

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

KRISTINE KITTLESON, an individual, and Amber
Schaeffer, an individual; Rory Clark, and individual

Plaintiffs,

v.

PEACEHEALTH, a non-profit corporation,

Defendant.

CASE NO.: 3:24-cv-05011-TMC

COMPLAINT FOR DAMAGES
\$5,000,000

JURY DEMAND

I. INTRODUCTION

1. Plaintiffs have suffered discrimination based on disability and their religious beliefs at the Defendant's hands through Defendant's implementation and enforcement of its COVID-19 vaccine mandate policy ("Policy"), which mandated a COVID-19 vaccine as a condition of employment. While the Policy on its face allowed individuals to claim religious and medical exemptions and receive accommodations, PeaceHealth denied these requests. Moreover, the Policy required Plaintiffs to receive an unapproved drug that was in clinical investigation stages in the COVID-19 vaccines and was merely approved as an emergency countermeasure under the Emergency Use Authorization legislation ("EUA").

COMPLAINT FOR
DAMAGES AND INJUNCTIVE
DECLARATORY RELIEF

Silent Majority Foundation
5238 Outlet Dr.
Pasco, WA 99301

1 2. Through the Policy, Defendants offered a sliver of hope that Plaintiffs would be
2 accommodated, but in the end, each Plaintiff's request was flatly rejected. This resulted in the
3 placement of Plaintiffs on indefinite leave without pay, with the Plaintiffs arising every day in the
4 hope that they could return to work and retiring at night having had no opportunity to do so.

5 **II. PARTIES**

6 **A. DEFENDANT**

7 3. Defendant, **PEACEHEALTH**, is a not-for-profit healthcare system
8 headquartered in Clark County, WA, recognized as tax-exempt pursuant to Section 501(c)(3) of
9 the Internal Revenue Code.

10 4. PeaceHealth touts a mission of "carry[ing] on the healing mission of Jesus Christ
11 by promoting personal and community health, relieving pain and suffering, and treating each
12 person in a loving and caring way."¹ Notably, "[a]t PeaceHealth, the fulfillment of our Mission
13 is our shared purpose."²

14 **B. PLAINTIFFS**

15 5. Plaintiff, **KRISTINE KITTLESON**, worked as a Radiation Therapist for
16 PeaceHealth St. Joseph Medical Center in 2015, until she was terminated on October 22, 2022.

17 6. She was a good employee and consistently met the expectations of her position
18 and her employer.

19 7. Plaintiff Kittleson filed an EEOC complaint, EEOC No. 551-2023-01270, on
20 March 9, 2023. She received her right to sue letter on December 4, 2022.

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27 ¹ *PeaceHealth at a Glance*. Available at: https://www.peacehealth.org/sites/default/files/2022-07/System_PeaceHealth-at-a-Glance-2022-FINAL.pdf. Last accessed: December 7, 2022.

28 ² *Id.*

1 8. Plaintiff, **AMBER SCHAEFFER**, worked as a painter for PeaceHealth
2 beginning November 3, 2020, until she was terminated in December of 2022, without notice or
3 warning.

4 9. She had an unblemished employment record, was highly motivated, detail-
5 oriented and dedicated, and voluntarily took on overtime work when needed.

6 10. Plaintiff Schaeffer filed an EEOC complaint on January 28, 2023. She was
7 previously part of a *Zimmerman v. PeaceHealth*, Case No. 3:22-cv-05960-TL, filed in the
8 Western District of Washington. She was dismissed from that case because she did not have a
9 Title VII discrimination claim. She joins this case on ADA discrimination grounds.

10 11. Ms. Schaeffer filed an EEOC complaint based on religious discrimination and
11 received her Right to Sue.

12 12. Plaintiff, **RORY CLARK**, worked as a security officer at St. John Medical
13 Center from October 17, 2016, until present.

14 13. Plaintiff Clark has an unblemished employment record and performed above
15 expectations. He has been nominated for awards for job performance and received certificates of
16 appreciation for going above and beyond the call of duty.

