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   DESMOND BARCA,

7

8   SUPERIOR COURT OF CALIFORNIA

9   COUNTY OF SAN FRANCISCO - UNLIMITED CIVIL JURISDICTION

10

DESMOND BARCA,
 	
            Plaintiff,
 	
vs.
 	
CITY AND COUNTY OF SAN FRANCISCO PUBLIC UTILITIES COMMISSION, AND DOES 1 TO 100,
 	
            Defendants
	CASE NO.: CGC-24-614084
	
	COMPLAINT FOR DAMAGES AND REQUEST FOR JURY TRIAL
	
	1. FAILURE TO PROVIDE REASONABLE RELIGIOUS ACCOMMODATIONS AND TERMINATION IN VIOLATION OF FEHA
	
	2. VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 FOR FAILURE TO ACCOMMODATE ON THE BASIS OF RELIGION
	
	3. VIOLATION OF FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION
	
	4. VIOLATION OF FREE EXERCISE CLAUSE OF THE CALIFORNIA CONSTITUTION

26 COMES NOW PLAINTIFF DESMOND BARCA and complains and alleges as follows:

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NATURE OF THE ACTION

1. This is an individual action brought by an employee against his former employer City and County of San Francisco Public Utilities Commission. Plaintiff Desmond Barca (hereinafter "Plaintiff") alleges violations of the Fair Employment and Housing Act (hereinafter "FEHA") and violations of Title VII, based upon the Defendants' failure to accommodate his religion by refusing to grant exemption from the Covid-19 vaccination mandate and terminate his employment as a result, as well as related violations of the California and US Constitutions.

PARTIES

2. Plaintiff is and at all material times alleged herein, was a resident of County of San Mateo.

3. At all material times alleged herein, Plaintiff was employed by Defendant the City and County of San Francisco Public Utilities Commission.

4. In addition to the Defendant named above, Plaintiff sues fictitiously Defendants DOES 1 through 100, pursuant to Code of Civil Procedure §474, because their names, capacities, status, or facts showing them to liable are not presently known. Plaintiff will amend this complaint to show their true names and capacities, together with appropriate charging language, when such information has been ascertained.

JURISDICTION AND VENUE

5. The acts of Defendants that form the basis for the causes of action in this complaint occurred in the County of San Francisco. Therefore, the San Francisco venue is proper.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

6. Plaintiff timely obtained a Right to Sue letter from EEOC, a true and correct copy of which is attached hereto as Exhibit A.

FACTUAL ALLEGATIONS

7. Plaintiff started working for the Defendants around March 19, 2012 as an Apprentice Stationary Engineer. Plaintiff's most recent position was Senior Stationary Engineer. Plaintiff also

1 held the title of Acting Chief Stationary Engineer for about two years of the last three years of his

2 employment with the Defendants.

3   8.   On September 30, 2021, Plaintiff applied for religious exemption from the

4 requirement to be vaccinated Covid-19, which the Defendants had in place. Plaintiff informed the

5 Defendants that he identified as Christian and submitted information about how his faith precluded

6 him from getting the vaccine.

7   9.   Plaintiff's request for religious exemption from the requirement to be vaccainated

8 against Covid-19 has been denied due to allegedly not providing sufficient information as to how his

9 religion and the Defendants' vaccination requirement were in conflict.

10   10.   On May 3, 2022, Plaintiff's employment was terminated after his dismissal was

11 upheld following the Skelli hearing. As a result of his termination, Plaintiff has and continues to

12 suffer loss of wages and emotional distress.

13 **FIRST CAUSE OF ACTION**
   FAILURE TO PROVIDE REASONABLE ACCOMMODATIONS OF FEHA

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15   11.   Plaintiff hereby incorporates by reference paragraphs 1 through 10, as though fully set

16 forth herein.

17   12.   At all times material to this complaint, Plaintiff was a person who held a sincerely

18 religious belief within the meaning of FEHA, and he identified as Christian.

19   13.   Defendant is an employer within the meaning of the FEHA.

20   14.   On information and belief, Plaintiff alleges that, during times material here,

21 the Defendant violated the FEHA by failing to provide reasonable accommodations to Plaintiff's

22 religious beliefs and by denying his request to be exempt from the Covid-19 vaccine mandate.

23   15.   The effect of the above actions and omissions have been to deprive Plaintiff of equal

24 employment opportunities and otherwise adversely affect his status as an employee because of his

25 religion.

26   16.   As a direct and further proximate result of the above violations of his rights under the

27

FEHA, Plaintiff has suffered compensatory damages in the form of past and future wage loss, and emotional distress.

17.   As a result of Defendant's unlawful acts, Plaintiff is entitled to compensatory damages, equitable relief, and attorney's fees and costs.

SECOND CAUSE OF ACTION
VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 FOR FAILURE TO ACCOMMODATE ON THE BASIS OF RELIGION

18.   Plaintiff hereby incorporates by reference paragraphs 1 through 17, as though fully set forth herein.

19.   Title VII forbids an employer from refusing a job to someone because of his need for religious accommodation absent proof that granting the accommodation would cause it undue hardship. 42 USC §§ 2000e(j), 2000e-2(a)(1); EEOC v Abercrombie & Fitch Stores, Inc., 575 US 768, 774 (2015).

20.   The Defendants denied Plaintiff's request for religious accommodation, providing which would not have imposed an undue hardship on the Defendants. Further, the Defendants did not propose any alternative reasonable accommodations to Plaintiff.

21.   As a result of the Defendants' violations, Plaintiff suffered lost income and other economic and non-economic damages.

THIRD CAUSE OF ACTION
VIOLATION OF FREE EXERCISE CLAUSE OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

22.   Plaintiff hereby incorporates by reference paragraphs 1 through 21, as though fully set forth herein.

23.   The First Amendment's Free Exercise Clause provides that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

24.   Defendants' vaccination policy substantially burdened Plaintiff's religious exercise by punishing him for seeking religious exemption to the Covid-19 vaccination requirement.

25.   Defendants' vaccination policy, on its face as applied, was not generally applicable because, as the Supreme Court recently reaffirmed, a policy that provides a "mechanism for individualized exemptions" is not generally applicable. *Fulton v City of Philadelphia,* 141 S. Ct. 1868, 1877 (2021).

26.   Here, the Defendants' vaccination policy provided medical and religious exemptions on an individualized basis, and the Defendants maintain the right to extend exemptions in whole or in part or change their vaccination policy at any time.

27.   Defendants' vaccination policy also violated the First Amendment because it denied a benefit or penalized an employee for exercising a constitutional right. See *Koontz v St. Johns River Water Mgmt. Dist.,* 570 US 595, 604 (2013).

28.   Defendants' vaccination policy fails strict scrutiny because it was not narrowly tailored to meet any compelling government interest.

29.   As a direct and proximate result of the Defendants' violation of the First Amendment, Plaintiff has suffered, and will suffer, irreparable harm, including the loss of their fundamental constitutional rights, entitling him to declaratory and injunctive relief. Additionally, Plaintiff is entitled to nominal damages, compensatory damages in an amount to be provide at trial, and attorneys fees under 42 USC 1988.

FOURTH CAUSE OF ACTION
VIOLATION OF FREE EXERCISE CLAUSE OF THE CALIFORNIA CONSTITUTION
(ARTICLE 1, SECTION 4)

30.   Plaintiff hereby incorporates by reference paragraphs 1 through 29, as though fully set

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