayhealth.org>
Sent: Wednesday, November 17, 2021 10:57 AM
To: Janelle Caruano
<Janelle_Caruano@bayhealth.org>
Subject: RE: COVID-19 Religious Request for
Immunization Exemption

Hi Janelle,

Tomorrow 11/18 by 4:30 pm.

Mariah A. Gebhart
Employee Relations Manager

Three Stones Church

1506 East Lebanon Road Dover DE 19901
302.538.6031 office@threestoneschurch.org

To whom it may concern,

I am writing on behalf of Janelle Caruano and in full support of her request for an exemption from the COVID-19 vaccine.

Christians are not of one mind on this issue. Unity of thinking is vital in the essentials of our faith, those clearly presented in Scripture, is critical to our faith. However, in other areas, such as this one, we recognize that we often come to different conclusion on matters that are not clearly detailed in the Bible. Even further, that God may well lead different Christians in different directions for his purposes. For example, in parts of the world where Christians are actively persecuted, God may call some to stand and be heard and others to hide or flee.

The Apostle Paul, in his first letter to the church in Corinth (1 Corinthians 8-10), addresses the matter of conscience among individual Christians – that there are times when – without violating our Christianity, we may differ, and specifically on *things taken into the body*.

In 1 Timothy, again written by Paul, the commendation to hold to one's faith and conscience is clear, and "made a shipwreck of their faith."

Janelle Caruano is a bright, intelligent, deep thinking

woman who is sincere about her beliefs sincere about her faith. All of these things are evident to anyone who knows her. I believe, sincerely, that to force her to decide between receiving the vaccine and keeping her job is likewise forcing her to choose between supporting her family and making, in Paul's words a shipwreck of her faith.

I humbly ask you not to force this decision upon her.

If I can be of any assistance, whatsoever in this matter please contact me at any time.

/s/

Rev. James M. Dorton Jr.
Pastor, Three Stones Church
1506 E. Lebanon Road Dover DE 19901
Telephone: Office (302) 538.6031. Cell (302) 632-0427
Email: pastorjim@threestoneschurch.org

APPENDIX V

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

DONNA L. MAHER,
Plaintiff,

v. C.A. No.: 1:22-cv-01551-RGA

BAYHEALTH MEDICAL CENTER, INC.,
Defendant.

TRIAL BY JURY DEMANDED

AMENDED COMPLAINT

1. Plaintiff Donna L. Maher ("Maher" or "Plaintiff") is a resident of the State of Delaware residing at 3438 Fox Hunters Road, Harrington, Delaware 19952.

2. Defendant Bayhealth Medical Center ("**Bayhealth**" or "Defendant") is a Delaware corporation whose registered agent for service of process is Bay health Medical Center, 640 South State Street, Dover, Delaware 19901.

3. Defendant is an employer within the State of Delaware and within the jurisdictional coverage of Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, *et seq.* ("Title VII").

4. Jurisdiction is conferred on this Court by 42 U.S.C. § 2000e-5(f)(3), 28 U.S.C. § 1331, and 28 U.S.C. § 1343.

5. Venue for all causes of action stated herein lies in the District of Delaware pursuant to 28 U.S.C. § 1391(b), as the acts alleged as the basis for these claims took place within the boundaries of that District.

6. Plaintiff brings this action under Title VII of the Civil Rights Act of 1964, as amended, to redress the wrongs done to her by Defendant's discrimination against her on the basis of her religion.

7. Plaintiff timely submitted a complaint of discrimination based on her religion to the Equal Employment Opportunity Commission ("EEOC").

8. Plaintiff has received a Notice of Right to Sue for the above referenced charge from the EEOC.

9. Plaintiff has timely filed this Complaint within ninety (90) days of her receipt of the EEOC Notice of Right to Sue.

10. Plaintiff was hired by Defendant as a Registered Nurse ("RN") in or about April 2005.

11. Plaintiff held the position of RN at the time of her discharge.

12. At all times relevant to this Complaint, Plaintiff was qualified for her job position and

satisfactorily performed all duties of her job position.

13. **Plaintiff is a non-denomination Christian who follows various preachers and teachers to help her understand God's Word** and holds a sincere religious belief that prevents her from being inoculated with the COVID-19 vaccine.

14. On August 12, 2021, Governor John Carney ordered that all Delaware state health care employees, which included Defendant's employees, to either become vaccinated or submit to regular testing for the COVID-19 virus by September 30, 2021.

15. On November 5, 2021, the Centers for Medicare and Medicaid Services ("CMS") issued a COVID-19 vaccine mandate.

16. The CMS vaccine mandate required that health care facilities ensure their covered staff were vaccinated against COVID-19, but also required that such facilities offer medical and religious exemptions.

17. Pursuant to the CMS mandate, a facility was considered 100% compliant when all of its staff were either vaccinated or had a medical or religious waiver.

18. On November 17, 2021, Plaintiff submitted a request for an exemption to the COVID-19 immunization based on her sincerely held religious beliefs. **A copy of Plaintiff's COVID-19 Religious Request for Immunization Exemption explains Plaintiff's objections in detail and is attached hereto as Exhibit "A".**

19. The request detailed the basis for Plaintiff's sincerely held religious belief, **specifically noting, *inter alia*, that her body is a temple of the living God, and that her God-given immune system gives her immunity to COVID-19.**

20. On December 14, 2021, Defendant informed Plaintiff via letter that her request for a religious exemption was denied.

21. Plaintiff's employment with Defendant was terminated on February 28, 2022.

22. Defendant had no process in place for appealing the denial of a religious exemption request.

23. By failing to allow an appeal or otherwise engage in any type of substantive communication regarding Plaintiff's request for a religious exemption, Defendant failed to engage in an interactive process to determine whether an exemption was warranted or whether a reasonable accommodation was available.

24. Plaintiff was subjected to differential treatment on the basis of her sincerely held religious beliefs by agents of the Defendant, including but not limited to **retaliation** ~~and~~ termination of her employment.

25. Defendant informed Plaintiff that her application for an exemption had been thoroughly reviewed before denying her request, but failed to provide a reason for the denial.

26. Defendant's denial of Plaintiff's request for a religious exemption failed to comply with federal law prohibiting discrimination ~~and retaliation~~ based on sincerely held religious beliefs.

27. Defendant is liable for the actions of its agents as set forth in this complaint under the principles of agency and the doctrine of *respondeat superior* and pursuant to the ratification of the agents' actions by Defendant.

28. The wrongful acts committed by the Defendant, as stated hereinabove, were willful, wanton, and committed in bad faith.

COUNT I - TITLE VII

29. Plaintiff restates and hereby incorporates by reference paragraphs 1 through 28 hereinabove.

30. By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has discriminated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 42 U.S.C. § 2000e *et seq.*

31. By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has retaliated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 42 U.S.C. § 2000e *et seq.*

~~32-31.~~As a direct result of the discriminatory, retaliatory, and wrongful conduct of the Defendant,

Plaintiff has suffered damages, including, but not limited to, severe emotional distress, pain and suffering, mental anguish, humiliation, and lost wages.

WHEREFORE, Plaintiff demands judgment against the Defendant for:

- a. back pay, including interest;
- b. reinstatement, if feasible, or in the alternative, front pay;
- c. compensatory damages, including damages for emotional and physical pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and all other non-pecuniary damages;
- d. punitive damages;
- e. pre-judgment and post-judgment interest;
- f. attorney's fees; and
- g. any other relief that this Court deems just.

SCHMITTINGER & RODRIGUEZ, P.A.

By: */s/ Gary E. Junge*
William D. Fletcher, Jr., Esquire
(#362)
Gary E. Junge, Esquire (#6169)
414 South State Street

P.O. Box 497
Dover, Delaware 19903-0497
(302) 674-0140
Attorneys for Plaintiff

Dated: April 18, 2023

EXHIBIT A

[BAYHEALTH LOGO]

**COVID-19 Religious Request for
Immunization Exemption**

Employee Name:
Donna Maher

Employee ID:
124290

Request Date:

Position/Title
Vascular Access BSN, RN

Supervisor's Name:
Gina Collins

On November 4, 2021, OSHA issued an Emergency Temporary Standard ("ETS") mandating COVID-19 vaccines for all employers with over 100 employees. As per the ETS all employees must be vaccinated against COVID-19, with exceptions only as required by law. In certain circumstances, an employee who has a religious objection to the COVID-19 vaccination requirement to an exemption from that requirement, in which case the employee would instead comply with alternative health and safety protocols. Bayhealth is committed to respecting the important legal protections for religious liberty. The purpose of this

form is to determine whether you may be eligible for an exemption.

Please explain in your own words why you are seeking religious exemption, the religious principles that guide your objection to immunization, and please indicate whether you are opposed to all immunizations, and if not, the religious basis on which you object to COVID-19 immunizations. (You may use space on page 3 and attach additional written pages or other supporting materials if you so choose. Some examples of supporting materials are listed on page 2.)