17 14. Prior to being put on indefinite leave, Plaintiff Clark, missed only 2-3 days of
18 work due to illness, even returning same day after having to have stitches in his finger.

19 **III. JURISDICTION AND VENUE**

20 15. Venue is proper in the Western District of Washington as Defendant
21 PeaceHealth's principal place of business is 1115 SE 164th Avenue Vancouver, in Clark County,
22 Washington.

23 16. This Court has jurisdiction over Plaintiffs' under 28 U.S.C. § 1331 and 1343, and
24 it has supplemental jurisdiction over Plaintiff's state law claims under 28 U.S.C. § 1376.
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1 17. This Court is authorized to grant declaratory judgment under the Declaratory
2 Judgment Act, 28 U.S.C. §§2201-02, implemented through Rule 57 of the Federal Rules of Civil
3 Procedure.

4 18. This Court is authorized to grant Plaintiffs' prayer for a temporary restraining
5 order and preliminary and permanent injunctive relief pursuant to Rule 65 of the Federal Rules
6 of Civil Procedure.

7 19. This Court is authorized to grant Plaintiffs' prayer for relief regarding damages
8 pursuant to Rule 54 of the Federal Rules of Civil Procedure and the supplementary laws of the
9 State of Washington, as applicable under Fed. R. Civ. P. 69.

10 20. This Court is authorized to grant Plaintiffs' prayer for relief regarding damages,
11 including treble damages under the Washington Law Against Discrimination ("WLAD"),
12 Revised Code of Washington ("RCW") 49.60.

13 21. This Court is authorized to grant Plaintiffs' prayer for relief regarding costs and
14 expenses, including reasonable attorneys' fees, pursuant to the Washington Law Against
15 Discrimination.

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18 **IV. FACTS**

19 ***Background information***

20 22. Because of the emergence of the novel corona virus, SARS CoV2 ("COVID-19"),
21 three separate vaccines were originally developed to purportedly prevent COVID-19.

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23 ***PeaceHealth adopted its COVID vaccination mandate on the idea that the vaccine would stop
24 transmission of the virus.***

25 23. The purported reason for a vaccine mandate is to stop the disease from spreading
26 through the population.

27 24. PeaceHealth knew or should have known that the vaccine would not stop
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1 infection and transmission before it rolled out the vaccine mandate, as the CDC statements on the
2 vaccine’s ineffectiveness were publicly available.³

3 25. The Food and Drug Administration (“FDA”) issued an Emergency Use
4 Authorization (“EUA”) for the Pfizer-BioNTech COVID-19 Vaccine (“Pfizer Vaccine”) for
5 individuals 16 years of age and older, on December 11, 2020.⁴

6 26. On August 23, 2021, less than a year later, the FDA gave the Pfizer vaccine under
7 the name Comirnaty full approval, though none of the approved product came to market in
8 2021.⁵ Moderna was granted an EUA for its COVID-19 Vaccine (“Moderna Vaccine”) on
9 December 17, 2020,⁶ and full approval under the name Spikevax on January 31, 2022.⁷

10 27. On February 27, 2021, the single shot Johnson and Johnson COVID-19 Vaccine
11 (“Johnson Vaccine”) was granted an EUA.⁸

12 28. On October 3, 2023, Novavax was granted an EUA.⁹

13 29. When these EUAs and approvals were issued, there was a lack of studies and
14 insufficient data about whether the vaccines stopped infection or transmission, as the following
15 statements by the FDA in meetings to grant EUA and/or approval status demonstrate:
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- 17 a. “The lack of data on how the vaccine impacts asymptomatic infection and
18 viral shedding was also pointed out and that this should be addressed prior to
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21 ³ See: ¶¶ 53 and 71.

22 ⁴ *FDA Takes key action in fight against COVID-19 By Issuing Emergency Use Authorization for First COVID-19*
23 *Vaccine*, FDA, <https://www.fda.gov/news-events/press-announcements/fda-takes-key-action-fight-against-covid-19-issuing-emergency-use-authorization-first-covid-19> (last visited October 20, 2022).

