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9
10 **IN THE UNITED STATES DISTRICT COURT**
FOR THE NORTHERN DISTRICT OF CALIFORNIA

11
12 JERAMIAH COOPER, RONALD) Case No.:
FREEMAN II, ADRIAN)
13 GILBERT, SILVERIO) **COMPLAINT FOR DAMAGES,**
14 GONZALEZ, SERGII) **DECLARATORY AND**
GRINCHENKO, LARON) **INJUNCTIVE RELIEF**
15 JOHNSON, JIM LASOVICH,)
16 RAYMOND LOCKETT,)
MICHAEL MANZANO, TERESA)
17 OWENS, ROSALIND PARKER,)
18 RYAN RIVERA, ALBERT ROTH,)
JIM SCULLION,)
19 SC SUN, NICK TAYLOR and)
20 DAROLYN TURNER)
21)
Plaintiffs,)
22)
23 v.)
24)
SAN FRANCISCO BAY AREA)
25 RAPID TRANSIT DISTRICT, and)
DOES 1-100,
26)
27 Defendants.

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INTRODUCTION

1. This is a complaint for employment discrimination brought by employees holding religious convictions against the SARS-CoV-2 (COVID-19) vaccine. Two hundred and four (204) employees requested medical or religious exemptions from their employer, San Francisco Bay Area Rapid Transit District (BART), from COVID-19 vaccination. One in three employees requesting medical exemptions were granted an accommodation. Of the 179 religious objector employees, not one received an accommodation. Exclusion of religious people from the enjoyment of a right stands in violation of the First Amendment’s religion clauses and federal and state anti-discrimination in employment laws.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, as it arises under the U.S. Constitution and laws of the United States. This action presents a federal question, pursuant to 28 U.S.C. § 1343(a)(3)-(4). The Court also has jurisdiction under 42 U.S.C. § 2000-e5(f)(3). Venue is proper within this judicial district and division, pursuant to 28 U.S.C. § 1391(b), because the relevant events have occurred and are threatened to occur in this jurisdictional district and division. The Defendant’s principal place of business is in this district.

1 3. Plaintiffs' claims for declaratory and injunctive relief
2 are authorized by 28 U.S.C. §§ 2201-02, Federal Rules of Civil
3 Procedure 57 and 65, and the general legal and equitable powers
4 of this Court, which empower this Court to grant the requested
5 relief.

6 **PARTIES**

7 **Plaintiffs**

8 4. Plaintiff, JERAMIAH COOPER, was employed by BART
9 as a Quality Team Leader. COOPER has sincerely held religious
10 beliefs that prevent him from receiving the COVID-19 vaccine
11 without violating his faith. COOPER submitted a written request
12 for a religious accommodation under Title VII and the California
13 Fair Employment and Housing Act (FEHA). COOPER utilized
14 BART's form entitled *Employee Request for Religious Exemption*
15 *(COVID-19 Vaccination)*. A true and correct copy of his request,
16 along with the combined requests of the other Plaintiffs,
17 accompanies this Complaint, is incorporated in full, and is
18 marked as Exhibit 1. His beliefs are sincerely held. BART
19 granted the exemption, but in a letter dated January 5, 2022,
20 BART denied the request for a religious accommodation. A true
21 and correct copy of the denial letter, along with the combined
22 denials of the other Plaintiffs, accompanies this Complaint, is
23 incorporated in full, and is marked as Exhibit 2. COOPER
24 declined to be vaccinated and was thus fired. COOPER has
25 exhausted administrative remedies and has received a notice of
26 right to sue from the Equal Employment Opportunity
27 Commission (EEOC). A true and correct copy of the EEOC
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1 notice, along with those of the other Plaintiffs, accompanies this
2 Complaint, is incorporated in full, and is marked as Exhibit 3.

3 5. Plaintiff, RONALD FREEMAN II, was employed by
4 BART as an Operations Supervisor Liaison. FREEMAN has
5 sincerely held religious beliefs that prevent him from receiving
6 the COVID-19 vaccine without violating his faith. FREEMAN
7 submitted a written request for a religious accommodation under
8 Title VII and FEHA. FREEMAN utilized BART's form entitled
9 *Employee Request for Religious Exemption (COVID-19*
10 *Vaccination)*. A true and correct copy of his request, along with
11 the combined requests of the other Plaintiffs, accompanies this
12 Complaint, is incorporated in full, and is marked as Exhibit 1.
13 His beliefs are sincerely held. BART granted the exemption, but
14 in a letter dated January 5, 2022, BART denied the request for a
15 religious accommodation. A true and correct copy of the denial
16 letter, along with the combined denials of the other Plaintiffs,
17 accompanies this Complaint, is incorporated in full, and is
18 marked as Exhibit 2. FREEMAN declined to be vaccinated and
19 was thus fired. FREEMAN has exhausted administrative
20 remedies and has received a notice of right to sue from the
21 EEOC. A true and correct copy of the EEOC notice, along with
22 those of the other Plaintiffs, accompanies this Complaint, is
23 incorporated in full, and is marked as Exhibit 3.