* See following page

I certify that the information I am submitting in support of my request for an accommodation is complete and accurate to the best of my knowledge, and I understand that any intentional misrepresentation contained in this request may result in disciplinary actions, up to and including termination. I understand that my request for accommodation will not be granted or may be withdrawn if it is unreasonable, if it poses a direct threat to the health and/or safety of others in the workplace, or if it creates an undue hardship.

Donna Maher	/s/	11-17-2021
Print Name	Signature	Date

THIS FORM NEEDS TO BE COMPLETED AND RECEIVED IN HUMAN RESOURCES BY 4:30 P.M. ON NOVEMBER 18, 2021. LATE SUBMISSIONS WILL NOT BE ACCEPTED.

SPACE FOR SUPPLEMENTAL INFORMATION

Name:
Donna Maher

Employee I.D.:
124290

I have been a Christian since childhood and adhere to the teachings and belief system of Jesus Christ. I believe that we are Spirit, soul, and body; and that we have a personal responsibility for the care of our individual selves, both mind and body. The way we choice to think, eat, and care for ourselves has consequences that will either be health promoting of disease causing.

I have made the decision for my life, to manage my food/fuel intake, my thought life, and emotions in ways that are beneficial to my health. These choices have been guided and directed though the spiritual guidance of my belief in the teachings of the Holy Bible and Jesus Christ.

I do not take any medications for any chronic issues. I do not put toxic substances in my body. I have not received the flu vaccine in several years, and had only received it periodically due to feeling pushed to do so, although I never felt good about taking it. I have a natural immunity to Covid, and believe that I do not need to be vaccinated against a virus that my body has proven to naturally overcome. I have a God-give immune system, supported by healthy lifestyle choices and for these reasons I have declined to take this

vaccine.

There are many (too numerous to print here), of Bible verses that guide my life choices for creating and maintaining a healthy mind, emotional state, and body. I will only share a few.

2 Timothy 1:7: For God did not give us a spirit of timidity (of cowardice, of craven and cringing and fawning fear), but [He has given us a spirit] of power and of love and of calm and well-balanced mind and discipline and self-control.

Ephesians 5:29: For no man ever hated his own flesh, but nourishes and carefully protects and cherishes it, as Christ does the church.

2Corinthians 6:16: ... For we are the temple of the living God.

2Corinthians 7:1 ... let us purify ourselves from everything that contaminates body and spirit, perfecting holiness out of reverence for God.

Galatians 5:16-23 ... walk and live [habitually] in the [Holy] Spirit [responsive to and controlled and guided by the Spirit]; then you will certainly not ratify the cravings and desires of the flesh (of human nature without God).

APPENDIX W

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

SEAN McCARTHY,
Plaintiff,

v. C.A. No.: 1:22-cv-01336-RGA

BAYHEALTH MEDICAL CENTER, INC.,
Defendant.

TRIAL BY JURY DEMANDED

AMENDED COMPLAINT¹

1. Plaintiff Sean McCarthy ("McCarthy" or "Plaintiff") is a resident of the State of Delaware residing at 1615 St. Augustine Road, Middletown, DE 19709.

2. Defendant Bayhealth Medical Center ("Bayhealth" or "Defendant") is a Delaware corporation whose registered agent for service of process is Bay health Medical Center, 640 South State Street, Dover, Delaware 19901.

¹ Original Complaint was a *pro se* Complaint filed on fillable Pro Se Employment Discrimination Complaint form that was completed in Plaintiff's handwriting. A copy of the original Complaint is attached hereto as Exhibit "B".

3. Defendant is an employer within the State of Delaware and within the jurisdictional coverage of Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, *et seq.* ("Title VII").

4. Jurisdiction is conferred on this Court by 42 U.S.C. § 2000e-5(f)(3), 28 U.S.C. § 1331, and 28 U.S.C. § 1343.

5. Venue for all causes of action stated herein lies in the District of Delaware pursuant to 28 U.S.C. § 1391(b), as the acts alleged as the basis for these claims took place within the boundaries of that District.

6. Plaintiff brings this action under Title VII of the Civil Rights Act of 1964, as amended, to redress the wrongs done to him by Defendant's discrimination against him on the basis of his religion.

7. Plaintiff timely submitted a complaint of discrimination based on his religion to the Equal Employment Opportunity Commission ("EEOC").

8. Plaintiff has received a Notice of Right to Sue for the above referenced charge from the EEOC.

9. Plaintiff has timely filed this Complaint within ninety (90) days of his receipt of the EEOC Notice of Right to Sue.

10. Plaintiff was hired by Defendant as a Registered Nurse in or about May 2020.

11. Plaintiff held the position of Registered Nurse at the time of his discharge.

12. At all times relevant to this Complaint, Plaintiff was qualified for his job position and satisfactorily performed all duties of his job position.

13. On August 12, 2021, Governor John Carney ordered that all Delaware state health care employees, which included Defendant's employees, to either become vaccinated or submit to regular testing for the COVID-19 virus by September 30, 2021.

14. On November 5, 2021, the Centers for Medicare and Medicaid Services ("CMS") issued a COVID-19 vaccine mandate.

15. The CMS vaccine mandate required that health care facilities ensure their covered staff were vaccinated against COVID-19, but also required that such facilities offer medical and religious exemptions.

16. Pursuant to the CMS mandate, a facility was considered 100% compliant when all of its staff were either vaccinated or had a medical or religious waiver.

17. Plaintiff is a Christian who holds a sincere religious belief that prevents him from being inoculated with the COVID-19 vaccine.

18. On November 16, 2021, Plaintiff submitted a request for an exemption to the COVID-19 immunization based on his sincerely held religious beliefs. A copy of the letter accompanying his

exemption request is attached hereto as Exhibit "A" and is incorporated herein by reference.

19. The request for an exemption details the basis for Plaintiff's sincerely held religious belief, specifically noting, *inter alia*, his belief that his body is a living temple of the Holy Spirit of God, that he is commanded to present his body as a living sacrifice, and that keeping and presenting his body in this way is part of how he worships God.

20. On December 10, 2021, Defendant informed Plaintiff via letter that his request for a religious exemption was denied without providing a reason for the denial.

21. On January 17, 2022, Plaintiff wrote Defendant via email demanding a re-evaluation of his religious exemption request.

22. On January 18, 2022, Defendant responded to Plaintiff's letter by stating his exemption request was denied because it was not evident that his religion had a theological opposition to vaccinations, that there was no appeal process, and that the decision stands as-is.

23. Plaintiff's employment with Defendant was terminated on February 28, 2022.

24. By failing to allow an appeal or otherwise engage in any type of substantive communication regarding Plaintiff's request for an exemption, Defendant failed to engage in an interactive process to

determine whether an exemption was warranted or whether a reasonable accommodation was available.

25. Plaintiff was subjected to differential treatment on the basis of his sincerely held religious beliefs by agents of the Defendant, including but not limited to termination of his employment.

26. The reason proffered by Defendant for Plaintiff's termination, i.e., denial of Plaintiff's request for a religious exemption with no explanation, failed to comply with federal and state laws prohibiting discrimination based on sincerely held religious beliefs.

27. Defendant is liable for the actions of its agents as set forth in this complaint under the principles of agency and the doctrine of *respondeat superior* and pursuant to the ratification of the agents' actions by Defendant.

28. On information and belief, it is believed that fewer than 20 requests for exemptions based on religious beliefs were approved out of hundreds of requests that were submitted.

29. The wrongful acts committed by the Defendant, as stated hereinabove, were willful, wanton, and committed in bad faith.

COUNT I - TITLE VII

30. Plaintiff restates and hereby incorporates by reference paragraphs 1 through 29 hereinabove.

31. By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has discriminated against Plaintiff on the basis of his sincerely held religious beliefs in violation of 42 U.S.C. § 2000e *et seq.*

32. As a direct result of the discriminatory and wrongful conduct of the Defendant, Plaintiff has suffered damages, including, but not limited to, severe emotional distress, pain and suffering, mental anguish, humiliation, and lost wages.

WHEREFORE, Plaintiff demands judgment against the Defendant for:

- a. back pay, including interest;
- b. reinstatement, if feasible, or in the alternative, front pay;
- c. compensatory damages, including damages for emotional and physical pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and all other non-pecuniary damages;
- d. punitive damages;
- e. pre-judgment and post-judgment interest;
- f. attorney's fees; and
- g. any other relief that this Court deems just.

SCHMITTINGER & RODRIGUEZ, P.A.

