

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN**

MELINDA CHALLENGER, JESSICA GREENE,
BRITTANY KRITZ, DARNELL MUDGETT,
MIKAELA SCHAEFER, and ASHLEY TRYLCH,
On their own behalf and on behalf of
all others similarly situated,

Case No.

Plaintiffs,

Hon.

v.

NORTHWEST MICHIGAN SURGERY CENTER,
L.L.C. d/b/a COPPER RIDGE SURGERY CENTER,

Defendant.

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There is no other pending or resolved civil action arising out
of this transaction or occurrence alleged in the Complaint.

COMPLAINT AND JURY DEMAND

Plaintiffs Melinda Challenger, Jessica Greene, Brittany Kritz, Darnell Mudgett, Mikaela Schaefer, and Ashley Trylch (collectively, "Plaintiffs"), on behalf of themselves and all other similarly situated individuals, by and through their attorneys, Hurwitz Law PLLC, state the following for their Complaint and Jury Demand against Defendant Northwest Michigan Surgery Center, L.L.C. d/b/a Copper Ridge Surgery Center (hereinafter, "Defendant"):

Religious freedom has been “zealously protected, sometimes even at the expense of other interests of admittedly high social importance.”

Wisconsin v. Yoder, 406 U.S. 205, 214 (1972).

INTRODUCTION

1. There is no pandemic exception to the protections afforded by Title VII of the Civil Rights Act of 1964 (“Title VII”) and the Elliott-Larsen Civil Rights Act (“ELCRA”). Defendant clearly did not understand this when it terminated Plaintiffs in retaliation for requesting a religious accommodation to the COVID-19 vaccine. Instead of engaging with Plaintiffs in the spirit of “bilateral cooperation,” Defendant denied their religious accommodation requests without justification.

2. This action is also brought pursuant to the opt-in collective action provisions of the Fair Labor Standards Act (the “FLSA”), 29 U.S.C. § 216(b) (sometimes referred to as an “opt-in” class action). Plaintiffs bring this action on their own behalf and on behalf of all other employees of Defendant, present and former, who were and/or are affected by the actions, pay schemes, policies and procedures of Defendant. In addition, Plaintiffs bring this action in their individual capacity, separate and apart from the collective action claims set forth herein.

PARTIES AND JURISDICTION

3. Plaintiff Melinda Challender (“Plaintiff Challender”) was a Medical Records Clerk for Defendant. Plaintiff Challender submitted a religious accommodation request on November 23, 2021, to which Defendant responded by terminating her on February 3, 2022. Plaintiff Challender is an individual residing in Traverse City, Michigan, which is located in Grand Traverse County.

4. Plaintiff Jessica Greene (“Plaintiff Greene”) was a Medical Records Clerk for Defendant. Plaintiff Greene submitted a religious accommodation request on November 23, 2021,

to which Defendant responded by terminating him her February 3, 2022. Plaintiff Greene is an individual residing in Traverse City, Michigan, which is located in Grand Traverse County.

5. Plaintiff Brittany Kritz (“Plaintiff Kritz”) was a Clinical Registered Nurse for Defendant. Plaintiff Kritz submitted a religious accommodation request on November 29, 2021, to which Defendant responded by terminating her on February 3, 2022. Plaintiff Kritz is an individual residing in Traverse City, Michigan, which is located in Grand Traverse County.

6. Plaintiff Darnell Mudgett (“Plaintiff Mudgett”) was an Operating Room Aid for Defendant. Plaintiff Mudgett submitted a religious accommodation request on November 29, 2021, to which Defendant responded by terminating him on February 3, 2022. Plaintiff Mudgett is an individual residing in Traverse City, Michigan, which is located in Grand Traverse County.

7. Plaintiff Mikaela Schaefer (“Plaintiff Schaefer”) was a Radiology Technician for Defendant. Plaintiff Schaefer submitted a religious accommodation request on November 18, 2021, to which Defendant responded by terminating her on February 3, 2022. Plaintiff Schaefer is an individual residing in Williamsburg, Michigan, which is located in Grand Traverse County.

