

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

NEELIE PANOZZO, et al.,

Plaintiffs,

v.

Case No. 2:21-cv-02292-CSB-EIL

RIVERSIDE HEALTHCARE,

Defendant.

**ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFFS' THIRD AMENDED COMPLAINT**

Defendant Riverside Healthcare (hereinafter “Riverside”¹ or “Defendant”) by and through its undersigned counsel, and for its Answer and Affirmative and Additional Defenses to Plaintiffs² Third Amended Complaint states as follows:

1. This is an action for declaratory relief and damages arising from Defendant’s mandate that Plaintiffs be vaccinated against COVID-19, in violation of their sincerely held religious beliefs in derogation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq. (“Title VII”). As a result of Defendant’s mandate, Defendant terminated the employment of 29 Plaintiffs for not receiving the COVID-19 vaccine despite those employees having a sincerely held religious belief against obtaining that vaccine. In addition, at least one Plaintiff obtained the COVID-19 vaccine in violation of her sincerely held religious beliefs due to Defendant’s mandate that forced her to choose between her religious beliefs and her employment and financial security of her family.

¹ While Plaintiffs have named “Riverside Healthcare” as the Defendant in this action, the correct employing entity for most of the remaining Plaintiffs is Riverside Medical Center and the correct employing entity for plaintiffs Dakota Gable, Merissa Hubert and Michael Raef is Riverside’s Senior Living Center. As used herein, “Riverside” refers to all Riverside entities.

² As the Parties confirmed within their August 16, 2023 Report of Rule 26(f) Planning Meeting (Dkt. #36) (the “Report”) the plaintiffs who remain in this action, and who are collectively referred to in this pleading as “Plaintiffs,” are identified on Exhibit A to the Parties’ Report (Dkt. # 36-1).

ANSWER: Riverside admits that Plaintiffs purport to bring such claims, but denies that such claims have any merit whatsoever, and further expressly denies that it engaged in any discriminatory actions whatsoever. Riverside also admits that at least one of the Plaintiffs received the COVID-19 vaccine and remains employed with Riverside and that Riverside terminated the employment of 29 of the Plaintiffs for not receiving the COVID-19 vaccination. Riverside otherwise denies the allegations of this paragraph.

Parties

2. Plaintiff Neelie Panozzo was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside's COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that "Riverside Healthcare" employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

3. Plaintiff Judy Busato was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside's COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that "Riverside Healthcare" employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

4. Plaintiff Amy Memenga was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside's COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that "Riverside Healthcare" employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

5. Plaintiff Allison Berard was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

6. Plaintiff Amber Marcotte was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

7. Plaintiff Beth Norwick was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

8. Plaintiff Bonnie Gross was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

9. Plaintiff Bonnie Rykiel was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

10. Plaintiff Cassidy Gerdes was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

11. Plaintiff Dakota Gable was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside’s Senior Living Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

12. Plaintiff Desneiges Hansen was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside otherwise lacks knowledge or information

sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

13. Plaintiff Holly Gade was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

14. Plaintiff Janet Stryzik was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

15. Plaintiff Jeanne James was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

16. Plaintiff Kathryn Vana was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside otherwise lacks knowledge or information

sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

17. Plaintiff Kendra Outsen was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside's COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that "Riverside Healthcare" employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

18. Plaintiff Laura Wendt was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside's COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that "Riverside Healthcare" employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

19. Plaintiff Linda Kendziorek was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside's COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that "Riverside Healthcare" employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

20. Plaintiff Merissa Hubert was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Senior Living Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside's COVID-19

vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

21. Plaintiff Michael Raef was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Senior Living Center employed the identified plaintiff, that he submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

22. Plaintiff Molly Snyder was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

23. Plaintiff Nadya Payne was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

24. Plaintiff Rebecca O’Connor was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

25. Plaintiff Sherrie Robertson was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

26. Plaintiff Tenise Irvin was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

27. Melissa Harms was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

28. Nicole Boersma was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

29. Nichole Bednarz was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

30. Valerie Keitzman was an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request.

ANSWER: Admitted that Riverside Medical Center employed the identified plaintiff, that she submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

31. Plaintiff Nicole Brewer is an employee of Riverside Healthcare. She requested a vaccine exemption based on sincerely held religious beliefs. Riverside denied that request. She was forced to choose between following her religious beliefs or her employment and financial security of her family. She chose to get the COVID-19 vaccine in violation of her religious beliefs in order to keep her job and continue to provide for her children.