By: */s/ Gary E. Junge*
GARY E. JUNGE, ESQUIRE
Bar I.D. # 6169
414 South State Street
P.O. Box 497
Dover, Delaware 19903-0497
(302) 674-0140
Attorney for Plaintiff

Dated: April 27, 2023

EXHIBIT A

[BAYHEALTH LOGO]

[DATE STAMP]
NOV 18 2021 PM 2:18

**COVID-19 Religious Request for
Immunization Exemption**

Employee Name:
Sean McCarthy RN

Employee ID:
134115

Request Date:
11-16-2021

Position/Title
RN

Supervisor's Name:
Kelly Schelts

On November 4, 2021, OSHA issued an Emergency Temporary Standard ("ETS") mandating COVID-19 vaccines for all employers with over 100 employees. As per the ETS all employees must be vaccinated against COVID-19, with exceptions only as required by law. In certain circumstances, an employee who has a religious objection to the COVID-19 vaccination requirement to an exemption from that requirement, in which case the employee would instead comply with

alternative health and safety protocols. Bayhealth is committed to respecting the important legal protections for religious liberty. The purpose of this form is to determine whether you may be eligible for an exemption.

Please explain in your own words why you are seeking religious exemption, the religious principles that guide your objection to immunization, and please indicate whether you are opposed to all immunizations, and if not, the religious basis on which you object to COVID-19 immunizations. (You may use space on page 3 and attach additional written pages or other supporting materials if you so choose. Some examples of supporting materials are listed on page 2.)

See attachments

I certify that the information I am submitting in support of my request for an accommodation is complete and accurate to the best of my knowledge, and I understand that any intentional misrepresentation contained in this request may result in disciplinary actions, up to and including termination. I understand that my request for accommodation will not be granted or may be withdrawn if it is unreasonable, if it poses a direct threat to the health and/or safety of others in the workplace, or if it creates an undue hardship.

Sean McCarthy RN	/s/	11-16-2021
Print Name	Signature	Date

THIS FORM NEEDS TO BE COMPLETED AND RECEIVED IN HUMAN RESOURCES BY 4:30

P.M. ON NOVEMBER 18, 2021. LATE SUBMISSIONS WILL NOT BE ACCEPTED.

Confidentiality of Information Provided

Requests for exemptions and any documents provided will be kept confidential and shared only with those Bayhealth employees who have a need to know.

Summary of Next Steps

1. This request will be reviewed and acknowledged by Human Resources.
2. If after reviewing the request Human Resources is unable to make a determination because of inadequate information or questions remain about the religious nature or the sincerity of a particular belief or practice, Human Resources may, at its sole discretion, request additional information. Some examples of additional/supporting information may include:
 - a. A letter from religious/spiritual leader, member, or person with personal knowledge from the religious organization attended by the requester explaining the doctrine/beliefs that prohibit all immunizations and/or the COVID-19 immunization;
 - b. Literature from the religious organization or other writings and sources upon which the requestor has relied in formulating their religious beliefs that prohibit all

immunizations and/or the COVID-19 immunization;

- c. Copies of previous statements submitted to other employers, institutions of higher education, and/or school districts explaining the requester's religious basis for refusing immunization; and
 - d. Any documents or other information the requester may be willing to provide that reflect their sincerely held religious objection to immunization and/or the COVID-19 immunization.
3. After review, you will be notified of the decision regarding your requested religious exemption.
 4. If you are granted a religious exemption, you will be required to undergo COVID-19 testing weekly in addition to observing all COVID-19 health and safety protocols and will be informed of any additional accommodations.

Privacy Act Statement:

This information is being collected and maintained to promote the safety of our workplaces in compliance with our policies, OSHA ETS (Nov. 4, 2021) and Executive Order 13991, Protecting the Federal Workforce and Requiring Mask-Wearing (Jan. 20, 2021), the COVID-19 Workplace Safety: Agency Model Safety Principles established by the Safer Federal Workforce Task Force, and guidance from Centers for

Disease Control and Prevention and the Occupational Safety and Health Administration.

While the Information requested on this form is Intended to be used primarily for internal purposes, in certain circumstances it may be necessary to disclose this information externally, for example to disclose information to: a Federal, State, or local agency to the extent necessary to comply with laws governing reporting of communicable disease or other laws concerning health and safety in the work environment; to adjudicative bodies, arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties regarding employment; to agencies, courts, and persons as necessary and relevant in the course of litigation, and as necessary and in accordance with requirements for law enforcement; or to a person authorized to act on your behalf. Under the ADA, it is unlawful for an employer to disclose that an employee is receiving a reasonable accommodation or to retaliate against an employee for requesting an accommodation.

11/16/2021

RE: Covid 19 Vaccination Religious Exemption

I, Sean McCarthy the undersigned, do hereby swear and affirm that I am a member of a recognized religious organization, and that the immunizations required by Bayhealth are contrary to my religious tenets and practices. On this basis, as the above referenced immunization requirements violate my right to freely exercise my religion as guaranteed by the First Amendment of the Constitution of The United States of America, I am asserting my rights to an exemption from Bayhealth's immunization requirements.

Per the U.S. Equal Employment Opportunity Commission (EEOC) which enforces Federal laws prohibiting employment discrimination, employers MUST offer religious and disability accommodations to vaccine requirements.

Thank you in advance,

/s/

Sean McCarthy RN

11/16/2021

R.E. Covid 19 Vaccination Religious Exemption

To Whom It May Concern:

I am writing this letter to explain my personal faith, religious convictions, biblical world view, and belief system that would exempt me from any mandated covid 19 vaccine policies.

"Strongly held conviction" based on one's personal faith, is more than just an ideological persuasion. Instead, it is a firmly held belief which governs that person's thoughts and practices in their daily life. I can assure you that my personal convictions and my covenant with my God, have led me to believe that at this time, putting this covid 19 vaccine into my body, is not the right decision for me or for my family.

Based on our belief in the Bible and its instruction in 1 Corinthians 6:19, a Christian sincerely believes that his or her body is the living temple of the Holy Spirit of God. Furthermore, in Romans 12:1, we are commanded to present our bodies as a living sacrifice, which is to be holy and pleasing to God. That verse also says doing so is part of our "true and proper worship", (That's from the new international version). The new living translation translates that Greek phrase as "This is truly the way to worship him". The amplified Bible says that it is "your rational, logical, intelligent act of worship".

Faith is not something that can be seen with the eyes.

Of course, the expression of it can be and should be observed by the world around us, and be a testimony of the goodness of our God. However, the core of who we are as Christians in our belief system can not be seen with physical eyes. In all honesty, it is difficult to put into words, what the faith is to a person that does not or may not share it. This world makes judgment calls based on what they see with their eyes and gather with their other senses. We Christians make judgment calls based on those things, plus something much dearer to us. We base our decisions on our faith, based on what we believe with all sincerity.

To a Christian, presenting and keeping our bodies in this way, is quite literally, part of how we worship our God. For someone to ask us to put something into our body that we are uncomfortable with, is antithetical to the very core belief system that we hold. It would be the exact same thing as asking a Muslim man to put pork into his body against his sincerely held belief that he should not. Furthermore, to demand he do so under direct and threat of losing his ability to provide financially for his family, is against every ounce of liberty that we hold dear in this nation.

Many people are questioning "Why wouldn't you take this vaccine if you have taken other vaccines?" My wife, my five young children and I, have taken other vaccines, but I have been able to make that decision with the ability to evaluate years, and in fact, many decades of the effectiveness of those vaccines. I do not have a problem with putting some medicines or vaccines into my body that have been proven over time to 1) be effective and 2) to have no adverse medical

effects. This vaccine has not had the time or track record, as of yet, to provide this comfort level to me. In fact, I personally know multiple people who have had very adverse reactions to this vaccine. One person in particular is a close family friend of mine that had no prior health issues, but after receiving the covid 19 vaccine, was diagnosed with Pericarditis. He and his family have had, and are still having multiple severe difficulties in their life as a result of this. This man is of similar age to me. This is just one personal example of what I have experienced. As I said earlier, it's difficult to articulate this faith or belief system in words. It is about following a "peace" that we have in our inner self. As Christians, according to Colossians 3:15, we are to allow that inner peace to "rule in our hearts" at all times. We are to make decisions that do not violate that leading of peace. If there is something that makes us uncomfortable, and we don't have a peace about it in our hearts, we are to avoid that thing. I can assure you that this is the situation that I find myself in with this vaccine. I do not have a peace about it whatsoever. Because of that, I simply can not place this vaccine inside of my body, which I believe is the temple of the Holy Spirit of God. Lastly, I can assure you that I am not being hypocritical of this decision. Like the example of the muslim man eating pork above, there are several things that, because of personal conviction, I can not put into my body, that other people have no problem putting into their bodies. For example, many people have no problem putting nicotine and drugs into their bodies. I however, hold a very strong personal conviction that I should not put these stimulants or drugs into my body. Therefore, I refuse to do so right at the same time that hundreds of

millions of people around the world see no problem with putting those exact same substances into their bodies.