24 6. Plaintiff, ADRIAN GILBERT, was employed by BART as
25 a Train Operator. GILBERT has sincerely held religious beliefs
26 that prevent him from receiving the COVID-19 vaccine without
27 violating his faith. GILBERT submitted a written request for a
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1 religious accommodation under Title VII and FEHA. GILBERT
2 utilized BART's form entitled *Employee Request for Religious*
3 *Exemption (COVID-19 Vaccination)*. A true and correct copy of
4 his request, along with the combined requests of the other
5 Plaintiffs, accompanies this Complaint, is incorporated in full,
6 and is marked as Exhibit 1. His beliefs are sincerely held. BART
7 granted the exemption, but in a letter dated December 22, 2021,
8 BART denied the request for a religious accommodation. A true
9 and correct copy of the denial letter, along with the combined
10 denials of the other Plaintiffs, accompanies this Complaint, is
11 incorporated in full, and is marked as Exhibit 2. GILBERT
12 declined to be vaccinated and was thus fired. GILBERT has
13 exhausted administrative remedies and has received a notice of
14 right to sue from the EEOC. A true and correct copy of the
15 EEOC notice, along with those of the other Plaintiffs,
16 accompanies this Complaint, is incorporated in full, and is
17 marked as Exhibit 3.

18 7. Plaintiff, SILVERIO GONZALEZ, was employed by
19 BART as a Transportation Supervisor. GONZALEZ has sincerely
20 held religious beliefs that prevent him from receiving the COVID-
21 19 vaccine without violating his faith. GONZALEZ submitted a
22 written request for a religious accommodation under Title VII
23 and FEHA. GONZALEZ utilized BART's form entitled *Employee*
24 *Request for Religious Exemption (COVID-19 Vaccination)*. A true
25 and correct copy of his request, along with the combined
26 requests of the other Plaintiffs, accompanies this Complaint, is
27 incorporated in full, and is marked as Exhibit 1. His beliefs are
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1 sincerely held. BART granted the exemption, but in a letter
2 dated December 22, 2021, BART denied the request for a
3 religious accommodation. A true and correct copy of the denial
4 letter, along with the combined denials of the other Plaintiffs,
5 accompanies this Complaint, is incorporated in full, and is
6 marked as Exhibit 2. GONZALEZ declined to be vaccinated and
7 was thus fired. GONZALEZ has exhausted administrative
8 remedies and has received a notice of right to sue from the
9 EEOC. A true and correct copy of the EEOC notice, along with
10 those of the other Plaintiffs, accompanies this Complaint, is
11 incorporated in full, and is marked as Exhibit 3.

12 8. Plaintiff, SERGII GRINCHENKO, was employed by
13 BART as an Elevator/Escalator Worker. GRINCHENKO, has
14 sincerely held religious beliefs that prevent him from receiving
15 the COVID-19 vaccine without violating his faith.
16 GRINCHENKO, submitted a written request for a religious
17 accommodation under Title VII and FEHA. GRINCHENKO,
18 utilized BART's form entitled *Employee Request for Religious*
19 *Exemption (COVID-19 Vaccination)*. A true and correct copy of
20 his request, along with the combined requests of the other
21 Plaintiffs, accompanies this Complaint, is incorporated in full,
22 and is marked as Exhibit 1. His beliefs are sincerely held. BART
23 granted the exemption, but in a letter dated November 23, 2021,
24 BART denied the request for a religious accommodation. A true
25 and correct copy of the denial letter, along with the combined
26 denials of the other Plaintiffs, accompanies this Complaint, is
27 incorporated in full, and is marked as Exhibit 2. GRINCHENKO

1 declined to be vaccinated and was forced to resign.

2 GRINCHENKO, has exhausted administrative remedies and has
3 received a notice of right to sue from the EEOC. A true and
4 correct copy of the EEOC notice, along with those of the other
5 Plaintiffs, accompanies this Complaint, is incorporated in full,
6 and is marked as Exhibit 3.

7 9. Plaintiff, LARON JOHNSON, was employed by BART as
8 a Train Control Electronic Technician. JOHNSON has sincerely
9 held religious beliefs that prevent him from receiving the COVID-
10 19 vaccine without violating his faith. JOHNSON submitted a
11 written request for a religious accommodation under Title VII
12 and the California Fair Employment and Housing Act (FEHA).
13 JOHNSON utilized BART'S form entitled *Employee Request for*
14 *Religious Exemption (COVID-19 Vaccination)*. A true and correct
15 copy of his request, along with the combined requests of the
16 other Plaintiffs, accompanies this Complaint, is incorporated in
17 full, and is marked as Exhibit 1. His beliefs are sincerely held.
18 BART granted the exemption, but in a letter dated December 15,
19 2021, BART denied the request for a religious accommodation. A
20 true and correct copy of the denial letter, along with the
21 combined denials of the other Plaintiffs, accompanies this
22 Complaint, is incorporated in full, and is marked as Exhibit 2.
23 JOHNSON, declined to be vaccinated and was thus fired.
24 JOHNSON has exhausted administrative remedies and has
25 received a notice of right to sue from the Equal Employment
26 Opportunity Commission (EEOC). A true and correct copy of the
27 EEOC notice, along with those of the other Plaintiffs,

1 accompanies this Complaint, is incorporated in full, and is
2 marked as Exhibit 3. JOHNSON sues on behalf of himself and is
3 the sixth Plaintiff to this action.

4 10. Plaintiff, JIM LASOVICH, was employed by BART as an
5 Operations Supervisor Liaison. LASOVICH has sincerely held
6 religious beliefs that prevent him from receiving the COVID-19
7 vaccine without violating his faith. LASOVICH submitted a
8 written request for a religious accommodation under Title VII
9 and the California Fair Employment and Housing Act (FEHA).
10 LASOVICH utilized BART's form entitled *Employee Request for*
11 *Religious Exemption (COVID-19 Vaccination)*. A true and correct
12 copy of his request, along with the combined requests of the
13 other Plaintiffs, accompanies this Complaint, is incorporated in
14 full, and is marked as Exhibit 1. His beliefs are sincerely held.
15 BART granted the exemption, but in a letter dated November 23,
16 2021, BART denied the request for a religious accommodation. A
17 true and correct copy of the denial letter, along with the
18 combined denials of the other Plaintiffs, accompanies this
19 Complaint, is incorporated in full, and is marked as Exhibit 2.
20 LASOVICH declined to be vaccinated and was thus fired.
21 LASOVICH has exhausted administrative remedies and has
22 received a notice of right to sue from the Equal Employment
23 Opportunity Commission (EEOC). A true and correct copy of the
24 EEOC notice, along with those of the other Plaintiffs,
25 accompanies this Complaint, is incorporated in full, and is
26 marked as Exhibit 3.