ANSWER: Admitted that Riverside Medical Center employs the identified plaintiff, that she submitted a religious exemption request to Riverside’s COVID-19 vaccination policy and that Riverside denied that request. Riverside denies that “Riverside Healthcare” employed the identified Plaintiff. Riverside further admits that the identified plaintiff chose to get the COVID-19 vaccination and that she kept her job with Riverside. Riverside otherwise lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations in this paragraph and on this basis denies same.

32. Defendant Riverside Healthcare (“Riverside”) is a not-for-profit corporation existing under the laws of the State of Illinois, with its principal place of business located at 350 N. Wall Street, Kankakee, Illinois.

ANSWER: Admitted.

Jurisdiction

33. This Court has jurisdiction of Plaintiffs’ Title VII claims pursuant to 28 U.S.C. §§ 1331 and 1343.

ANSWER: Denied that this Court has subject matter jurisdiction over the claims of those plaintiffs who received the COVID-19 vaccination; otherwise, admitted.

34. Venue is proper under 28 U.S.C. § 1391 because all the conduct complained of occurred within this District.

ANSWER: Admitted that venue is proper.

Factual Allegations

35. Title VII prohibits employers from failing or refusing to hire or to discharge any individual, or to otherwise discriminate with respect to an employee’s compensation, terms, conditions, or privileges of employment, because of the employee’s race, color, religion, sex, or national origin. 42 U.S.C. § 2000e-2(a)(1).

ANSWER: This paragraph asserts a legal conclusion to which no response is required, but to the extent a response is required, Defendant admits that Title VII prohibits employers from failing or refusing to hire or to discharge any individual, or to otherwise discriminate

with respect to an employee's compensation, terms, conditions, or privileges of employment, because of the employee's race, color, religion, sex, or national origin; however, Riverside expressly denies that it engaged in any such discrimination or otherwise violated Title VII whatsoever.

36. On August 26, 2021, Illinois Governor J.B. Pritzker issued an executive order mandating health care workers be vaccinated against COVID-19. His order included an option for weekly testing if vaccination would require a health care worker to "violate or forgo a sincerely held religious belief, practice, or observance."

ANSWER: Admitted that on August 26, 2021, Illinois Governor J.B. Pritzker issue Executive Order 2021-20 mandating health care workers be vaccinated against COVID-19. Riverside further admits that Gov. Pritzker's executive order provided that "Individuals are exempt from the requirement to be fully vaccinated against COVID-19 if... vaccination would require the individual to violate or forgo a sincerely held religious belief, practice, or observance. Individuals who demonstrate they are exempt from the vaccination requirement shall undergo, at a minimum, weekly testing..." Riverside denies the remaining allegations of this paragraph.

37. On August 27, 2021, Riverside circulated a memorandum and policy to all employees announcing it was implementing the Governor's order and offering a process and form by which Riverside employees could secure a religious exemption.

ANSWER: Admitted.

38. All Plaintiffs, as part of their deeply held religious faith, oppose abortion and the use of aborted fetal tissue or hold other sincere religious objections to the current vaccines.

ANSWER: Riverside lacks knowledge or information sufficient to form a belief regarding the truth of the allegations in this paragraph and on this basis denies same.

39. Because all the currently available COVID-19 vaccines were developed with the use of aborted fetal tissue, receiving any COVID-19 vaccine would go against Plaintiffs' sincerely held religious beliefs.

ANSWER: Denied.

40. All plaintiffs promptly submitted a letter or form to Riverside Healthcare requesting a religious exemption from their COVID-19 vaccine mandate.

ANSWER: Admitted that all Plaintiffs submitted religious exemption requests to Riverside's COVID-19 vaccination policy. Riverside denies the remaining allegations in this paragraph.