I will summarize a practical articulation as to where I stand on this issue. I am not against vaccines in general. I am potentially not even against this covid 19 vaccine. There has simply not been enough time and documented results of this vaccine to give me a comfort level that it is something that me, or my family should put into our bodies. As such, I can not, in good conscience, receive this vaccine into my body. Forcing me to do so would be forcing me to violate *my* strongly held conviction and personal faith in this matter. Matthew 6:24 teaches us that "God is our primary Master and Authority whom we are to serve". Proverbs 3:9 further instructs "I belong to God, not the world, and am not to conform". As such, I am asking you to grant me an exemption from any mandate which would force me to violate these beliefs as a condition of employment.

Thank you in advance,

/s/

Sean McCarthy RN

EXHIBIT B

(Del. Rev. 5/2014) Pro Se Employment Discrimination
Complaint

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

[DATE STAMP]
FILED
CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE
2022 OCT 11 PM 2:00

Sean McCarthy
(Name of Plaintiff or Plaintiffs)

v.

Bayhealth Medical Center, Inc.
(Name of Defendant or Defendants)

Civ. Action No. 22 -1336
(To be assigned by Clerk's Office)

**COMPLAINT FOR
EMPLOYMENT DISCRIMINATION**
(Pro se)

Jury Demand?

- Yes
 No

1. This action is brought pursuant to (check all spaces that apply):

- Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, *et seq.*, for employment discrimination on the basis of race, color, religion, sex, or national origin.
- Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §§ 621, *et seq.*, for employment discrimination on the basis of age. My year of birth is: _____.
- Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 701, *et seq.*, for employment discrimination on the basis of a disability by an employer which constitutes a program or activity receiving federal financial assistance.
- Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, *et seq.*, for employment discrimination on the basis of disability.

2. Plaintiff resides at

1615 Augustine rd
(Street Address)

Middletown New Castle
(City) (County)

Delaware 19709
(State) (Zip Code)

247a

609 352 4517
(Area Code) (Phone Number)

Attached additional sheets if more than one Plaintiff.

3. Defendant resides at, or its business is located at

640 South State Street

Dover Kent Delaware 19901
(City) (County) (State) (Zip Code)

Attach additional sheets if more than one Defendant.

4. The discriminatory conduct occurred in connection with plaintiff's employment at, or application to be employed at, defendant's

Bayhealth Medical Center, Inc.
(Defendant's Name)

place of business located at

640 South State Street
(Street Address)

Dover Kent Delaware 19901
(City) (County) (State) (Zip Code)

5. The alleged discriminatory acts occurred on

28, February, 2022.
(Day) (Month) (Year)

6. The alleged discriminatory practice

is is not continuing.

7. On _____, _____, _____ Plaintiff filed charges
(Day) (Month) (Year)

with the Department of Labor of the State of
Delaware: _____,
(Agency)

(Street Address) (City) (County) (State) (Zip Code)

regarding defendant's alleged discriminatory
conduct

8. On 05, April, 2022, Plaintiff filed charges
(Day) (Month) (Year)

with the Equal Employment Opportunity
Commission of the United States regarding
defendant's alleged discriminatory conduct.

9. The Equal Employment Opportunity
Commission issued the attached Notice-of-Right-
to-Sue letter which was received by plaintiff on:

14, July, 2022.
(Day) (Month) (Year)

**{NOTE: ATTACH NOTICE-OF-RIGHT-TO-SUE
LETTER TO THIS COMPLAINT.}**

10. The alleged discriminatory acts, in this suit, concern:
- A. Failure to employ plaintiff.
 - B. Termination of plaintiff's employment. Plaintiff was terminated from employment on the following date: 02/28/2022.
 - C. Failure to promote plaintiff. Plaintiff was refused a promotion on the following date: _____.
 - D. Other acts (please specify): _____.
11. The conduct of Defendant(s) was discriminatory because it was based on (check all that apply):
- A. Plaintiff's race
 - B. Plaintiff's color
 - C. Plaintiff's sex
 - D. Plaintiff's religion
 - E. Plaintiff's national origin
 - F. Plaintiff's age
 - G. Plaintiff's disability

12. A copy of the charges filed with the Department of Labor of the State of Delaware and/or the Equal Employment Opportunity Commission is attached to this complaint and is submitted as a brief statement of the facts of plaintiff's claim.

(NOTE: ATTACH A COPY OF THE CHARGES FILED WITH THE DEPARTMENT OF LABOR OF THE STATE OF DELAWARE AND/OR THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION OF THE UNITED STATES TO THIS COMPLAINT.)

THEREFORE, Plaintiff asks the Court to grant such relief as may be appropriate, including but not limited to (check all that apply):

- A. Injunctive relief (specify what you want the Court to order): _____.
- B. Back pay.
- C. Reinstatement to former position.
- D. Monetary damages in the amount of TBD
- E. That the Court appoint legal counsel.
- F. Such relief as may be appropriate, including costs and attorney's fees.
- G. Other (specify): _____.

I/We declare under penalty of perjury that the foregoing is true and correct.

Dated: 10/11/2022

/s/
(Signature of Plaintiff)

(Signature of additional Plaintiff)

NOTICE

Federal Rule of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

APPENDIX X

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CHERYL L. HAND,
Plaintiff,

v. C.A. No.: 1:22-cv-01548-RGA

BAYHEALTH MEDICAL CENTER, INC.,
Defendant.

TRIAL BY JURY DEMANDED

AMENDED COMPLAINT

1. Plaintiff Cheryl L. Hand ("Hand" or "Plaintiff") is a resident of the State of Delaware residing at 123 Josie Avenue, Dover, DE 19901.

2. Defendant Bayhealth Medical Center ("Bayhealth" or "Defendant") is a Delaware corporation whose registered agent for service of process is Bayhealth Medical Center, 640 South State Street, Dover, Delaware 19901.

3. Defendant is an employer within the State of Delaware and within the jurisdictional coverage of Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, *et seq.* ("Title VII").

4. Jurisdiction is conferred on this Court by 42

U.S.C. § 2000e-5(f)(3), 28 U.S.C. § 1331, and 28 U.S.C. § 1343.

5. Venue for all causes of action stated herein lies in the District of Delaware pursuant to 28 U.S.C. § 1391(b), as the acts alleged as the basis for these claims took place within the boundaries of that District.

6. Plaintiff brings this action under Title VII of the Civil Rights Act of 1964, as amended, to redress the wrongs done to her by Defendant's discrimination against her on the basis of her religion.

7. Plaintiff timely submitted a complaint of discrimination based on her religion to the Equal Employment Opportunity Commission ("EEOC").

8. Plaintiff has received a Notice of Right to Sue for the above referenced charge from the EEOC.

9. Plaintiff has timely filed this Complaint within ninety (90) days of her receipt of the EEOC Notice of Right to Sue.

10. Plaintiff was hired by Defendant as a Licensed Practical Nurse ("LPN")/OB Technician in or about May 2014.

11. Plaintiff held the position of LPN/OB Tech at the time of her discharge.

12. At all times relevant to this Complaint, Plaintiff was qualified for her job position and

satisfactorily performed all duties of her job position.

13. Plaintiff is a **non-denominational Christian who attends weekly services at the United Church in Dover, Delaware** and holds a sincere religious belief that prevents her from being inoculated with the COVID-19 vaccine.

14. On August 12, 2021, Governor John Carney ordered that all Delaware state health care employees, which included Defendant's employees, to either become vaccinated or submit to regular testing for the COVID-19 virus by September 30, 2021.

15. On November 5, 2021, the Centers for Medicare and Medicaid Services ("CMS") issued a COVID-19 vaccine mandate.

16. The CMS vaccine mandate required that health care facilities ensure their covered staff were vaccinated against COVID-19, but also required that such facilities offer medical and religious exemptions.

17. Pursuant to the CMS mandate, a facility was considered 100% compliant when all of its staff were either vaccinated or had a medical or religious waiver.

18. On November 12, 2021, Plaintiff submitted a request for an exemption to the COVID-19 immunization based on her sincerely held religious beliefs. **A copy of Plaintiff's COVID-19 Religious Request for Immunization Exemption explains Plaintiff's objections in detail and is attached hereto as Exhibit "A".**

19. The request detailed the basis for Plaintiff's sincerely held religious beliefs, **specifically noting, *inter alia*, that her body is a temple of the Holy Spirit and that taking a vaccine that could make changes to her DNA would defile that temple.**

20. On December 14, 2021, Defendant informed Plaintiff via letter that her request for a religious exemption was denied.

21. Defendant had no process in place for appealing the denial of a religious exemption request.

22. Plaintiff's employment with Defendant was terminated on February 28, 2022.

23. By failing to allow an appeal or otherwise engage in any type of substantive communication regarding Plaintiff's request for an exemption, Defendant failed to engage in an interactive process to determine whether an exemption was warranted or whether a reasonable accommodation was available.