1 11. Plaintiff, RAYMOND LOCKETT, was employed by BART
2 as an Operation Liaison Supervisor. LOCKETT has sincerely held
3 religious beliefs that prevent him from receiving the COVID-19
4 vaccine without violating his faith. LOCKETT submitted a
5 written request for a religious accommodation under Title VII
6 and the California Fair Employment and Housing Act (FEHA).
7 LOCKETT utilized BART's form entitled *Employee Request for*
8 *Religious Exemption (COVID-19 Vaccination)*. A true and correct
9 copy of his request, along with the combined requests of the
10 other Plaintiffs, accompanies this Complaint, is incorporated in
11 full, and is marked as Exhibit 1. His beliefs are sincerely held.
12 BART granted the exemption, but in a letter dated January 5,
13 2022, BART denied the request for a religious accommodation. A
14 true and correct copy of the denial letter, along with the
15 combined denials of the other Plaintiffs, accompanies this
16 Complaint, is incorporated in full, and is marked as Exhibit 2.
17 LOCKETT declined to be vaccinated and was thus fired.
18 LOCKETT has exhausted administrative remedies and has
19 received a notice of right to sue from the Equal Employment
20 Opportunity Commission (EEOC). A true and correct copy of the
21 EEOC notice, along with those of the other Plaintiffs,
22 accompanies this Complaint, is incorporated in full, and is
23 marked as Exhibit 3.

24 12. Plaintiff, MICHAEL MANZANO, was employed by BART
25 as a Police Officer. MANZANO has sincerely held religious
26 beliefs that prevent him from receiving the COVID-19 vaccine
27 without violating her faith. MANZANO submitted a written
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1 request for a religious accommodation under Title VII and FEHA.
2 MANZANO utilized BART's form entitled *Employee Request for*
3 *Religious Exemption (COVID-19 Vaccination)*. A true and correct
4 copy of his request, along with the combined requests of the
5 other Plaintiffs, accompanies this Complaint, is incorporated in
6 full, and is marked as Exhibit 1. His beliefs are sincerely held.
7 BART granted the exemption, but in a letter dated December 22,
8 2021, BART denied the request for a religious accommodation. A
9 true and correct copy of the denial letter, along with the
10 combined denials of the other Plaintiffs, accompanies this
11 Complaint, is incorporated in full, and is marked as Exhibit 2.
12 MANZANO declined to be vaccinated and was thus fired.
13 MANZANO has exhausted administrative remedies and has
14 received a notice of right to sue from the EEOC. A true and
15 correct copy of the EEOC notice, along with those of the other
16 Plaintiffs, accompanies this Complaint, is incorporated in full,
17 and is marked as Exhibit 3.

18 13. Plaintiff, TERESA OWENS, was employed by BART as a
19 Station Agent. OWENS has sincerely held religious beliefs that
20 prevent her from receiving the COVID-19 vaccine without
21 violating her faith. OWENS submitted a written request for a
22 religious accommodation under Title VII and FEHA. OWENS
23 utilized BART's form entitled *Employee Request for Religious*
24 *Exemption (COVID-19 Vaccination)*. A true and correct copy of
25 her request, along with the combined requests of the other
26 Plaintiffs, accompanies this Complaint, is incorporated in full,
27 and is marked as Exhibit 1. Her beliefs are sincerely held. BART

1 granted the exemption, but in a letter dated December 22, 2021,
2 BART denied the request for a religious accommodation. A true
3 and correct copy of the denial letter, along with the combined
4 denials of the other Plaintiffs, accompanies this Complaint, is
5 incorporated in full, and is marked as Exhibit 2. OWENS
6 declined to be vaccinated and was thus fired. OWENS has
7 exhausted administrative remedies and has received a notice of
8 right to sue from the EEOC. A true and correct copy of the
9 EEOC notice, along with those of the other Plaintiffs,
10 accompanies this Complaint, is incorporated in full, and is
11 marked as Exhibit 3.

12 14. Plaintiff, ROSALIND PARKER, was employed by BART
13 as a Customer Service Clerk IV. PARKER has sincerely held
14 religious beliefs that prevent her from receiving the COVID-19
15 vaccine without violating her faith. PARKER submitted a written
16 request for a religious accommodation under Title VII and FEHA.
17 PARKER utilized BART's form entitled *Employee Request for*
18 *Religious Exemption (COVID-19 Vaccination)*. A true and correct
19 copy of her request, along with the combined requests of the
20 other Plaintiffs, accompanies this Complaint, is incorporated in
21 full, and is marked as Exhibit 1. Her beliefs are sincerely held.
22 BART granted the exemption, but in a letter dated December 20,
23 2021, BART denied the request for a religious accommodation. A
24 true and correct copy of the denial letter, along with the
25 combined denials of the other Plaintiffs, accompanies this
26 Complaint, is incorporated in full, and is marked as Exhibit 2.
27 PARKER declined to be vaccinated and was thus fired. PARKER
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1 has exhausted administrative remedies and has received a notice
2 of right to sue from the EEOC. A true and correct copy of the
3 EEOC notice, along with those of the other Plaintiffs,
4 accompanies this Complaint, is incorporated in full, and is
5 marked as Exhibit 3.

