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9 **UNITED STATES DISTRICT COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11 KELLY R. BRENNER, an individual,

12 Plaintiff,

13 v.

14 XERIS PHARMACEUTICALS, INC., a  
15 Delaware Corporation; and DOES 1  
16 through 10, inclusive,

17 Defendants.

Case No. '21 CV2094 AJB LL

**COMPLAINT FOR VIOLATIONS OF  
THE CALIFORNIA FAIR  
EMPLOYMENT AND HOUSING ACT  
[Cal. Govt. Code § 12900 et seq.] AND  
CONSTRUCTIVE TERMINATION IN  
VIOLATION OF PUBLIC POLICY**

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1 Plaintiff KELLY R. BRENNER (“Mrs. Brenner” or “Plaintiff”), alleges:

2 **COMPLAINT**

3 1. Mrs. Brenner brings this action against Xeris Pharmaceuticals, Inc.  
4 (“Xeris” or “Defendant”) a pharmaceutical company incorporated in Delaware. This  
5 action is based, in part, on violations of the California Fair Employment and Housing  
6 Act, Cal. Govt. Code § 12900, *et seq.* (“FEHA”).

7 2. The gravamen of this Complaint is that Defendant engaged in religious  
8 discrimination and failed to provide Mrs. Brenner a reasonable accommodation  
9 following Defendant’s granting of Mrs. Brenner’s religious exemption to Defendant’s  
10 mandatory employee vaccination policy. Defendant previously granted Mrs. Brenner  
11 a reasonable accommodation for a medical exemption but later refused to provide the  
12 very same accommodation for her religious exemption.

13 **JURISDICTION & VENUE**

14 3. This Court has original jurisdiction over this action pursuant to 28  
15 U.S.C. § 1332, in that the matter in controversy exceeds the value of \$75,000,  
16 exclusive of interest and costs and is between citizens of different States. This court  
17 has supplemental jurisdiction over Plaintiff’s related claims arising under state law  
18 pursuant to 28 U.S.C. § 1367(a).

19 4. Venue is proper in the Southern District of California under 42 U.S.C. §  
20 2000e5(f)(3), in that the Plaintiff resides within the Southern District; the Defendant  
21 maintains significant operations within the Southern District; and the location where  
22 the alleged unlawful employment practices took place is within the Southern District.

23 **PARTIES**

24 **Plaintiff**

25 5. At all times relevant herein, Plaintiff resides in San Diego County and  
26 was an employee of Defendant.

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28 ///

**Defendant**

6. Upon information and belief, Defendant is a Delaware corporation, operating throughout the United States and having its corporate headquarters in Chicago, Illinois. At the time of the events giving rise to this Complaint, Mrs. Brenner was employed by Defendant as a Territory Business Manager servicing accounts in San Diego County and in surrounding jurisdictions.

**STATEMENT OF FACTS**

7. Mrs. Brenner was employed by Defendant for approximately five months. At all times during her employment, Mrs. Brenner performed at an exceptional level with frequent praise from her manager.

8. On August 9, 2021, Xeris's Chief Executive Officer, Paul Edick, sent an email to all employees notifying that as of September 17, 2021, all employees are required to have a COVID-19 vaccination. (See Exhibit A.) The stated purpose of Defendant's vaccine mandate was to, "protect the health and safety of our employees, families [and] customers...." According to Defendant's CEO, each employee's "personal choice" has to take a "back seat" to the best interests of the company.

**Defendant Grants Mrs. Brenner's Medical Exemption and Provides a Reasonable Accommodation**

9. On August 11, 2021, Mrs. Brenner tested positive for COVID-19 and notified Defendant that same day. Following the positive test, Mrs. Brenner requested Defendant provide her with a reasonable accommodation to the vaccine mandate via a medical exemption. (See Exhibit B.) Defendant approved Mrs. Brenner's exemption request on September 7, 2021, approximately one month after she contracted COVID-19. (See Exhibit C.)