24. Plaintiff was subjected to differential treatment on the basis of her sincerely held religious beliefs by agents of the Defendant, including but not limited to **retaliation and** termination of her employment.

25. Defendant informed Plaintiff that her application for an exemption had been thoroughly reviewed before denying her request, but failed to provide a reason for the denial.

26. Defendant's denial of Plaintiff's request for a religious exemption failed to comply with federal and state laws prohibiting discrimination **and retaliation** based on sincerely held religious beliefs.

27. Defendant is liable for the actions of its agents as set forth in this complaint under the principles of agency and the doctrine of respondeat superior and pursuant to the ratification of the agents' actions by Defendant.

28. The wrongful acts committed by the Defendant, as stated hereinabove, were willful, wanton, and committed in bad faith.

COUNT I - TITLE VII

29. Plaintiff restates and hereby incorporates by reference paragraphs 1 through 28 hereinabove.

30. By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has discriminated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 42 U.S.C. § 2000e *et seq.*

~~31. By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has retaliated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 42 U.S.C. § 2000e *et seq.*~~

~~32-31.~~ As a direct result of the discriminatory, retaliatory, and wrongful conduct of the Defendant,

Plaintiff has suffered damages, including, but not limited to, severe emotional distress, pain and suffering, mental anguish, humiliation, and lost wages.

WHEREFORE, Plaintiff demands judgment against the Defendant for:

- a. back pay, including interest;
- b. reinstatement, if feasible, or in the alternative, front pay;
- c. compensatory damages, including damages for emotional and physical pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and all other non-pecuniary damages;
- d. punitive damages;
- e. pre-judgment and post-judgment interest;
- f. attorney's fees; and
- g. any other relief that this Court deems just.

SCHMITTINGER & RODRIGUEZ, P.A.

By: */s/ Gary E. Junge*
GARY E. JUNGE, ESQUIRE
Bar I.D. # 6169
414 South State Street
P.O. Box 497

Dover, Delaware 19903-0497
(302) 674-0140
Attorney for Plaintiff

Dated: April 18, 2023

EXHIBIT A

[BAYHEALTH LOGO]

COVID-19 Religious Request for Immunization Exemption

Employee Name:
Cheryl Lynn Hand

Employee ID:
121099

Request Date:
11-12-2021

Position/Title
LPN/OB Tech

Supervisor's Name:
Kathryn "Starr" Lynch

On November 4, 2021, OSHA issued an Emergency Temporary Standard ("ETS") mandating COVID-19 vaccines for all employers with over 100 employees. As per the ETS all employees must be vaccinated against COVID-19, with exceptions only as required by law. In certain circumstances, an employee who has a religious objection to the COVID-19 vaccination requirement to an exemption from that requirement, in which case the employee would instead comply with alternative health and safety protocols. Bayhealth is committed to respecting the important legal protections for religious liberty. The purpose of this

form is to determine whether you may be eligible for an exemption.

Please explain in your own words why you are seeking religious exemption, the religious principles that guide your objection to immunization, and please indicate whether you are opposed to all immunizations, and if not, the religious basis on which you object to COVID-19 immunizations. (You may use space on page 3 and attach additional written pages or other supporting materials if you so choose. Some examples of supporting materials are listed on page 2.)

I certify that the information I am submitting in support of my request for an accommodation is complete and accurate to the best of my knowledge, and I understand that any intentional misrepresentation contained in this request may result in disciplinary actions, up to and including termination. I understand that my request for accommodation will not be granted or may be withdrawn if it is unreasonable, if it poses a direct threat to the health and/or safety of others in the workplace, or if it creates an undue hardship.

Cheryl Lynn Hand	/s/	11-12-2021
Print Name	Signature	Date

THIS FORM NEEDS TO BE COMPLETED AND RECEIVED IN HUMAN RESOURCES BY 4:30 P.M. ON NOVEMBER 18, 2021. LATE

SUBMISSIONS WILL NOT BE ACCEPTED.

Confidentiality of Information Provided

Requests for exemptions and any documents provided will be kept confidential and shared only with those Bayhealth employees who have a need to know.

Summary of Next Steps

1. This request will be reviewed and acknowledged by Human Resources.
2. If after reviewing the request Human Resources is unable to make a determination because of inadequate information or questions remain about the religious nature or the sincerity of a particular belief or practice, Human Resources may, at its sole discretion, request additional information. Some examples of additional/supporting information may include:
 - a. A letter from religious/spiritual leader, member, or person with personal knowledge from the religious organization attended by the requester explaining the doctrine/beliefs that prohibit all immunizations and/or the COVID-19 immunization;
 - b. Literature from the religious organization or other writings and sources upon which the requestor has relied in formulating their religious beliefs that prohibit all immunizations and/or the COVID-19

immunization;

- c. Copies of previous statements submitted to other employers, institutions of higher education, and/or school districts explaining the requester's religious basis for refusing immunization; and
 - d. Any documents or other information the requester may be willing to provide that reflect their sincerely held religious objection to immunization and/or the COVID-19 immunization.
3. After review, you will be notified of the decision regarding your requested religious exemption.
 4. If you are granted a religious exemption, you will be required to undergo COVID-19 testing weekly in addition to observing all COVID-19 health and safety protocols and will be informed of any additional accommodations.

Privacy Act Statement:

This information is being collected and maintained to promote the safety of our workplaces in compliance with our policies, OSHA ETS (Nov. 4, 2021) and Executive Order 13991, Protecting the Federal Workforce and Requiring Mask-Wearing (Jan. 20, 2021), the COVID-19 Workplace Safety: Agency Model Safety Principles established by the Safer Federal Workforce Task Force, and guidance from Centers for Disease Control and Prevention and the Occupational

Safety and Health Administration.

While the Information requested on this form is Intended to be used primarily for internal purposes, in certain circumstances it may be necessary to disclose this information externally, for example to disclose information to: a Federal, State, or local agency to the extent necessary to comply with laws governing reporting of communicable disease or other laws concerning health and safety in the work environment; to adjudicative bodies, arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties regarding employment; to agencies, courts, and persons as necessary and relevant in the course of litigation, and as necessary and in accordance with requirements for law enforcement; or to a person authorized to act on your behalf. Under the ADA, it is unlawful for an employer to disclose that an employee is receiving a reasonable accommodation or to retaliate against an employee for requesting an accommodation.

SPACE FOR SUPPLEMENTAL INFORMATION

Name:
Cheryl Lynn Hand

Employee I.D.: 121099

I am requesting a religious exemption to the Covid vaccine. I am a believer of Jesus Christ as our Lord and Savior. I believe the Holy Spirit lives within me and leads me and guides me. See John 16:13 However, when He, the spirit of truth, has come He will guide

you into all truth; for He will not speak on His own authority, but whatever He hears, He will speak; and He will tell you things to come.

The Bible states the body is the temple of the Holy Spirit – we are to take care of our bodies and not to defile it, and certainly we should not introduce something into our body willingly, that potentially harm it.

I Corinthians 3:16-17 or do you not know that you are the temple of God and that the spirit dwells in you? If anyone defiles the temple of God, God will destroy him. For the temple of God is holy, which temple you are.

I am not an anti vaxxer. I have had vaccines in the past. The Covid 19 vaccines are the first mRNA vaccines. They do not act in the same way as traditional vaccines. Instead of using a fragment of dead viruses as an adjunct to an immune response, the Covid 19 vaccine products are genetic coding instructions that instruct the body to produce a spike protein that is not natural to our own human genetic system. There are studies that have shown the protein will stay around your cells much longer than the actual virus, and is also engineered such that it is efficient at being transformed into protein which increases the probability that it will be integrated into your DNA, thus altering the DNA that God created us with.

I believe God's promise that if anyone lacks wisdom, let him ask of God, who gives to all liberally and without reproach and it will be given to him. James

1:15

I have prayed and asked God for wisdom and guidance and I believe the Holy Spirit has moved on my heart and conscious not to take the vaccine. If I were to take it I would be going against God and the Holy Spirits Convictions. I had covid in Dec. 2020 and recovered due to a healthy immune system and should have natural immunities. I have prayer fully considered this and I am asking that Bayhealth take into consideration my Christian beliefs and Convictions and allow me to remain in my current position and to obtain weekly Covid 19 testing as I have been doing.

Sincerely,

Cheryl Lynn Hand

266a

APPENDIX Y

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ANDREA L. MALONEY,
Plaintiff,

v. C.A. No.: 1:23-cv-00078-RGA

**BAYHEALTH MEDICAL
CENTER, INC.,**
Defendant.

TRIAL BY JURY DEMANDED

AMENDED COMPLAINT

1. Plaintiff Andrea L. Maloney ("Maloney" or "Plaintiff") is a resident of the State of Maryland residing at 126 Deep Shore Road, Denton, MD 21629.