6 15. Plaintiff, RYAN RIVERA, was employed by BART as a
7 Storekeeper-Procurement. RIVERA has sincerely held religious
8 beliefs that prevent him from receiving the COVID-19 vaccine
9 without violating his faith. RIVERA submitted a written request
10 for a religious accommodation under Title VII and FEHA.
11 RIVERA utilized BART's form entitled *Employee Request for*
12 *Religious Exemption (COVID-19 Vaccination)*. A true and correct
13 copy of his request, along with the combined requests of the
14 other Plaintiffs, accompanies this Complaint, is incorporated in
15 full, and is marked as Exhibit 1. His beliefs are sincerely held.
16 BART granted the exemption, but in a letter dated January 5,
17 2022, BART denied the request for a religious accommodation. A
18 true and correct copy of the denial letter, along with the
19 combined denials of the other Plaintiffs, accompanies this
20 Complaint, is incorporated in full, and is marked as Exhibit 2.
21 RIVERA declined to be vaccinated and was thus fired. RIVERA
22 has exhausted administrative remedies and has received a notice
23 of right to sue from the EEOC. A true and correct copy of the
24 EEOC notice, along with those of the other Plaintiffs,
25 accompanies this Complaint, is incorporated in full, and is
26 marked as Exhibit 3.

1 16. Plaintiff, ALBERT ROTH, was employed by BART as an
2 Automatic Fare Collection Foreman. ROTH has sincerely held
3 religious beliefs that prevent him from receiving the COVID-19
4 vaccine without violating his faith. ROTH submitted a written
5 request for a religious accommodation under Title VII and FEHA.
6 ROTH utilized BART's form entitled *Employee Request for*
7 *Religious Exemption (COVID-19 Vaccination)*. A true and correct
8 copy of his request, along with the combined requests of the
9 other Plaintiffs, accompanies this Complaint, is incorporated in
10 full, and is marked as Exhibit 1. His beliefs are sincerely held.
11 BART granted the exemption, but in a letter dated November 24,
12 2021, BART denied the request for a religious accommodation. A
13 true and correct copy of the denial letter, along with the
14 combined denials of the other Plaintiffs, accompanies this
15 Complaint, is incorporated in full, and is marked as Exhibit 2.
16 ROTH declined to be vaccinated and was thus fired. ROTH has
17 exhausted administrative remedies and has received a notice of
18 right to sue from the EEOC. A true and correct copy of the
19 EEOC notice, along with those of the other Plaintiffs,
20 accompanies this Complaint, is incorporated in full, and is
21 marked as Exhibit 3.

22 17. Plaintiff, JIM SCULLION, was employed by BART as a
23 Train Control Electronic Technician and Instructor. SCULLION
24 has sincerely held religious beliefs that prevent him from
25 receiving the COVID-19 vaccine without violating his faith.
26 SCULLION submitted a written request for a religious
27 accommodation under Title VII and FEHA. SCULLION utilized
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1 BART's form entitled *Employee Request for Religious Exemption*
2 (*COVID-19 Vaccination*). A true and correct copy of his request,
3 along with the combined requests of the other Plaintiffs,
4 accompanies this Complaint, is incorporated in full, and is
5 marked as Exhibit 1. His beliefs are sincerely held. BART
6 granted the exemption, but in a letter dated January 5, 2022,
7 BART denied the request for a religious accommodation. A true
8 and correct copy of the denial letter, along with the combined
9 denials of the other Plaintiffs, accompanies this Complaint, is
10 incorporated in full, and is marked as Exhibit 2. SCULLION
11 declined to be vaccinated and was thus fired. SCULLION has
12 exhausted administrative remedies and has received a notice of
13 right to sue from the EEOC. A true and correct copy of the
14 EEOC notice, along with those of the other Plaintiffs,
15 accompanies this Complaint, is incorporated in full, and is
16 marked as Exhibit 3.

17 18. Plaintiff, SC SUN, was employed by BART as a
18 Computer Electronic Technician. SUN has sincerely held
19 religious beliefs that prevent him from receiving the COVID-19
20 vaccine without violating his faith. SUN submitted a written
21 request for a religious accommodation under Title VII and FEHA.
22 SUN utilized BART's form entitled *Employee Request for*
23 *Religious Exemption (COVID-19 Vaccination)*. A true and correct
24 copy of his request, along with the combined requests of the
25 other Plaintiffs, accompanies this Complaint, is incorporated in
26 full, and is marked as Exhibit 1. His beliefs are sincerely held.
27 BART granted the exemption, but in a letter dated December 20,
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1 2021, BART denied the request for a religious accommodation. A
2 true and correct copy of the denial letter, along with the
3 combined denials of the other Plaintiffs, accompanies this
4 Complaint, is incorporated in full, and is marked as Exhibit 2.
5 SUN declined to be vaccinated and was thus fired. SUN has
6 exhausted administrative remedies and has received a notice of
7 right to sue from the EEOC. A true and correct copy of the
8 EEOC notice, along with those of the other Plaintiffs,
9 accompanies this Complaint, is incorporated in full, and is
10 marked as Exhibit 3.