41. On September 10, 2021, after President Biden's speech to the nation, Riverside circulated another memorandum to employees, stating that "Until we receive the [Emergency Temporary Standard from the federal Occupational Safety and Health Administration (OSHA)] and can review its contents in light of the existing emergency order issued by Governor Pritzker, Riverside will be temporarily suspending the decisions on pending religious and medical exemption requests . . ."

ANSWER: Admitted that on September 10, 2021, after President Biden's speech to the nation regarding COVID-19, Riverside sent certain employees a memorandum regarding its COVID-19 policy which included that "Until we receive the ETS and can review its contents in light of the existing emergency order issued by Governor Pritzker, Riverside will be temporarily suspending any further action with respect to employee separation of employment." Riverside denies the remaining allegations of this paragraph.

42. Nevertheless, after pledging to suspend all decisions on pending religious exemption requests until the OSHA Rule was published (which was issued on November 4, 2021), on September 17, 2021, Riverside denied all religious exemption requests for all patient-facing employees, including those of Plaintiffs.

ANSWER: Admitted that on November 4, 2021, the United States US Occupational Safety and Health Administration ("OSHA") issued its Emergency Temporary Standard ("ETS"). Riverside further admits that it denied all religious exemption requests to its COVID-19 vaccination policy in 2021 for patient-facing employees. Riverside otherwise denies the remaining allegations in this paragraph.

43. Riverside has implemented a policy to deny any religious accommodation request by any employee it deemed to be in a patient-facing position.

ANSWER: Admitted that Riverside denied all religious exemption requests to its COVID-19 vaccination policy in 2021 for patient-facing employees; otherwise, denied.

44. Plaintiffs who filed appeals of their exemption denials with Riverside also received denials of those appeals.

ANSWER: Riverside lacks knowledge or information sufficient to form a belief regarding what Plaintiffs mean by the term “appeals” and on this basis denies the allegations in this paragraph.

45. On September 21, 2021, Plaintiff Memenga received a letter, dated September 20, 2021, terminating her employment with Riverside Healthcare effective that day for refusing to comply with Riverside’s vaccination mandate after being placed on a two-week administrative leave for not meeting the original September 6, 2021, deadline for vaccination.

ANSWER: Admitted that on September 20, 2021, Riverside sent Plaintiff Memenga a letter terminating her employment effective that day for failing to comply with Riverside’s COVID-19 vaccination policy. Riverside further admits that on September 6, 2021, Riverside placed Memenga on an administrative leave and provided her with a two-week extension to become compliant with its COVID-19 vaccination policy after she failed to comply with the original September 6, 2021 deadline for leadership employees to obtain at least their first dose of a COVID-19 vaccination. Riverside lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations of this paragraph and on this basis denies same.

46. On September 24, 2021, previous counsel for Plaintiffs sent a demand letter to Riverside outlining the Plaintiffs’ rights under Illinois Health Care Right of Conscience Act, 745 ILCS § 70/1, et seq. (the “HCRCA”)³ and federal Title VII.

ANSWER: Admitted that on September 24, 2021, prior counsel for Plaintiffs sent a demand letter to Riverside making allegations related to the Illinois Health Care Right of

³ Plaintiffs originally brought this action in state court alleging violations of the HCRCA. This Third Amended Complaint drops Plaintiffs’ HCRCA count and simply alleges a violation under Title VII.

ANSWER: Admitted.

Conscience Act (the “HCRCA”) and Title VII, but denies that Riverside violated these statutes in any way.

47. On September 30, 2021, Riverside sent Neelie Panozzo a letter threatening to place her on unpaid leave or terminate her if she did not become vaccinated by October 31.

ANSWER: Admitted that on September 30, 2021, Riverside sent Plaintiff Panozzo a letter reminding her that if she failed to receive a COVID-19 vaccine or an approved exemption by October 31, 2021, she could be placed on an unpaid leave of absence or separated from employment. Riverside denies the remaining allegations of this paragraph.