2. Defendant Bayhealth Medical Center ("Bayhealth" or "Defendant") is a Delaware corporation whose registered agent for service of process is Bay health Medical Center, 640 South State Street, Dover, Delaware 19901.

3. Defendant is an employer within the State of Delaware and within the jurisdictional coverage of Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, *et seq.* ("Title VII") and the Delaware Discrimination in Employment Act ("DDEA"), 19 *Del.*

C. § 710, *et seq.*

4. Jurisdiction is conferred on this Court by 42 U.S.C. § 2000e-5(f)(3), 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 1367.

5. Venue for all causes of action stated herein lies in the District of Delaware pursuant to 28 U.S.C. § 1391(b), as the acts alleged as the basis for these claims took place within the boundaries of that District.

6. Plaintiff brings this action under Title VII of the Civil Rights Act of 1964, as amended, and under the Delaware Discrimination in Employment Act to redress the wrongs done to her by Defendant's discrimination against her on the basis of her religion.

7. Plaintiff timely submitted a complaint of discrimination based on her religion to the Delaware Department of Labor ("DDOL") and the Equal Employment Opportunity Commission ("EEOC").

8. Plaintiff has received a Notice of Right to Sue for the above referenced charge from the EEOC.

9. Plaintiff has timely filed this Complaint within ninety (90) days of her receipt of the EEOC Notice of Right to Sue.

10. Plaintiff was hired by Defendant as a Radiologic Technologist on or about November 4, 2004.

11. Plaintiff held the position of Radiologic

Technologist at the time of her discharge.

12. At all times relevant to this Complaint, Plaintiff was qualified for her job position and satisfactorily performed all duties of her job position.

13. On August 12, 2021, Governor John Carney ordered that all Delaware state health care employees, which included Defendant's employees, to either become vaccinated or submit to regular testing for the COVID-19 virus by September 30, 2021.

14. On November 5, 2021, the Centers for Medicare and Medicaid Services ("CMS") issued a COVID-19 vaccine mandate.

15. The CMS vaccine mandate required that health care facilities ensure their covered staff were vaccinated against COVID-19, but also required that such facilities offer medical and religious exemptions.

16. Pursuant to the CMS mandate, a facility was considered 100% compliant when all of its staff were either vaccinated or had a medical or religious waiver.

17. **Plaintiff is a Christian (Methodist) who does not currently attend worship services at a dedicated church but who does participate in weekly home bible study and** holds a sincere religious belief that prevents her from being inoculated with the COVID-19 vaccine.

18. On November 15, 2021, Plaintiff submitted a request for an exemption to the COVID-19

immunization based on her sincerely held religious beliefs. **A copy of Plaintiff's COVID-19 Religious Request for Immunization Exemption explains Plaintiff's objections in detail and is attached hereto as Exhibit "A".**

19. The request detailed the basis for Plaintiff's sincerely held religious belief, supported by scripture, by specifically noting, *inter alia*, her belief that she was made in the image of God and has a duty to honor and care for the body God has given her against anything unclean.

20. Plaintiff declined the flu vaccine in 2021 with no repercussions.

21. On December 14, 2021, Defendant informed Plaintiff via letter that her request for a religious exemption was denied without providing a reason for the denial.

22. On December 20, 2021, Plaintiff emailed Defendant's Human Resources department to ask why her exemption was not approved and to note that it seemed as if everyone had received the same generic response to their exemption requests.

23. Plaintiff also requested information regarding Defendant's appeal process.

24. On December 20, 2021, Defendant's Human Resources department responded by email to Plaintiff stating that per the documentation submitted, her religion did not have a theological opposition to

vaccines.

25. The same December 20, 2021, email, noted there was no appeal process for the decision.

26. By a letter dated January 26, 2022, a Delaware attorney wrote Terry M. Murphy, President and CEO of Defendant, on behalf of ninety Bay health employees, including Plaintiff, requesting Defendant reconsider the denied exemption requests and to comply with its obligations under Title VII.

27. Plaintiff's employment with Defendant was terminated on February 28, 2022.

28. By failing to allow an appeal or otherwise engage in any type of substantive communication regarding Plaintiff's request for an exemption, Defendant failed to engage in an interactive process to determine whether an exemption was warranted or whether a reasonable accommodation was available.

29. Plaintiff was subjected to differential treatment on the basis of her sincerely held religious beliefs by agents of the Defendant, including but not limited to ~~retaliation and~~ termination of her employment.

30. The reason proffered by Defendant for Plaintiff's termination, i.e., denial of her request for a religious exemption because Defendant believed her religion had no theological opposition to vaccines, failed to comply with federal and state laws prohibiting discrimination ~~and retaliation~~ based on

sincerely held religious beliefs.

31. Defendant is liable for the actions of its agents as set forth in this complaint under the principles of agency and the doctrine of *respondeat superior* and pursuant to the ratification of the agents' actions by Defendant.

32. The wrongful acts committed by the Defendant, as stated hereinabove, were willful, wanton, and committed in bad faith.

COUNT I - TITLE VII

33. Plaintiff restates and hereby incorporates by reference paragraphs 1 through 32 hereinabove.

34. By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has discriminated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 42 U.S.C. § 2000e *et seq.*

~~35. By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has retaliated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 42 U.S.C. § 2000e *et seq.*~~

~~36:35.~~ As a direct result of the discriminatory; **retaliatory**; and wrongful conduct of the Defendant, Plaintiff has suffered damages, including, but not limited to, severe emotional distress, pain and suffering, mental anguish, humiliation, and lost

wages.

WHEREFORE, Plaintiff demands judgment against the Defendant for:

- a. back pay, including interest;
- b. reinstatement, if feasible, or in the alternative, front pay;
- c. compensatory damages, including damages for emotional and physical pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and all other non-pecuniary damages;
- d. punitive damages;
- e. pre-judgment and post-judgment interest;
- f. attorney's fees; and
- g. any other relief that this Court deems just.

COUNT II - DDEA

37:36. Plaintiff hereby restates and incorporates by reference paragraphs 1 through **3635** hereinabove.

38:37. By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has discriminated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 19 *Del. C.* § 710, *et seq.*

~~39. By committing the aforementioned acts, in including Plaintiff's subsequent termination, Defendant has retaliated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 19 Del. C. § 710, et seq.~~

~~40:38.~~ As a direct result of the discriminatory; ~~retaliatory~~, and wrongful conduct of the Defendant, Plaintiff has suffered damages, including, but not limited to, severe emotional distress, pain and suffering, mental anguish, humiliation, and lost wages.

WHEREFORE, Plaintiff demands judgment against the Defendant for:

- a. back pay, including interest;
- b. reinstatement; if feasible, or in the alternative, front pay;
- c. compensatory damages, including damages for emotional and physical pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and all other non-pecuniary damages;
- d. punitive damages;
- e. pre-judgment and post-judgment interest;
- f. attorney's fees; and
- g. any other relief that this Court deems just.

SCHMITTINGER & RODRIGUEZ, P.A.

By: */s/ Gary E. Junge*
GARY E. JUNGE, ESQUIRE
Bar I.D. # 6169
414 South State Street
P.O. Box 497
Dover, Delaware 19903-0497
(302) 674-0140
Attorney for Plaintiff

Dated: April 20, 2023

EXHIBIT A

Andrea Maloney
126 Deep Shore Road
Denton MD 21629

November 12, 2021

To Whom it may concern,

My name is Andrea Maloney and I am seeking an exemption from Bayhealth's recent announcement that it is requiring its employees to be vaccinated against Covid-19. I would like to file for a religious and principled exemption under federal law, Delaware law, natural law and my firmly held personal religious beliefs, from the Covid-19 vaccination mandate, being imposed at my place of work and/or as a condition of my employment. I am a Christian who believes in the teachings of the Bible. It Is my God given responsibility to protect the Integrity of my body and mind against anything unclean. The mandated vaccine has various additives that have the potential of altering my body and mind. My conscious is governed by God and the mandate that is imposed goes against any beliefs I have. A person is morally required to obey his or her conscience.

Romans 9:1-1 say the truth in Christ, I lie not, my conscience also bearing me witness in the Holy Ghost Humans are made in the image and likeness of God (Genesis 1:26). Christians have a duty to honor and care for the body God has given us as a temple of the Holy Spirit (Romans 12:1; 1 Corinthians 3:16; 1

Corinthians 6:20; 1 Corinthians 10:31). Therefore, to force or coerce a person to administer a substance into their body against their will is a violation of their personhood. Forced or coerced vaccination is also a violation of the dignity of the human person because freedom of religion and freedom of conscience are fundamental to human dignity. Moreover, decisions regarding vaccination must be determined by the individual and the family, not by the jurisdiction of a state or any other authority, according to biblical mandate (Romans 13:1). Forced or coerced vaccination is a violation of my bodily integrity and therefore, is unethical and intrusive, according to my firmly held personal religious and moral beliefs. Forced or coerced vaccination can also make institutions legally liable for harm and damages that result from adverse events, including injury, permanent disability, and death.