24 ⁵ *Pfizer-BioNTech COVID-19 Vaccines*, FDA, <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/pfizer-biontech-covid-19-vaccines> (last visited October 20, 2022).

25 ⁶ *Moderna COVID-19 Vaccine Frequently Asked Questions*, FDA, <https://cacmap.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/moderna-covid-19-vaccine-frequently-asked-questions>. (last visited October 20, 2022).

26 ⁷ *Moderna COVID-19 Vaccines*, FDA, <https://www.fda.gov/emergency-preparedness-and-response/coronavirus-disease-2019-covid-19/moderna-covid-19-vaccines> (last visited October 20, 2022).

27 ⁸ *FDA Issues Emergency Use Authorization for Third COVID-19 Vaccine*, <https://www.fda.gov/news-events/press-announcements/fda-issues-emergency-use-authorization-third-covid-19-vaccine> (last visited October 20, 2022).

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1 study unblinding.”¹⁰ However, Pfizer unblinded the group anyway.¹¹

2 b. “Effect on asymptomatic infection and infectiousness –Other designs
3 needed.”¹²

4 30. On July 30, 2021, a report was posted on the Center for Disease Control and
5 Prevention (“CDC”) website discussing how the Delta infection resulted in similarly high SARS-
6 CoV-2 viral loads in vaccinated and unvaccinated people.

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8 31. High viral loads suggest an increased risk of transmission and raised concern that
9 vaccinated people can transmit the virus.

10 32. The finding that vaccinated people carry an equally high viral load to the
11 unvaccinated was a pivotal discovery leading to CDC’s updated mask recommendation. The
12 masking recommendation was updated to ensure the vaccinated public would not unknowingly
13 transmit virus to others, including their unvaccinated or immunocompromised loved ones.¹³

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15 33. On August 6, 2021 the director of the CDC, Rochelle Walensky stated to Wolf
16 Blitzer that, “Our vaccines are working exceptionally well. . . . They continue to work well for
17 Delta, with regard to severe illness and death – they prevent it. But what they can’t do anymore
18 is prevent transmission.”

19 34. Additionally, PeaceHealth had a COVID-19 outbreak originating from patients
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21 ¹⁰ 162nd VACCINES AND RELATED BIOLOGICAL PRODUCTS ADVISORY COMMITTEE SUMMARY
22 MINUTES, [https://www.fda.gov/advisory-committees/advisory-committee-calendar/vaccines-and-related-
biological-products-advisory-committee-december-10-2020-meeting-announcement](https://www.fda.gov/advisory-committees/advisory-committee-calendar/vaccines-and-related-biological-products-advisory-committee-december-10-2020-meeting-announcement),
23 <https://www.fda.gov/media/144958/download>, December 10, 2020, accessed October 18, 2022.

¹¹ See Discussions by FDA regarding EUA for Moderna.

24 ¹² Steven Goodman, MD, MHS, PhD, *Considerations for placebo-controlled trial design if an unlicensed vaccine
becomes available*, p. 20, VRBAC, [https://www.fda.gov/advisory-committees/advisory-committee-
calendar/vaccines-and-related-biological-products-advisory-committee-october-22-2020-meeting-
announcement#event-materials](https://www.fda.gov/advisory-committees/advisory-committee-calendar/vaccines-and-related-biological-products-advisory-committee-october-22-2020-meeting-announcement#event-materials), <https://www.fda.gov/media/144582/download>, December 17, 2020, accessed
25 October 18, 2022.

26 ¹³ Brown CM, Vostok J, Johnson H, et al. Outbreak of SARS-CoV-2 Infections, Including COVID-19 Vaccine
Breakthrough Infections, Associated with Large Public Gatherings — Barnstable County, Massachusetts, July 2021.
27 MMWR Morb Mortal Wkly Rep 2021;70:1059-1062. DOI: <http://dx.doi.org/10.15585/mmwr.mm7031e2>, accessed
28 October 18, 2022.