11 19. Plaintiff, NICK TAYLOR, was employed by BART as a
12 Tool Room Attendant. TAYLOR has sincerely held religious
13 beliefs that prevent him from receiving the COVID-19 vaccine
14 without violating his faith. TAYLOR submitted a written request
15 for a religious accommodation under Title VII and FEHA.
16 TAYLOR utilized BART's form entitled *Employee Request for*
17 *Religious Exemption (COVID-19 Vaccination)*. A true and correct
18 copy of his request, along with the combined requests of the
19 other Plaintiffs, accompanies this Complaint, is incorporated in
20 full, and is marked as Exhibit 1. His beliefs are sincerely held.
21 BART granted the exemption, but in a letter dated November 24,
22 2021, BART denied the request for a religious accommodation. A
23 true and correct copy of the denial letter, along with the
24 combined denials of the other Plaintiffs, accompanies this
25 Complaint, is incorporated in full, and is marked as Exhibit 2.
26 TAYLOR declined to be vaccinated and was thus fired. TAYLOR
27 has exhausted administrative remedies and has received a notice
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1 of right to sue from the EEOC. A true and correct copy of the
2 EEOC notice, along with those of the other Plaintiffs,
3 accompanies this Complaint, is incorporated in full, and is
4 marked as Exhibit 3.

5 20. Plaintiff, DAROLYN TURNER was employed by BART as a
6 Train Operator. TURNER has sincerely held religious beliefs that
7 prevent her from receiving the COVID-19 vaccine without
8 violating her faith. TURNER submitted a written request for a
9 religious accommodation under Title VII and FEHA. TURNER
10 utilized BART's form entitled *Employee Request for Religious*
11 *Exemption (COVID-19 Vaccination)*. A true and correct copy of
12 her request, along with the combined requests of the other
13 Plaintiffs, accompanies this Complaint, is incorporated in full, and
14 is marked as Exhibit 1. Her beliefs are sincerely held. BART
15 granted the exemption, but in a letter dated December 22, 2021,
16 BART denied the request for a religious accommodation. A true
17 and correct copy of the denial letter, along with the combined
18 denials of the other Plaintiffs, accompanies this Complaint, is
19 incorporated in full, and is marked as Exhibit 2. TURNER
20 declined to be vaccinated and was thus fired. TURNER has
21 exhausted administrative remedies and has received a notice of
22 right to sue from the EEOC. A true and correct copy of the EEOC
23 notice, along with those of the other Plaintiffs, accompanies this
24 Complaint, is incorporated in full, and is marked as Exhibit 3.

25 **Defendant**

26 21. Defendant, SAN FRANCISCO BAY AREA RAPID
27 TRANSIT DISTRICT, was established as a special district in 1957

1 and is a heavy-rail public transit system that connects the San
2 Francisco Peninsula with communities in the East Bay and South
3 Bay. BART began service in 1972.

4 22. The true names and capacities, whether individual,
5 corporate, associate, or otherwise, of DOES 1-100, inclusive, are
6 unknown to Plaintiffs at this time, who therefore sues said
7 Defendant by such fictitious names. Plaintiffs are informed and
8 believe and thereon allege that each of the fictitiously named
9 Defendant is in some way responsible for, or participated in or
10 contributed to, the matters and things complained of herein, and
11 is legally responsible in some manner. Plaintiffs will seek leave
12 to amend this Complaint when the true names, capacities, and
13 responsibilities have been ascertained.

14
15 **FACTS**

16 23. On October 14, 2021, BART issued a COVID-19
17 Vaccination Policy requiring all employees to be fully vaccinated
18 as a condition of employment.

19 24. Per the requirements of state and federal anti-
20 discrimination in employment laws, BART employees were given
21 an opportunity to request either a medical or religious exemption
22 to COVID-19 vaccination. If an exemption was granted, then
23 BART determined whether to provide a reasonable
24 accommodation.

25 25. Between October 14, 2021, and February 16, 2022, 204
26 BART employees requested either religious or medical
27 exemptions to COVID-19 vaccination. A true and correct copy of
28

1 the table showing the number of employees seeking exemptions
2 and the results of said requests accompanies this Complaint, is
3 incorporated in full, and is marked as Exhibit 4.

4 26. Of those, 25 employees requested medical exemptions
5 to COVID-19 vaccination. One in three employees requesting a
6 medical exemption were given an accommodation by BART. *See*
7 Exhibit 4.

8 27. Approximately 179 employees submitted requests to be
9 exempted from COVID-19 vaccination due to their sincerely held
10 religious beliefs. Seventy of these employees were granted a
11 religious **exemption**. However, 109 employees' requests for
12 religious exemption were denied. *Id.*

13 28. Of the 70 remaining employees granted a religious
14 exemption, not one employee with faith-based convictions against
15 COVID-19 vaccination was given a religious **accommodation**.
16 No matter what any religious employee suggested as an
17 accommodation, it was never good enough.

18 29. The named Plaintiffs have each submitted a written
19 request for a religious accommodation in order to be exempted
20 from COVID-19 vaccination. They affirmatively assert that their
21 religious convictions against taking the COVID-19 vaccination are
22 sincerely held.

23 30. Generally, an employer should proceed on the
24 assumption that a request for religious accommodation is based
25 on sincerely held religious beliefs, practices, or observances.
26 BART has turned this standard on its head. Instead, BART
27

1 instituted a detailed probe into the sincerity of the faith of its
2 employees in which 61 percent received a failing grade.

3 31. BART utilized an interviewer question template entitled
4 *Religious Exemption Interviews (Question Template)*. A true and
5 correct copy of the *Question Template* accompanies this
6 Complaint and is incorporated in full and marked as Exhibit 5.