10. Pursuant to the medical exemption, Defendant allowed Mrs. Brenner to continue to work and perform her job duties (without a COVID-19 vaccine), as normal, subject to the following conditions: (1) access to Mrs. Brenner's key accounts were not disrupted due to her vaccination status; (2) Mrs. Brenner wear a

1 face mask during business visitations; (3) Mrs. Brenner submit to weekly COVID-19  
2 testing; (4) Mrs. Brenner complete a health screening questionnaire each day that she  
3 works outside the home; and (5) Mrs. Brenner stay at home if she has any symptoms  
4 related to COVID-19.

5 11. Defendant's medical exemption approval explicitly recognized that as an  
6 unvaccinated employee Mrs. Brenner did not "pose a direct threat to [herself] or  
7 others in the workplace" and that the accommodation provided would not "create an  
8 undue hardship for Xeris Pharmaceuticals" otherwise, the exemption accommodation  
9 would not be provided. In short, Defendant determined that even though Mrs.  
10 Brenner was not vaccinated, it was safe and reasonable for her to work with these  
11 accommodations.

12 12. For approximately eight weeks, Mrs. Brenner continued to perform all of  
13 her job duties, worked in the field, visited doctor offices and followed all of the  
14 accommodation requirements without any issues or concerns. At no time was Mrs.  
15 Brenner denied access to a medical office or otherwise prohibited from performing  
16 her job duties as a result of her vaccination status.

17 **Defendant Grants Mrs. Brenner's Religious Exemption**  
18 **but Fails to Offer a Reasonable Accommodation**

19 13. On November 10, 2021, one day before her medical exemption was set  
20 to expire, Mrs. Brenner submitted a request for accommodation due to her religious  
21 objection to the COVID-19 vaccine and informed Defendant that she was still in  
22 possession of COVID-19 antibody protection. (See Exhibit D.)

23 14. Defendant's Vice President of Human Resources, Kendal J. Korte,  
24 called Mrs. Brenner on November 12, 2021, to discuss the matter. During this phone  
25 call, Ms. Korte informed Mrs. Brenner that she would not receive the same  
26 reasonable accommodations under a religious exemption as she did under her  
27 previously approved medical exemption because: (1) Defendant is a contractor of the  
28 federal government and that federal law requires all contractors to be vaccinated; and

1 (2) Defendant treats medical exemption requests differently from religious  
2 exemptions, citing that the latter “is a personal choice.” Ms. Korte told Mrs. Brenner  
3 that Mrs. Brenner would receive a formal letter regarding the religious exemption  
4 request shortly. Mrs. Brenner received the letter a few minutes later.

5 15. Defendant’s November 12, 2021, letter granted Mrs. Brenner’s religious  
6 exemption request to Defendant’s mandatory employee vaccine mandate. (See  
7 Exhibit E.) Despite granting her religious exemption, however, Defendant did not  
8 allow for testing, masking and other reasonable accommodations as Defendant did in  
9 connection with Mrs. Brenner’s previously granted medical exemption.

10 16. Defendant’s November 12, 2021, letter stated that Mrs. Brenner will be  
11 placed on unpaid leave starting November 16, 2021, and that she is prohibited from  
12 returning to work (or getting paid) until such time as she is fully vaccinated, or the  
13 company ends its vaccination requirement.

14 17. Defendant’s November 12, 2021, letter stated that Defendant is placing  
15 Mrs. Brenner on unpaid leave “based on the nature of your current position and the  
16 direct threat of harm you pose to other employees, customers and vendors when you  
17 travel for Xeris business by not being vaccinated.”

18 18. Defendant’s November 12, 2021, letter fails to explain why, under a  
19 religious exemption, Mrs. Brenner presents as a “direct threat of harm” but under a  
20 medical exemption granted September 7, 2021, she presented no such risk.

21 19. On November 13, 2021, Mrs. Brenner informed Defendant that it failed  
22 to provide her with a “reasonable accommodation” under the California Fair  
23 Employment and Housing Act, Cal. Govt. Code § 12900, *et seq.*, and that no “undue  
24 hardship” would result, especially given that reasonable accommodations (short of  
25 unpaid leave) were previously provided to Mrs. Brenner under a medical exemption  
26 and are explicitly recognized as reasonable in the California Public Health Order  
27 dated August 5, 2021. (See Exhibit F.) Mrs. Brenner also requested Defendant to  
28 reconsider its decision to place her on unpaid leave and, instead, allow her to continue

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