1 including “fully” vaccinated individuals.¹⁴

2 35. Based on these and other statements by officials in the Federal Government,
3 evidence from drug companies, other studies, and its own experience that the vaccines were not
4 effective in stopping the transmission of COVID-19, PeaceHealth knew or should have known
5 that the vaccine could not stop transmission.

6 36. PeaceHealth knew or should have known that despite vaccination status, the use
7 of Personal Protective Equipment (“PPE”) and other countermeasures would be required for all
8 staff (vaccinated and unvaccinated alike) to prevent infecting patients.

9 37. PeaceHealth demonstrated this conclusion by requiring the use of additional PPE,
10 even for vaccinated staff. These additional PPE requirements for vaccinated staff demonstrate
11 that PeaceHealth knew of or questioned the vaccine’s ability to prevent the transmission of
12 COVID-19 to and from the vaccinated.¹⁵

13 38. On information and belief, despite knowing the vaccine did not stop infection and
14 transmission, PeaceHealth required infected but vaccinated workers to return to work because of
15 the staffing shortages caused by the vaccine mandate, in contradiction to the mandate that was
16 intended to protect patients.

17 39. On information and belief, because PeaceHealth did not require regular testing or
18 proof of testing for COVID-19 for all PeaceHealth employees, it allowed asymptomatic
19 individuals who had COVID-19 to work without additional limitations..
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26 ¹⁴Wochnick, Meg, *PeaceHealth COVID outbreak traced to patient; 3 of 4 infected workers unvaccinated*, published
in the Columbian, July 19, 2021, 12:50pm. <https://www.columbian.com/news/2021/jul/19/peacehealth-covid-outbreak-traced-to-patient-3-of-4-infected-workers-unvaccinated/>

27 ¹⁵ PeaceHealth’s COVID-19 Vaccine Information, available at: <https://www.peacehealth.org/about-peacehealth/safety>. Last accessed 12/11/2022.
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Plaintiff's Disabilities

A. Kristin Kittleson's Disability

40. Ms. Kittleson has struggled with chronic endometriosis which has caused ovarian cysts, ruptured ovaries resulting in internal bleeding, and organ failure, including a tumor on her colon and bladder issues.

41. This disability has required multiple surgeries and resulted in immune compromise and worsening autoimmune conditions.

42. Ms. Kittleson has needed accommodation for this disability through time off and slightly altered working conditions, which in the past has always resulted in accommodation without compromising her performance of job functions.

B. Amber Schaeffer's Disability

43. Ms. Schaeffer has had a long history of severe reactions to vaccines.

44. As a child, Ms. Schaeffer suffered hives, a seizure, and an asthma attack. At 20 years old she received an influenza vaccine with subsequent development of several months of migraines and hand numbness, a condition the doctor said was a Guillain-Barre like syndrome.

45. She had requested exemption and accommodation from all vaccination in 2020 when she was hired, including the Tdap, influenza, and the Hepatitis B vaccines.

46. Due to this history of severe reactions, her doctor advised against the COVID-19 vaccines, worrying that another episode was a high risk.

C. Rory Clark's Disability

47. Mr. Clark has a history of severe reactions to vaccines and other medications.

48. Mr. Clark's first reaction to the tetanus vaccine when he was a child. Then at 18 years of age, he received another tetanus vaccination after receiving treatment for a laceration.

He experienced a severe allergic reaction bordering on, if not crossing the line into an

1 anaphylactic reaction.

2 49. Mr. Clark also has a history of febrile seizures that do not respond to normal
3 medications.

4 50. In 2019, Mr. Clark experienced a severe respiratory reaction to the flu shot that
5 lasted over 5 months. His doctor was unable to determine exactly what the respiratory issue was,
6 but determined that it was a reaction to the flu shot.

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8 51. Mr. Clark was accommodated, based on his disability, in October 2020, after the
9 flu shot was made mandatory. His doctor referred him to an allergy clinic and the doctors at the
10 allergy clinic agreed that the risk of a severe reaction was high and that he should not take
11 another flu vaccine. PeaceHealth accommodated his disability by requiring him to wear a
12 surgical mask while out of the Security Office.