7 32. The *Question Template* began with four boxes for the
8 interviewer which appeared as follows:

9 EEOC factors:

- 10 The reasons cited in support of the request
- 11 were primarily for secular/non-religious reasons.
- 12 A clear nexus between the request and the
- 13 stated religious beliefs was not established.
- 14 Evidence of behaviors inconsistent with
- 15 adherence to the stated beliefs exists.
- 16 The timing of your request as it relates to
- 17 adoption of the stated beliefs. *Id.*

18 33. The interviewer then asks the employee five questions:

- 19 1. Can you just tell us briefly about your sincerely
- 20 held belief?
- 21 2. Can you tell us in your own words why taking
- 22 COVID-19 vaccine is contrary to your religious
- 23 belief?
- 24 3. What do you think will happen to you if you take
- 25 the COVID-19 vaccine?
- 26 4. Can you provide us other examples of how this
- 27 religious belief is demonstrated in other aspects
- 28 of your life?
5. You refuse to take the COVID-19 vaccine
- because of the alleged use of aborted fetal cells
- in the creation of the vaccine. Research on this
- topic has revealed some cosmetic and over-the-
- counter medicines may use the same process as
- the COVID-19 vaccine. Are you aware of this?

1 Tell me how else you demonstrate the same pre-
2 cautions in your life. *Id.*

3 34. The third question, which asks, "What do you think will
4 happen to you if you take the COVID-19 vaccine," is, charitably,
5 ambiguous at best and possibly calculated to mislead the
6 employee. Does this interrogatory seek to elicit an answer based
7 in doctrine or theology? By way of examples, "I will have a guilty
8 conscience." "I will be committing a sin." "I will deny my faith."
9 "I will spend eternity in hell." On the other hand, is the question
10 seeking a social, emotional, or physical response? Consider these
11 examples. "My wife will divorce me as a coward without
12 principle." "I'll lose my bodily autonomy." "I'll get sick or die."
13 The employee has little or no idea which direction will lead to a
14 denial or approval.

15 35. The protocol and standardized forms used by HR
16 evaluators comprise a detailed, individualized assessment, giving
17 broad discretion to an evaluator.

18 36. The evaluators use a document entitled RELIGIOUS
19 REQUEST REVIEW FORM (COVID-19 Vaccination). A true and
20 correct copy of the RELIGIOUS REQUEST REVIEW FORM
21 (COVID-19 Vaccination) accompanies this Complaint and is
22 incorporated in full and marked as Exhibit 6. The form has
23 evaluators engage in an individualized assessment in which they
24 ask the following questions:

- 25 • "Is there evidence that the employee has acted in a way that
26 is inconsistent with the claimed belief."

- 1 • “Is there evidence the employee is seeking a benefit or an
- 2 exception that is likely to be sought for nonreligious
- 3 reasons?”
- 4 • “Is the timing of the request considered questionable?”
- 5 • “Is there evidence the employee may be seeking the benefit
- 6 for secular reasons?”

7 37. After denying every request for an accommodation

8 coming from a religious objector to the vaccination, BART gave

9 these employees an ultimatum:

- 10 • Comply with the vaccination mandate;
- 11 • Retire if qualified;
- 12 • Resign;
- 13 • Do nothing and be terminated. *See* Exhibit 2.

14 38. The ultimatum required the Plaintiffs to choose

15 between their employment and their faith. Unless an employee

16 was vaccinated, the employee was either forced into early

17 retirement, constructively discharged by forced resignation, or

18 simply terminated.

19 *Centers for Disease Control Statements*

20 39. In a published statement, the federal Centers for

21 Disease Control and Prevention (CDC) stated that the Delta

22 variant resulted in similarly high COVID-19 viral loads in

23 vaccinated and unvaccinated people.¹ CDC Director Rochelle

24 Walensky has confirmed that COVID-19-positive individuals carry

25 ¹ Statement from CDC Director Rochelle P. Walensky issued on

26 July 30, 2021,

27 [https://www.cdc.gov/media/releases/2021/s0730-mmwr-covid-](https://www.cdc.gov/media/releases/2021/s0730-mmwr-covid-19.html)

28 [19.html](https://www.cdc.gov/media/releases/2021/s0730-mmwr-covid-19.html).

1 the same “viral load” (equivalent to the risk of spreading
2 infection) whether they are vaccinated or unvaccinated.²

3 40. The CDC Director’s statement was based on a study in
4 the summer of 2021 which tested vaccinated and unvaccinated
5 persons and found that “[c]ycle threshold values [COVID-19 viral
6 loads] were similar among specimens from patients who were
7 fully vaccinated and those who were not.”³

8 41. Later studies have found that the viral load associated
9 with COVID-19 variants such as Omicron also does not vary based
10 upon vaccination status: “[F]ully vaccinated individuals with
11 breakthrough infections have peak viral load similar to
12 unvaccinated cases and can efficiently transmit infection in
13 household settings, including to fully vaccinated contacts.”⁴

14
15 ² *Id.*

16 ³ “Outbreak of SARS-CoV-2 Infections, Including COVID-19
17 Vaccine Breakthrough Infections, Associated with Large Public
18 Gatherings — Barnstable County, Massachusetts, July 2021,”
19 *Morbidity and Mortality Weekly Report, CDC* (July 30, 2021),
[https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm?
20 s_cid=mm7031e2_w](https://www.cdc.gov/mmwr/volumes/70/wr/mm7031e2.htm?s_cid=mm7031e2_w).