48. On or about October 4, 2021, Riverside denied all exemption appeals by Plaintiffs.

ANSWER: Riverside lacks knowledge or information sufficient to form a belief regarding what Plaintiffs mean by the term “exemption appeals” and on this basis denies the allegations in this paragraph.

49. On October 8, 2021, Riverside’s attorney replied to Plaintiffs’ demand letter by defending Riverside’s position.

ANSWER: Admitted.

50. On October 8, 2021, Riverside sent a letter to Plaintiff Neelie Panozzo informing her that the Medical Executive Committee would be meeting on October 25, 2021, to revoke her clinical privileges and credentials as a necessary step towards termination. The letter recommended resigning, because revocation would become a permanent part of Panozzo’s personnel file that would follow her to future medical jobs. A follow-up email indicated all unvaccinated staff would have their credentials revoked that day.

ANSWER: Admitted that on October 8, 2021, Riverside sent a letter to Plaintiff Panozzo informing her that Riverside’s Medical Executive Committee would be meeting on October 25, 2021 to consider termination of her medical staff membership and/or clinical privileges due to her failure to comply with hospital policy. Riverside denies the remaining allegations of this paragraph.

51. On October 8, 2021, Riverside posted a video to YouTube for employees from Riverside president Kambic “to answer questions,” and “to explain the why of why we’re doing some things.” In the video, Kambic says that for employees to choose to refuse to be vaccinated is to say, “I’m going to have to leave” Riverside. Kambic also explained the scope of his definition of “patient-facing,” saying, “The vast, vast majority of all of our employees touch a patient somehow. They simply do. Whether they come over to the hospital or to an outpatient setting and walk through, they are coming into contact with patients. That is why everybody has to get vaccinated. There are very few people who don’t come to a hospital setting or a care setting.”

ANSWER: Admitted that Philip Kambic posted a video to YouTube on October 8, 2021, that the intention of the video was “to answer questions” regarding Riverside’s COVID-19 vaccination policy and that Kambic said in the video, amongst other things, that the video was “to explain the why of why we’re doing some things” and that “the vast, vast majority of all of our employees touch a patient somehow. They simply do. Whether they come over to the hospital or to an outpatient setting and walk through, they are coming into contact with patients. That is why everybody has to get vaccinated. There are very few people who don’t come to a hospital setting or a care setting.” Riverside denies the remaining allegations of this paragraph.

52. Plaintiffs were discriminated against because of their religious beliefs in violation of Title VII when Defendant terminated Plaintiffs’ employment based on their refusal to accept administration of the COVID-19 vaccines in violation of their religious faith.

ANSWER: Denied.

Procedural History

53. This case began on October 13, 2021, when six plaintiff nurses employed by Riverside Healthcare filed a complaint in the State of Illinois’ Circuit Court for the 21st Circuit, Kankakee County, against the hospital and its CEO, Philip Kambic, alleging violations of the Illinois Health Care Right of Conscience Act, 745 ILCS § 70/1, et seq. The complaint alleged that Riverside was forcing Plaintiffs to choose between compromising their sincerely held religious

beliefs by obtaining the COVID-19 vaccine in accordance with Riverside's COVID-19 vaccine mandate and termination for failing to obtain the COVID-19 vaccine.

ANSWER: Admitted that on October 13, 2021 six plaintiffs filed a complaint against Riverside and Kambic in the Circuit Court for the 21st Judicial Circuit, Kankakee County, and that those plaintiffs alleged HCRCA violations related to Riverside's COVID-19 vaccination policy, but denies that Riverside violated the HCRCA or that those plaintiffs' claims had any veracity whatsoever.

54. On October 25, 2021, the state court entered a temporary restraining order, preventing Defendant from terminating employment of four Plaintiffs.

ANSWER: Admitted that on October 25, 2021, the state court entered an order temporarily restraining Riverside from taking adverse action against the four then-plaintiffs who were then presently employed— Neelie Panozzo, Valerie Kietzman, Judy Busato, and Kathryn Hamblen.