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14 ***The Process Used by PeaceHealth Upon Enacting the COVID-19
Vaccine Mandate.***

15 52. PeaceHealth has long had a requirement for the flu vaccine but has allowed those
16 with a medical or religious accommodation to opt out with a simple declination.

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18 53. The accommodation required the unvaccinated employee to wear a surgical mask
19 except while eating in the break room and the withholding of a name tag sticker which indicated
20 an individual had received the flu vaccine.

21 54. In 2020, the process changed and those with medical exemptions to the flu
22 vaccine or other vaccines were required to have a doctor's verification of exemption and were
23 then granted the same accommodation.

24 55. With the implementation of the COVID Vaccination policy, PeaceHealth
25 implemented a new procedure for claiming a medical exemption. An individual with a medical
26 disability that would not allow them to receive the vaccine was required to have a medical
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1 examination.

2 56. PeaceHealth required the examining doctor to fill out a form that had three
3 choices for not receiving the vaccine.

- 4 ○ History of severe anaphylactic reaction to a prior dose of COVID-19
5 vaccine or allergy to a component of the COVID-19 vaccines. **Please**
6 **attach supporting DOCUMENTATION or MEDICAL RECORDS.**
- 7
- 8 ○ History of Guillain-Barre Syndrome within six weeks of receiving a
9 previous vaccine. Please provide and attach a detailed narrative that
10 describes the event.
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- 12 ○ Other – Please provide this information in a separate narrative that
13 describes the exception in detail (these requests will be reviewed on a
14 case-by-case basis.)

15 57. The employee submitted the medical accommodation request to the vaccination
16 mandate to PeaceHealth's employee health department.

17 58. On information and belief, the employee health department relied upon an
18 anonymous third party to review the exemption requests.

19 59. If the request for exemption could not be categorized under the first two choices
20 on the form, the request was denied without further explanation.

21 60. If an employee received a denial, no interactive process was offered.

22 61. With the implementation of the COVID Vaccination policy, PeaceHealth also
23 implemented a new procedure for claiming a religious accommodation which included a much
24 more intrusive questionnaire and investigation.
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26 62. On August 3, 2021, PeaceHealth stated that it would only accept medical
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1 exemptions.¹⁶

2 63. On August 3, 2021, PeaceHealth stated that those with approved exemptions
3 would “be subject to regular COVID-19 testing, as well as additional masking, potential
4 reassignment to non-patient care settings, and other safety protocols.”¹⁷

5 64. On August 3, 2021, PeaceHealth officials asserted that “formal ethical
6 discernment” led them to “join[] many health systems across the country, and professional
7 organizations including the Catholic Health Association, the American Hospital Association, the
8 American Medical Association, the American Nurses Association, and others in supporting
9 vaccine requirements to ensure public health.”¹⁸

10 65. On information and belief and sometime after this announcement, PeaceHealth
11 decided to allow religious exemptions as well.

12 66. However, contrary to the original announcement, medical exemptions were
13 declined, including routine or common exemptions that PeaceHealth had accommodated prior to
14 the emergence of COVID-19, based on whether the doctor’s submission fit into acceptable
15 contraindications derived from a predetermined list.

16 67. If a medical exemption was denied, the employee was considered non-compliant
17 and could be disciplined for not receiving the vaccine.

18 68. A series of warnings was given for those who were non-compliant with the
19 vaccine mandate, and were eventually terminated.

20 69. On information and belief, PeaceHealth granted zero medical or religious
21 accommodations.

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27 ¹⁶ *PeaceHealth Requires COVID-19 Vaccination.*

¹⁷ *Id.*

¹⁸ *Id.*

1 70. Most employees seeking medical and religious accommodations had to use Paid
2 Time Off (“PTO”) until it was exhausted or go unpaid the whole time they were forced to be on
3 leave.

4 *The Effect of PeaceHealth’s process on Plaintiffs*

5 **A. Ms. Kittleson’s experience with the accommodation process.**

6 71. Ms. Kittleson had worked throughout the Pandemic safely.