21 ⁴ Anika Singanayagam, et al., *Community transmission and
22 viral load kinetics of the SARS-CoV-2 delta (B.1.617.2) variant
23 in vaccinated and unvaccinated individuals in the UK: a
24 prospective, longitudinal, cohort study*, p. 183 *The Lancet
25 Infectious Diseases* (October 28, 2021)
[https://www.thelancet.com/action/showPdf?pii=S1473-
26 3099%2821%2900648-4](https://www.thelancet.com/action/showPdf?pii=S1473-3099%2821%2900648-4) See, also, David W. Eyre, B.M., B.Ch.,
27 D.Phil. et al., *Effect of Covid-19 Vaccination on Transmission of
28 Alpha and Delta Variants*, *New England J. Med* 386:744-756
(Feb. 24, 2022),
<https://www.nejm.org/doi/full/10.1056/NEJMoa2116597>.

1 42. In another official statement, the CDC has confirmed
2 those studies and stated that it expects that anyone with an
3 Omicron infection, regardless of vaccination status or whether or
4 not they have symptoms, can spread the virus to others.⁵

5 43. Because the viral loads are no different for the
6 vaccinated and the unvaccinated, BART's position that the
7 unvaccinated pose a danger to themselves, coworkers, and the
8 public, but that the vaccinated do not pose this danger, is not
9 consistent with the above-cited statements from the CDC.

10 44. The CDC spokesperson, Greta Massetti, stated that
11 immunity for the population is now around 95 percent when
12 combining those who have contracted and recovered from
13 COVID-19 with those that have been vaccinated. As such, "it
14 makes the most sense not to differentiate" between the
15 vaccinated and unvaccinated.⁶

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PROVIDE RELIGIOUS ACCOMMODATION**
18 **Violation of Title VII of the Civil Rights Act of 1964**
19 All Plaintiffs Against All Government Defendants
20 (42 U.S.C. § 2000e)

21 _____
22 ⁵ "Omicron Variant: What You Need to Know," CDC (March 29,
23 <https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html>).

24 ⁶ "With new guidance, CDC ends test-to-stay for schools and
25 relaxes COVID rules" NPR (Aug. 11, 2022),
26 <https://www.npr.org/sections/health-shots/2022/08/11/1116991600/with-new-guidance-cdc-ends-test-to-stay-for-schools-and-relaxes-covid-rules>.

1 45. Plaintiffs repeat and reallege the allegations above and
2 incorporate those allegations herein by reference.

3 46. At all times relevant hereto, Title VII was in full force
4 and effect and was binding on BART.

5 47. At all times relevant hereto, the Plaintiffs were
6 performing competently in the positions they held as employees
7 of BART.

8 48. Plaintiffs have bona fide religious beliefs that conflict
9 with receiving the COVID-19 vaccination; they have informed
10 their employer of such beliefs. The Plaintiffs were disciplined for
11 failure to comply with the conflicting employment requirement.

12 49. Title VII makes it an unlawful employment practice to
13 fail or refuse to reasonably accommodate the religious beliefs and
14 practices of an employee.

15 50. BART failed to provide reasonable alternative means of
16 accommodating the religious belief or observance that was in
17 conflict with the COVID-19 vaccination work requirement.

18 51. BART granted medical accommodations to vaccination
19 but not a single religious accommodation. Stated otherwise,
20 religious persons as a class were excluded from accommodation.

21 52. An unvaccinated employee exempted for medical
22 reasons poses precisely the same threat as an unvaccinated
23 employee exempted for religious reasons.

24 53. There is a dispute between the Plaintiffs and
25 Defendant. BART asserts that it can undertake a detailed probe
26 of the sincerity of the religious beliefs of its employees; this
27 includes placing a burden on the Plaintiffs to provide an objective
28

1 basis for religious convictions regarding the refusal to take the
2 COVID-19 vaccination. Plaintiffs disagree. Because faith is
3 intrinsically subjective, a religious objector cannot be held to an
4 objective measure of proof regarding what lay within his or her
5 heart, mind, and soul. Belief in what one may demonstrate to the
6 senses is not faith. Plaintiffs assert that Title VII presumes
7 sincerity of belief by an employee, and therefore BART's
8 standardized practice of a rigorous inquisition is an unlawful
9 standard. The Plaintiffs' legal position is that, although an
10 employee's faith may be deemed as heresy to some and
11 incomprehensible to others, employers cannot require orthodoxy
12 of employees according to a recognized religion or demand that
13 employees be put to the proof of their religious beliefs.

14
15 **SECOND CAUSE OF ACTION**

16 **RELIGION CLAUSES**

17 **First Amendment to the U.S. Constitution**

18 All Plaintiffs Against All Government Defendants

19 (42 U.S.C. § 1983)

20 54. The Plaintiffs repeat and reallege the allegations above
21 and incorporate those allegations herein by reference.

22 55. The right to free exercise of religion is a right protected
23 and guaranteed by the First Amendment of the U.S. Constitution.
24 The liberties under the First Amendment apply to the states and
25 their political subdivisions through the Fourteenth Amendment.

26 56. The actions of BART have been, and continue to be,
27 done under color of law.

1 57. The Plaintiffs have sincerely held religious beliefs that
2 compel them to refuse the COVID-19 vaccine.

3 58. There are two ways that BART has violated the
4 religious clauses. These are through the evaluation process
5 which looks for heretics or hypocrites. The second is by totally
6 excluding religious people from a statutory accommodation to a
7 condition required for employment.

8 *Total Exclusion of Religious Employees*

9 59. BART provided accommodations for approximately 33
10 percent of its employees who sought an exemption to vaccination
11 due to medical reasons. In contrast, BART provided
12 accommodations for 0 percent of its employees who sought an
13 exemption to vaccination due to religious beliefs.

14 60. The exclusion of employees from a statutory
15 accommodation deprives them of a right because of their status
16 as people of faith.

17 61. One third of employees requesting a medical exemption
18 from vaccination received an accommodation, though such an
19 unvaccinated employee poses the same health risk as an
20 unvaccinated religious employee.