Since the beginning of the pandemic I have complied to Bayhealth's policy of wearing full PPE while treating patients. I will continue this practice of enhanced precautions along with testing as needed to remain an asset to Bayhealth just as I have for the past 18 years.

I respectfully ask that my religious beliefs are accommodated with regard to the mandate that is now upon us.

Sincerely,

/s/

11/15/2021

Andrea Maloney RT(R)

277a

APPENDIX Z

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BETH A. McDOWELL,
Plaintiff,

v. C.A. No.: 1:22-cv-01392-RGA

BAYHEALTH MEDICAL CENTER, INC.,
Defendant.

TRIAL BY JURY DEMANDED

AMENDED COMPLAINT

1. Plaintiff Beth A. McDowell ("McDowell" or "Plaintiff") is a resident of the State of Delaware residing at 22541 Lawson Road, Georgetown, DE 19947.

2. Defendant Bayhealth Medical Center ("~~Defendant~~**Bayhealth**" or "Defendant") is a Delaware corporation whose registered agent for service of process is Bayhealth Medical Center, 640 South State Street, Dover, Delaware 19901.

3. Defendant is an employer within the State of Delaware and within the jurisdictional coverage of Title VII of the Civil Rights Act, as amended, 42 U.S.C. §2000e, *et seq.* ("Title VII") and the Delaware Discrimination in Employment Act ("DDEA"), 19 *Del.*

C. § 710, *et seq.*

4. Jurisdiction is conferred on this Court by 42 U.S.C. § 2000e-5(f)(3), 28 U.S.C. § 1331, 28 U.S.C. § 1343, and 28 U.S.C. § 1367.

5. Venue for all causes of action stated herein lies in the District of Delaware pursuant to 28 U.S.C. § 1391(b), as the acts alleged as the basis for these claims took place within the boundaries of that District.

6. Plaintiff brings this action under Title VII of the Civil Rights Act of 1964, as amended, and under the Delaware Discrimination in Employment Act to redress the wrongs done to her by Defendant's discrimination against her on the basis of her religion.

7. Plaintiff timely submitted a complaint of discrimination based on her religion to the Delaware Department of Labor ("DDOL") and the Equal Employment Opportunity Commission ("EEOC").

8. Plaintiff has received a Notice of Right to Sue for the above referenced charge from the DDOL and the EEOC.

9. Plaintiff has timely filed this Complaint within ninety (90) days of her receipt of the EEOC Notice of Right to Sue.

10. Plaintiff was hired by Defendant as a Radiation Therapist on or about February 2, 2002.

11. Plaintiff held the position of Radiation Therapist II (Lead) at the time of her discharge.

12. At all times relevant to this Complaint, Plaintiff was qualified for her job position and satisfactorily performed all duties of her job position.

13. Plaintiff is a **non-denominational Christian who attends online services with the First Harvest Ministries and the Joyce Meyers Ministries every other week and** holds a sincere religious belief that prevents her from taking the COVID-19 vaccine.

14. On August 12, 2021, Governor John Carney ordered that all Delaware state health care employees, which included Defendant's employees, to either become vaccinated or submit to regular testing for the COVID-19 virus by September 30, 2021.

15. On November 5, 2021, the Centers for Medicare and Medicaid Services ("CMS") issued a COVID-19 vaccine mandate.

16. The CMS vaccine mandate required that health care facilities ensure their covered staff were vaccinated against COVID-19, but also required that such facilities offer medical and religious exemptions.

17. Pursuant to the CMS mandate, a facility was considered 100% compliant when all of its staff were either vaccinated or had a medical or religious waiver.

18. On November 15, 2021, Plaintiff submitted a

request for an exemption to the COVID-19 immunization based on her sincerely held religious beliefs. **A copy of Plaintiff's COVID-19 Religious Request for Immunization Exemption explains Plaintiff's objections in detail and is attached hereto as Exhibit "A".**

19. Plaintiff's request for an exemption was accompanied by a letter from a religious leader of her church. **A copy of the letter is included with Exhibit "A".**

20. The request detailed the basis for Plaintiff's sincerely held religious belief, **specifically noting, *inter alia*, her belief that God wants her to protect and purify her body (His temple) and that taking the COVID-19 vaccine would be purposely defiling God's temple.**

21. On December 14, 2021, Defendant informed Plaintiff via letter that her request for a religious exemption was denied.

22. On December 17, 2021, Plaintiff emailed Defendant's Human Resources department asking for an explanation as to why her religious exemption was denied.

23. On December 17, 2021, Plaintiff also requested via email Bayhealth's policy for appeal.

24. On December 17, 2021, Defendant's Human Resources department responded by email to Plaintiff stating that per the information provided by Plaintiff,

Plaintiff's religion did not have a theological opposition to vaccinations and that there was no appeal process.

25. On January 17, 2022, Plaintiff wrote Defendant's Human Resources Department requesting that Defendant reconsider her request for an exemption to the COVID-19 vaccine based on her sincerely held religious beliefs.

26. On January 17, 2022, Defendant's Human Resources Department advised Plaintiff that each 'decision was carefully reviewed, that it was not evident from the information presented that Plaintiff's religion had a theological opposition to vaccinations, that there was no appeal process for these decisions, and that the decision stood as-is.

27. Plaintiff's employment with Defendant was terminated on February 28, 2022.

28. By failing to allow an appeal or otherwise engage in any type of substantive communication regarding Plaintiff's request for an exemption, Defendant failed to engage in an interactive process to determine whether an exemption was warranted or whether a reasonable accommodation was available.

29. Plaintiff was subjected to differential treatment on the basis of her sincerely held religious beliefs by agents of the Defendant, including but not limited to ~~retaliation~~ ~~and~~ termination of her employment.

30. The reason proffered by Defendant for

Plaintiff's termination, i.e., denial of her request for a religious exemption because Defendant believed her religion had no theological opposition to vaccines, failed to comply with federal and state laws prohibiting discrimination **and retaliation** based on sincerely held religious beliefs.

31. Defendant is liable for the actions of its agents as set forth in this complaint under the principles of agency and the doctrine of respondeat superior and pursuant to the ratification of the agents' actions by Defendant.

32. The wrongful acts committed by the Defendant, as stated hereinabove, were willful, wanton, and committed in bad faith.

COUNT I - TITLE VII

33. Plaintiff restates and hereby incorporates by reference paragraphs 1 through 32 hereinabove.

34. By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has discriminated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 42 U.S.C. § 2000e *et seq.*

~~35. By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has retaliated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 42 U.S.C. § 2000e *et seq.*~~

36:35. As a direct result of the discriminatory, **retaliatory**, and wrongful conduct of the Defendant, Plaintiff has suffered damages, including, but not limited to, severe emotional distress, pain and suffering, mental anguish, humiliation, and lost wages.

WHEREFORE, Plaintiff demands judgment against the Defendant for:

- a. back pay, including interest;
- b. reinstatement, if feasible, or in the alternative, front pay;
- c. compensatory damages, including damages for emotional and physical pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and all other non-pecuniary damages;
- d. punitive damages;
- e. pre-judgment and post-judgment interest;
- f. attorney's fees; and
- g. any other relief that this Court deems just.

COUNT II - DDEA

37:36. Plaintiff hereby restates and incorporates by reference paragraphs 1 through 35 hereinabove.

~~38:37.~~ By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has discriminated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 19 *Del. C.* § 710, *et seq.*

~~39. By committing the aforementioned acts, including Plaintiff's subsequent termination, Defendant has retaliated against Plaintiff on the basis of her sincerely held religious beliefs in violation of 19 *Del. C.* § 710, *et seq.*~~

~~40:38.~~ As a direct result of the discriminatory, retaliatory, and wrongful conduct of the Defendant, Plaintiff has suffered damages, including, but not limited to, severe emotional distress, pain and suffering, mental anguish, humiliation, and lost wages.

WHEREFORE, Plaintiff demands judgment against the Defendant for:

- h. back pay, including interest;
- i. reinstatement, if feasible, or in the alternative, front pay;
- j. compensatory damages, including damages for emotional and physical pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and all other non-pecuniary damages;
- k. punitive damages;

- l. pre-judgment and post-judgment interest;
- m. attorney's fees; and
- n. any other relief that this Court deems just.

SCHMITTINGER & RODRIGUEZ, P.A.