55. The state court then granted Plaintiffs leave to file their First Amended Complaint adding 56 additional Riverside employees to the case. The state court also extended the TRO to 53 additional Riverside employees, which Defendant, without conceding that the TRO was properly entered, did not oppose.

ANSWER: Admitted that the state court granted leave to file an amended complaint, and, on October 29, 2021, Neelie Panozzo and 59 other plaintiffs filed an Amended Complaint. Riverside further admits that the state court extended the TRO to 53 additional plaintiffs. Riverside otherwise denies the allegations of this paragraph.

56. The federal Centers for Medicaid & Medicare Services (CMS) then issued a rule requiring vaccination of employees of Medicaid/Medicare-participating employers like Riverside, with an initial deadline for the first dose of vaccination on December 5, 2021. Medicare and Medicaid Programs; Omnibus COVID-19 Health Care Staff Vaccination, 86 Fed. Reg. 61,555, 61,583 (Nov. 5, 2021). Defendant promptly moved to dissolve the stay based on this federal preemption. The Court held a hearing, and the parties agreed to set the stay to dissolve on

December 5, 2021, the final day before the CMS Rule required employees to receive the first dose of a vaccine. The Court also granted Plaintiffs leave to amend their complaint.

ANSWER: Denied that December 5, 2021 was the final day before Riverside was required to comply with the CMS rule; otherwise, admitted.

57. Plaintiffs filed a Second Amended Complaint, adding ten additional Plaintiffs and a second count that alleged that Defendant was not complying with the religious nondiscrimination requirements of Title VII of the federal Civil Rights Act of 1964, which was not preempted by the CMS Rule.

ANSWER: Admitted that Plaintiffs' Second Amended Complaint added additional plaintiffs and a count under Title VII of the Civil Rights Act of 1964, but denied that Riverside violated Title VII or that Plaintiffs' claim has any veracity whatsoever. Riverside otherwise denies the remaining allegations of this paragraph.

58. With the introduction of a federal claim into the case, Defendant removed the case to this Court on November 29, 2021.

ANSWER: Admitted.

59. On November 30, 2021, the U.S. District Court for the Western District of Louisiana issued a nationwide preliminary injunction against the CMS Rule. *Louisiana v. Becerra*, 3:21-CV-03970, ECF No. 28 (Nov. 30, 2021).

ANSWER: Admitted.

60. With the issuance of a nationwide preliminary injunction against the CMS Rule, the parties agreed to observe the terms of the then-existing TRO while they briefed, and this Court heard, Plaintiffs' motions for a TRO and preliminary injunction. Defendant informed Plaintiffs that it would end their voluntary continuation of the TRO on January 3, 2022, and would fire Plaintiffs at that time.

ANSWER: Admitted that with the issuance of a nationwide preliminary injunction against the CMS Rule, the parties agreed to observe the terms of the then-existing TRO while they briefed, and this Court heard, Plaintiffs' motions for a TRO and preliminary injunction. Riverside denies that it "informed Plaintiffs that it would end their voluntary continuation of the TRO on January 3, 2022, and would fire Plaintiffs at that time."

61. This Court denied Plaintiffs motions for TRO and preliminary injunction on January 2, 2022.

ANSWER: Admitted.

62. Defendant terminated the employment of Plaintiffs who had not already been terminated or who had not obtained the COVID-19 vaccine on January 3, 2022.

ANSWER: Admitted that, on January 3, 2022, Riverside terminated the employment of Plaintiffs who had not already been terminated and who had not obtained the COVID-19 vaccine.

63. Defendant filed a motion to dismiss, asserting, among other things, that Plaintiffs' HCRCA state claim should be dismissed as preempted by federal law, that Defendant Kambic should be dismissed, and that Plaintiffs must file a charge before the U.S. Equal Employment Opportunity Commission (EEOC) and obtain a Notice of Right to Sue letter.

ANSWER: Admitted.

64. Plaintiffs did not oppose dismissing their HCRCA claim and Defendant Kambic without prejudice and proposed that the Court stay this matter until Plaintiffs could obtain Notice of Right to Sue letters.

ANSWER: Admitted.