7 72. She willingly and successfully used all mitigation measures necessary to keep
8 herself, her patients, and community safe.

9 73. PeaceHealth required that she receive a medical examination to determine if her
10 disability warranted a medical exemption.

11 74. She complied with this requirement and visited her doctor to fill out an exemption
12 form. She submitted a medical exemption and accommodation request signed by her doctor on
13 August 12, 2021, to her manager, who then directed her to send it to Employee Health as
14 directed by her manager.

15 75. On August 19, 2021, PeaceHealth denied Ms. Kittleson’s request for
16 accommodation stating that her medical documentation did not support the medical
17 contraindication, regardless of the fact that her doctor advised against receiving the vaccine due
18 to risk of autoimmune complications.

19 76. PeaceHealth, through Ms. Kittleson’s manager, asked for more medical
20 documentation than the signed form she had supplied supporting her accommodation request –
21 the additional documentation requested proof of her disability, rather than proof of her ability
22 to perform her job functions.

23 77. Ms. Kittleson attempted to appeal PeaceHealth’s denial of her accommodation
24 request in October 2021, by submitting more documentation.
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1 78. However, during the pendency of this appeal, PeaceHealth denied her access to
2 her email, despite being an employee, making it impossible for her to follow up on the status of
3 her appeal or accommodation.

4 79. Despite these difficulties, Ms. Kittleson continued to communicate with her
5 manager and asked him to text her the appeal information. He recommended that her provider
6 give a more detailed response. Other than that, the only information he was able to give her was
7 the original form. No other procedure or information was provided.

8 80. In fact, Ms. Kittleson was not allowed any kind of interactive process to deal with
9 the denial of accommodation.

10 81. Rather than accommodate Ms. Kittleson's disability, PeaceHealth put her on
11 medical leave beginning August 24, 2021.

12 82. Washington State ESD approved paid medical leave for Ms. Kittleson through
13 October 16, 2021.

14 83. However, PeaceHealth approved her paid medical leave only until October 4,
15 2021.

16 84. PeaceHealth agreed to extend Ms. Kittleson personal leave from October 4, 2021,
17 until December 1, 2021.

18 85. This leave was unprotected, which meant her job would be advertised as available
19 to other candidates and she would not be reinstated at the end of her leave but would have to
20 reapply for a position within PeaceHealth.

21 86. Ms. Kittleson did not learn that her job would be unavailable to return to until
22 January 19, 2022, in a letter from Traci Stacy.

23 87. The letter from Traci Stacy required that she obtain a position in PeaceHealth by
24 October 4, 2022, or be "voluntarily" terminated.

1 88. Additionally, Traci Stacy informed her that she would be unable to obtain a new
2 position without proof of vaccination.

3 89. In no way did the letter offer any kind of interactive process to pursue
4 accommodation.

5 90. The letter also did not contain any sort of disciplinary procedure.

6 91. While on leave, Ms. Kittleson was scheduled to have surgery in September.

7 92. However, her surgery was delayed until December because of complications with
8 the insurance provider processing her disability insurance, UNUM.

9 93. This meant that her surgery was now scheduled after her medical leave expired,
10 and that the amount of time she had to take off was extended.

11 94. PeaceHealth insisted that the extra time off was a personal leave of absence and
12 unpaid.

13 95. ESD later granted Ms. Kittleson an additional period of paid medical leave from
14 December 5, 2021, to January 8, 2022.

15 96. Ms. Kittleson learned from pay stubs that, beginning in October 2021,
16 PeaceHealth began coding her leave as unpaid suspension, rather than as a leave of absence.

17 97. PeaceHealth also cancelled her insurance on December 15, 2021, without notice.

18 98. This was shortly after her surgery and during her recovery period, preventing her
19 from getting post-surgical care and treatment.

20 99. Ms. Kittleson sought clarification for the leave coding and insurance cancellation,
21 both of which appeared to be punitive actions against her employment but received no
22 explanation.