21 *Heretics and Hypocrites*

22 62. The protocol that BART evaluators use imposes
23 requirements that stand as hostile to the religious beliefs of the
24 Plaintiffs and acts in a manner that passes judgment upon, or
25 presupposes the illegitimacy of, religious beliefs and practices.
26 Therefore, the protocol used is not neutral.

1 63. BART’s detailed probe into the beliefs of the Plaintiffs
2 exceeds sincerity by determining orthodoxy, verity of beliefs, and
3 hypocrisy.

4 64. BART’s evaluators are taking on the role that the First
5 Amendment reserves to ecclesiastical courts, not government
6 officials.

7 65. There is a dispute between the Plaintiffs and
8 Defendant. BART asserts that it can undertake a detailed probe
9 of the sincerity of the religious beliefs of its employees; this
10 includes placing a burden on the Plaintiffs to provide an objective
11 basis for religious convictions regarding the refusal to take the
12 COVID-19 vaccination. Plaintiffs disagree. Because faith is
13 intrinsically subjective, a religious objector cannot be held to an
14 objective measure of proof regarding what lay within his or her
15 heart, mind, and soul. Belief in what one may demonstrate to the
16 senses is not faith. The Plaintiffs’ legal position is that, although
17 an employee’s faith may be deemed as heresy to some and
18 incomprehensible to others, employers cannot require orthodoxy
19 of employees according to a recognized religion or demand that
20 employees be put to the proof of their religious beliefs.

21 66. BART provided accommodations for approximately 33
22 percent of its employees who sought an exemption to vaccination
23 due to medical reasons. In contrast, BART provided
24 accommodations for 0 percent of its employees who sought an
25 exemption to vaccination due to religious beliefs.

26 67. The protocol that evaluators of employees seeking a
27 religious exemption constitutes individualized assessments,

1 giving broad discretion to an evaluator, and thus are not neutral
2 and generally applicable.

3 68. The vaccination requirement forces the Plaintiffs to
4 choose between receiving the COVID-19 vaccine in violation of
5 their sincerely held religious beliefs or being fired, forced into
6 retirement, or constructively discharged by pressuring them to
7 resign.

8 69. The conduct of BART thus imposes a substantial burden
9 on the Plaintiffs and interferes with, and deprives them of, the
10 enjoyment of the religious liberties guaranteed by the First
11 Amendment to the U.S. Constitution, as made applicable to the
12 states through the Fourteenth Amendment.

13 ///

14 ///

15 ///

16 **THIRD CAUSE OF ACTION**

17 **FAILURE TO PROVIDE RELIGIOUS ACCOMMODATION**
18 **Violation of the California Fair Employment and Housing**
19 **Act**

20 All Plaintiffs Against All Government Defendants
21 (Gov. Code § 12900 et seq.)

22 70. The Plaintiffs repeat and reallege the allegations above
23 and incorporate those allegations herein by reference.

24 71. At all times relevant hereto, FEHA was in full force and
25 effect and was binding on BART.

26 72. BART failed to provide reasonable alternative means of
27 accommodating the religious belief or observance that conflicted
28 with the work requirement, i.e., COVID-19 vaccination.

1 73. Accommodating the Plaintiffs does not pose a
2 *significant difficulty or expense* on BART per Gov. Code §
3 12926(u).

4 74. Plaintiffs are entitled to further relief as more fully set
5 forth below in their Prayer for Relief.

6
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs request that the Court enter judgment
9 in their favor, and against the Defendant, for full relief, including
10 the following:

11 a. Declaratory judgment that BART's protocol for
12 determining sincerity of faith in whole, or in part, on its face, and
13 as applied, does not comport with the requirements of Title VII;

14 b. Declaratory judgment that BART's protocol for
15 determining sincerity of faith in whole, or in part, on its face, and
16 as applied, does not comport with the requirements of FEHA;

17 c. Declaratory judgment that BART's protocol for
18 determining sincerity of faith is in whole, or in part, on its face,
19 and as applied, is violative of the religion clauses of the First
20 Amendment;

21 d. Declaratory judgment that BART's protocol
22 individualized assessment for both religious exemptions and
23 accommodation is in whole, or in part, on its face, and as applied,
24 violative of the religion clauses of the First Amendment;

25 e. Declaratory judgment that BART's decision not to grant
26 any religious accommodations is violative of the religion clauses
27 of the First Amendment;

1 f. Declaratory judgment that providing a religious
2 accommodation does not impose an undue hardship on BART
3 under Title VII;

4 g. Declaratory judgment that providing a religious
5 accommodation does not impose a significant difficulty or
6 expense on BART under FEHA;

7 h. A preliminary and permanent injunction prohibiting
8 BART's protocol for determining sincerity of faith;

9 i. Equitable relief in the form of an order setting aside the
10 denials for accommodation and that the Plaintiffs receive *de novo*
11 consideration of their accommodation requests;

12 j. An award for actual, consequential, and incidental
13 financial losses, including, but not limited to lost back pay, front
14 pay, benefits, lost overtime, and other compensation plus interest;

15 k. An award of compensatory damages;

16 l. Restoration of employee benefits, including, but not
17 limited to, medical benefits, pensions, and insurance;

18 m. Restore vacation days, comp hours, and lost time hours;

19 n. Attorneys' fees and costs; and

20 o. Any and all other appropriate relief to which the
21 Plaintiffs may be entitled

22 ///

23 including all "appropriate relief" within the scope of FRCP 54(c).

24 Dated: December 22, 2022

25 /s/ Kevin T. Snider

26 Kevin T. Snider

27 *Counsel of Record*

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