By: */s/ Gary E. Junge*
GARY E. JUNGE, ESQUIRE
Bar I.D. # 6169
414 South State Street
P.O. Box 497
Dover, Delaware 19903-0497
(302) 674-0140
Attorney for Plaintiff

Dated: April 18, 2023

EXHIBIT A

[BAYHEALTH LOGO]

**COVID-19 Religious Request for
Immunization Exemption**

Employee Name:
Beth A. McDowell

Employee ID:
122580

Request Date:
11-15-2021

Position/Title
Radiation Therapist II

Supervisor's Name:
Laura Ryan

On November 4, 2021, OSHA issued an Emergency Temporary Standard ("ETS") mandating COVID-19 vaccines for all employers with over 100 employees. As per the ETS all employees must be vaccinated against COVID-19, with exceptions only as required by law. In certain circumstances, an employee who has a religious objection to the COVID-19 vaccination requirement to an exemption from that requirement, in which case the employee would instead comply with alternative health and safety protocols. Bayhealth is committed to respecting the important legal protections for religious liberty. The purpose of this

form is to determine whether you may be eligible for an exemption.

Please explain in your own words why you are seeking religious exemption, the religious principles that guide your objection to immunization, and please indicate whether you are opposed to all immunizations, and if not, the religious basis on which you object to COVID-19 immunizations. (You may use space on page 3 and attach additional written pages or other supporting materials if you so choose. Some examples of supporting materials are listed on page 2.)

Please see page three and attached letter

I certify that the information I am submitting in support of my request for an accommodation is complete and accurate to the best of my knowledge, and I understand that any intentional misrepresentation contained in this request may result in disciplinary actions, up to and including termination. I understand that my request for accommodation will not be granted or may be withdrawn if it is unreasonable, if it poses a direct threat to the health and/or safety of others in the workplace, or if it creates an undue hardship.

Beth A. McDowell	/s/	11-17-2021
Print Name	Signature	Date

THIS FORM NEEDS TO BE COMPLETED AND RECEIVED IN HUMAN RESOURCES BY 4:30 P.M. ON NOVEMBER 18, 2021. LATE SUBMISSIONS WILL NOT BE ACCEPTED.

Confidentiality of Information Provided

Requests for exemptions and any documents provided will be kept confidential and shared only with those Bayhealth employees who have a need to know.

Summary of Next Steps

1. This request will be reviewed and acknowledged by Human Resources.
2. If after reviewing the request Human Resources is unable to make a determination because of inadequate information or questions remain about the religious nature or the sincerity of a particular belief or practice, Human Resources may, at its sole discretion, request additional information. Some examples of additional/supporting information may include:
 - a. A letter from religious/spiritual leader, member, or person with personal knowledge from the religious organization attended by the requester explaining the doctrine/beliefs that prohibit all immunizations and/or the COVID-19 immunization;
 - b. Literature from the religious organization or other writings and sources upon which the requestor has relied in formulating their religious beliefs that prohibit all immunizations and/or the COVID-19 immunization;

- c. Copies of previous statements submitted to other employers, institutions of higher education, and/or school districts explaining the requester's religious basis for refusing immunization; and
 - d. Any documents or other information the requester may be willing to provide that reflect their sincerely held religious objection to immunization and/or the COVID-19 immunization.
3. After review, you will be notified of the decision regarding your requested religious exemption.
 4. If you are granted a religious exemption, you will be required to undergo COVID-19 testing weekly in addition to observing all COVID-19 health and safety protocols and will be informed of any additional accommodations.

Privacy Act Statement:

This information is being collected and maintained to promote the safety of our workplaces in compliance with our policies, OSHA ETS (Nov. 4, 2021) and Executive Order 13991, Protecting the Federal Workforce and Requiring Mask-Wearing (Jan. 20, 2021), the COVID-19 Workplace Safety: Agency Model Safety Principles established by the Safer Federal Workforce Task Force, and guidance from Centers for Disease Control and Prevention and the Occupational Safety and Health Administration.

While the Information requested on this form is Intended to be used primarily for internal purposes, in certain circumstances it may be necessary to disclose this information externally, for example to disclose information to: a Federal, State, or local agency to the extent necessary to comply with laws governing reporting of communicable disease or other laws concerning health and safety in the work environment; to adjudicative bodies, arbitrators, and hearing examiners to the extent necessary to carry out their authorized duties regarding employment; to agencies, courts, and persons as necessary and relevant in the course of litigation, and as necessary and in accordance with requirements for law enforcement; or to a person authorized to act on your behalf. Under the ADA, it is unlawful for an employer to disclose that an employee is receiving a reasonable accommodation or to retaliate against an employee for requesting an accommodation.

SPACE FOR SUPPLEMENTAL INFORMATION

Name:
Beth McDowell

Employee I.D.:
122580

Under the 1st Ammendment and Title VII of the Cival Rigths Acts of 1964, I am seeking religious exemption from the Covid-19 vaccination requirement because it goes against my genuine and sincere religious beliefs. A mandated vaccine would force me to make a decision that goes against my God and religious beliefs, choosing my God or my job.

My body is the temple of the Holy Spirit who lives within me, whom I received from God. I believe that God wants me to protect and purify this body (His temple) not to cause it any harm or contamination, nor do anything to shorten its life expectancy. (1 Corinthians 3:16-17, 1 Corinthians 6:19-20, 2 Corinthians 7:1) I believe my salvation is through obedience to God's word (John 14:23) If anyone, then, knows the good they ought to do and doesn't do it, it is sin for them. (James 4:17) I believe that by receiving the Covid-19 vaccination, I would knowingly and purposely be defiling God's temple.

Over the past two years, I have declined the flu vaccines. Recently, I declined the updated hepatitis B and C vaccines. Over the past several years, my faith and knowledge of God's word has increased and I understand God wants me to protect my temple. I must obey God rather than men (Acts 5:29)

I appreciate and am thankful for Bayhealth's commitment to respect the legal protections of my religious liberty.

Sincerely,

/s/

Attached please find a copy of the religious exemption letter from Bishop Vaughn with First Harvest Ministries, which I am an on-line congregation member. I am also an on-line member of the congregation of Joyce Meyers Ministries.

**First Harvest Ministries
Presenting the Coming Kingdom**

From The Desk of the General Counsel of First
Harvest Ministries

RE: Written on behalf of those who share our religious
objections.

To Whom it May Concern.

Reaching back into the long history of the American principle of religious deference and respect, we find an unbroken chain of the rule and the sacred consideration of conscientious religious objection; even our great military affords such respect to American Citizens in times of battle.

This letter is urgently written on behalf of those devout Christians of America, who believe that the Word of God forbids us to accept certain things and entities into our bodies, as our bodies are the living temple of the Holy Spirit. And as such, to ask us to violate these Commandments of our God would force us to choose between human science, so-called, versus our undying faith in the written commands of God! Our complete reverence and devotion is not the frailty of human government but instead to The almighty Yahweh of Israel. The God by Whom we were created and to Whom we have given the whole of our lives.

We have vowed by our sacred honor to live according to His instructions in the beauty of Holiness. Whereas when the governments of men do not ask us to violate

these deeply held truths, we gladly yield and obey.

We refer you to several verses of scripture for our claim of religious objection. In so doing, we would remind you of a time in the future when most of these claims will be brought before the courts when the heat of the moment (The Covid Crisis) gives way to the bedrock principles of the Constitution. Legal precedence proves, In the past, many companies have made the same mistake. While under the pressure of the moment, they gave no serious regard for religious objection nor the future consequences thereof. They have later wished to undo these ill-advised decisions; that violated religious conscience; it never fails; the religious objection is the right of all Americans.

These verses are just a few of many that we lay claim to in our Christian faith.

Leviticus 11:1-47

Deuteronomy 14:1-29

Genesis 7:2

Romans 12:1

1- Whereas we do not know the long-term consequences of the Covid Vaccine

2 - Whereas we do not understand its long term effects on our bodies (Gods Holy Temple)

We are forced to err on the side of spiritual caution and refuse to harm our temples in honor of God's Holy Word.

The 1st Amendment of the Constitution has protected these exact claims before the Supreme Court on many occasions. Even State governments have faced this glaring truth during the Covid crisis. They attempted to pass mandates and laws that violated this fundamental principle, only to have their wrong decisions righted before the Courts, with financial penalties.

While, as Christians, we strive to be at peace with all men and to obey all laws and mandates from a legitimately elected government. We do not do so in violation of God's Holy Laws, of which the protection of my body is one of those spiritual laws that supersedes all manmade laws in my religious conscience.

As an Ordained Christian Bishop, we respectfully present this letter on behalf of those members of our faith for your consideration.

Warmest Christian Regards;

/s/

J. Shane Vaughn, Th.D.
Founding Bishop
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