65. The Court dismissed the HCRCA claim and Defendant Kambic and entered a stay as to Plaintiffs' remaining Title VII claim.

ANSWER: Admitted.

66. Thirty of the Plaintiffs received Notice of Right to Sue letters from the EEOC, which were filed with the Court.

ANSWER: Admitted.

Count I
Violation of Title VII of the Civil Rights Act of 1964, 42 USC § 2000e, et seq.

67. Plaintiffs reallege the foregoing paragraphs of this Complaint as though fully set forth herein.

ANSWER: Defendant reasserts its answers to the foregoing paragraphs as if fully set forth herein.

68. Title VII of the Civil Rights Act of 1964 prohibits Defendant from discriminating against their employees because of their sincerely held religious beliefs. *See* 42 U.S.C. § 2000e-2(a).

ANSWER: This paragraph asserts a legal conclusion to which no response is required, but to the extent a response is required, Defendant admits that Title VII prohibits discrimination based on sincerely held religious beliefs but expressly denies that it engaged in any such discrimination or otherwise violated Title VII whatsoever.

69. Plaintiffs, former and existing employees of Defendant, hold sincere religious beliefs that preclude them from receiving a COVID-19 vaccine.

ANSWER: Admitted that all of the remaining Plaintiffs except for Dakota Gable, Merissa Hubert and Michael Raef are former or existing employees of Riverside Medical Center. Riverside denies that any of the remaining Plaintiffs were employed by “Riverside Healthcare.” Riverside lacks knowledge or information sufficient to form a belief regarding the truth of the remaining allegations of this paragraph and on this basis denies same.

70. Plaintiffs informed Defendant of those beliefs and requested religious exemptions and reasonable accommodations from the vaccine mandate.

ANSWER: Admitted that the remaining Plaintiffs requested religious exemptions to Riverside’s COVID-19 vaccination policy. Riverside denies the remaining allegations of this paragraph.

71. Defendant failed to engage in the interactive process with Plaintiffs regarding their religious accommodation requests. Instead, Defendant denied all religious accommodation requests with a blanket email.

ANSWER: Denied.

72. Irrespective of the interactive process, Defendant failed to provide Plaintiffs with religious exemptions and reasonable accommodations, thereby discriminating against Plaintiffs because of their religious beliefs.

ANSWER: Denied.

73. Defendant's failure to provide religious exemptions or offer any reasonable accommodation and terminated Plaintiffs' employment because they did not obtain the COVID-19 vaccine against their religious beliefs. Defendant's actions have harmed Plaintiffs.

ANSWER: Admitted that Riverside Medical Center and Riverside's Senior Living Center terminated some of the Plaintiffs' employment because they failed to obtain the COVID-19 vaccine, otherwise, denied.

74. By failing to engage in the interactive process or offer any reasonable accommodation, Defendant's discriminatory actions were intentional and/or reckless and in violation of Title VII.

ANSWER: Denied.

75. As a direct and proximate result of Defendant's actions, Plaintiffs suffered lost wages, emotional distress, and other consequential damages.

ANSWER: Denied.

AFFIRMATIVE AND ADDITIONAL DEFENSES

For its affirmative and additional defenses to Plaintiffs' Third Amended Complaint, Riverside states as follows:

First Defense

All actions by Riverside with regard to Plaintiffs were lawful and made in good-faith and in compliance with applicable, and/or then existing, provisions of law, rules and regulations.

Second Defense

All employment actions regarding Plaintiffs were based on legitimate, non-discriminatory reasons.

Third Defense

Plaintiffs' allegations of discrimination are barred because their employer engaged in an interactive process and/or attempted to reasonably accommodate Plaintiffs' alleged religious beliefs.

Fourth Defense

Any recovery is barred because Plaintiffs' requested accommodations imposed an undue hardship and undue burden.

Fifth Defense

To the extent that any Plaintiffs failed to exhaust their administrative remedies by timely filing a charge of discrimination and receiving a right to sue notice prior to filing the instant lawsuit, as required to recover under Title VII of the Civil Rights Act of 1964, and/or to the extent that any Plaintiffs failed to file their Complaint within 90 days of receiving a right-to-sue letter from the Equal Employment Opportunity Commission, if any such letter was received, they shall

have their claims barred by the applicable statute of limitations and/or by other limitations imposed by law.