8. Plaintiff Ashley Trylch (“Plaintiff Trylch”) was an Operating Room Registered Nurse for Defendant. Plaintiff Trylch submitted a religious accommodation request on November 29, 2021, to which Defendant responded by terminating her on February 3, 2022. Plaintiff Trylch is an individual residing in Traverse City, Michigan, which is located in Grand Traverse County.

9. Defendant is a Michigan domestic limited liability company with its principal place of business in Traverse City, Michigan. Defendant’s registered agent is located in Plymouth, Michigan.

10. Plaintiffs’ claims arise out of Defendant’s violation of ELCRA and the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*

11. This Court has general federal question jurisdiction pursuant to 28 U.S.C. § 1331.

12. Venue is proper in the Western District of Michigan pursuant to 28 U.S.C. § 1391, as it is the district where the events giving rise to Plaintiff's claims took place and where Defendant regularly conducts business.

13. Plaintiffs submitted Charges of Discrimination with the Equal Employment Opportunity Commission ("EEOC") on March 29, 2022 and will amend this Complaint to add claims under Title VII upon receipt of an EEOC Right to Sue letter.

FACTUAL ALLEGATIONS

COVID-19 and Defendant's Response to the Center of Medicare and Medicaid Services Interim Final Rule

14. By Spring 2020, the SARS-CoV2 ("COVID-19") virus had spread to many nations, including the United States.

15. In that timeframe, Defendant began implementing certain mitigation procedures for its workforce, such as wearing masks or other Personal Protective Equipment ("PPE"), maintaining minimum distances from other workers, and receiving body temperature checks. In addition, Defendant increased the cleaning and sanitation of its facilities.

16. Defendant's services never ceased during the COVID-19 pandemic.

17. Defendant's employees were required to enter Defendant's facility regardless of vaccination status while donning PPE.

18. On or about November 5, 2021, the Centers for Medicare & Medicaid Services ("CMS") issued an emergency regulation entitled "CMS Omnibus COVID-19 Health Care Staff Vaccination Interim Final Rule," which requires that certain employers who are certified under the Medicare and Medicaid programs to issue a policy requiring all employees to be vaccinated against COVID-19 (the "CMS Mandate")

19. Thereafter, on November 12, 2021, Defendant’s Chief Executive Officer, Tina Piotrowski (“Ms. Piotrowski”), sent an email to all staff with the subject heading, “COVID-19 Exemption Form and vaccination card update.” The email announced Defendant’s compliance with the CMS Mandate.

20. Ms. Piotrowski outlined the CMS Mandate’s timeline for employees to receive the COVID-19 vaccine. All staff were required to receive the first dose of a two-dose COVID-19 vaccine or a one-dose COVID-19 vaccine prior to December 5, 2021 and be fully vaccinated by January 4, 2022.

21. Ms. Piotrowski’s email claimed, “We are working on an official CRSC policy,” which foreshadowed Defendant’s own internal policy mandating COVID-19 vaccination.

22. Ms. Piotrowski also acknowledged that the CMS Mandate carves out exemptions to the mandate based on sincerely held *bona fide* religious beliefs, observances, or practices and for medical conditions.

23. Accordingly, Defendant elicited accommodation requests, and the last day to submit applications for religious or medical exemptions was November 30, 2021—just 18 days after Defendant announced it would implement a COVID-19 vaccine mandate.

Plaintiffs’ Employment and Religious Accommodation Requests

24. Defendant’s exemption form asked four questions:

- (1) Please identify your sincerely held religious belief, practice or observance and describe how that prohibits you from receiving the COVID-19 vaccination;
- (2) Please indicate the religious nature on which you object to the COVID-19 vaccine;
- (3) Please identify the particular accommodation or modification to your position requirements you are requesting; and

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