Sixth Defense

Plaintiffs' allegations of discrimination are barred to the extent that they did not have a bona fide religious belief, practice or observance that conflicted with an employment requirement.

Seventh Defense

Any recovery is barred because Riverside maintained policies prohibiting unlawful conduct and providing for a work environment free from discrimination, harassment and retaliation.

Eighth Defense

Any recovery on Plaintiffs' claims is barred because there is no causal link between any protected activity, characteristic or belief and any purported adverse employment action.

Ninth Defense

Plaintiffs' Complaint fails to state a claim upon which relief may be granted.

Tenth Defense

To the extent Plaintiffs are awarded compensatory or punitive damages, such awards are limited by the damage cap provisions of 42 U.S.C. § 1981a.

Eleventh Defense

To the extent Plaintiffs are awarded damages, such damages should be reduced by any short-term disability or long-term disability payments made to Plaintiffs or by any workers compensation or unemployment compensation awards or payments made to Plaintiffs.

Twelfth Defense

There is no basis in law or fact on which Plaintiffs are entitled to recover damages, including punitive damages, against Riverside.

Thirteenth Defense

Any alleged emotional distress suffered by Plaintiffs was caused by external factors and not by Riverside.

Fourteenth Defense

Riverside reserves the right to assert that Plaintiffs' claims and/or demands for relief are barred or are otherwise not actionable because of the after-acquired evidence doctrine.

Fifteenth Defense

To the extent that Plaintiffs failed to diligently search for alternative employment inside or outside Riverside, their claim to damages is barred, in whole or in part, by their failure to mitigate damages.

Sixteenth Defense

Riverside took reasonable and appropriate steps to prevent discrimination from occurring in the workplace and Plaintiffs failed to avail themselves of those steps in a prompt and appropriate fashion.

Seventieth Defense

If discriminatory or otherwise unlawful reasons had been a motivating factor in any employment decision toward Plaintiffs, although such is not admitted hereby or herein, any recovery on the Complaint, or any cause of action alleged therein, is barred because Riverside would have made the same employment decisions toward Plaintiffs, in any case, for legitimate and/or non-discriminatory reasons.

Eighteenth Defense

Riverside is relieved of any vicarious liability whatsoever to the extent any such liability is based on alleged unlawful conduct by its current and/or former employees because such unlawful conduct would be outside the course and scope of Riverside's employees' employment.

Nineteenth Defense

Plaintiffs' claims are barred because Riverside's allegedly discriminatory conduct was in accordance with available public health, EEOC and court guidance, upon which Riverside was entitled to rely, as well as all applicable laws.

Twentieth Defense

Those Plaintiffs that received the COVID-19 vaccine have not suffered an adverse action and therefore they do not have standing to pursue their claims and their claims are barred.

Twenty-First Defense

Riverside has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, defenses available. Riverside reserves the right to assert any additional or affirmative defenses that may become apparent or available during discovery of this matter.

WHEREFORE, having fully answered and responded to the allegations contained in Plaintiffs' Third Amended Complaint, Riverside hereby prays that:

1. Plaintiffs' claims be dismissed with prejudice in their entirety;
2. Each and every prayer for relief contained in Plaintiffs' Complaint be denied;
3. Judgment be entered in favor of Riverside;
4. All costs, including reasonable attorneys' fees, be awarded to Riverside and against Plaintiffs pursuant to applicable law; and

5. Riverside be granted such other and further relief as this Court may deem just and proper.

Dated: December 7, 2023

Respectfully Submitted,

RIVERSIDE HEALTHCARE

/s/ Katharine P. Lennox

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Counsel for Defendant Riverside Healthcare

CERTIFICATE OF SERVICE

I certify that on December 7, 2023, I filed and served the foregoing document through the Court's electronic filing system, which will serve notice upon all counsel of record.

/s/ Katharine P. Lennox

Katharine P. Lennox
McGuireWoods LLP