23 100. Throughout this process, Ms. Kittleson met with her manager and Human
24 Resources one time.
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1 101. At this meeting, she was told she had to be vaccinated. No discussion of possible
2 accommodation was offered , such as masking, distancing, reassignment, and/or testing.

3 102. Rather, PeaceHealth simply decided sua sponte through some unknown individual
4 or individuals that her disability was insufficient to support a medical exemption in contradiction
5 to her own doctor's advice.

6 103. After her surgeries, Ms. Kittleson planned to become vaccinated on her doctor's
7 advice. However, due to the surgeries failing to relieve the original issue as well as other post-
8 surgical complications, she began receiving hormone therapy, increasing her risk of clotting and
9 stroke, and thus adding another contraindication for vaccination.

10 104. On June 25, 2022, Ms. Kittleson applied in writing for her position that she had
11 held for many years and was still vacant. This application was rejected.

12 105. On October 4, 2022, PeaceHealth officially terminated Ms. Kittleson's
13 employment.

14 **B. Amber Schaeffer's experience with the accommodation process.**

15 106. Ms. Schaeffer began working during the pandemic and was able to do so safely.

16 107. Ms. Schaeffer's job as a painter requires her to work in rooms only when no
17 patients are present due to the fumes of the paint.

18 108. Additionally, when Ms. Schaeffer is working in common areas she has no direct
19 contact with anyone and is able to and was required to remain a minimum of six feet away from
20 all others.

21 109. She was willing to wear a SCBA bubble mask, take CDC approved COVID tests,
22 wash her hands, and socially distance.

23 110. On August 30, 2021, after visiting her doctor, Ms. Schaeffer applied for a medical
24 accommodation to the vaccine mandate.

1 111. The form given to the doctor had the following three options:

- 2 ○ History of severe anaphylactic reaction to a prior dose of COVID-19
3 vaccine or allergy to a component of the COVID-19 vaccines. **Please**
4 **attach supporting DOCUMENTATION or MEDICAL RECORDS.**
5 ○ History of Guillain-Barre Syndrome within six weeks of receiving a
6 previous vaccine. Please provide and attach a detailed narrative that
7 describes the event.
8 ○ Other – Please provide this information in a separate narrative that
9 describes the exception in detail (there requests will be reviewed on a
10 case-by-case basis.)
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12 112. Her doctor chose both the second and third options and wrote, “This woman has
13 had a severe reaction to the Flu vaccine with a Guillain Barre like syndrome. She is terrified of
14 taking the vaccine and I agree she shouldn’t.”
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16 113. Based on this limited narrative, Ms. Schaeffer was granted the exemption but was
17 refused accommodation on October 3, 2021.

18 114. Instead, she was put on indefinite unpaid administrative leave and forced to take
19 her PTO until it was exhausted if she was to be paid at all during her leave.
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21 115. Her benefits continued until her PTO was exhausted and then she was without
22 insurance and other benefits beginning October 29, 2021.

23 116. While on administrative leave, she continued to get paychecks until they stopped
24 without warning in December 2022.

25 117. Though she submitted her accommodation request on time, PeaceHealth claimed
26 to have lost it. As a result, they sent her two warnings that she was to be terminated if she did
27 not get vaccinated.
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1 118. After putting her on unpaid administrative leave, PeaceHealth prohibited her from
2 accessing her email.

3 119. Because PeaceHealth made the vaccination status of workers public by putting a
4 sticker on the badge of anyone who received the vaccine, everyone knew she was unvaccinated
5 and treated her with hostility.

6 120. She endured such comments as you are “batshit crazy like all the others, and “just
7 get the fucking vaccine.”

8 121. Though she complained to management about such treatment, nothing was done
9 to stop it.

10 122. Additionally, if a vaccinated employee refused to wear the sticker, they would
11 face discipline.

12 123. Due to the stress of being without work, Ms. Schaeffer suffered a heart condition
13 requiring three trips to the Emergency Room.

14 **C. Mr. Clark’s experience with the accommodation process.**

15 124. Mr. Clark worked at PeaceHealth as a Security Officer throughout the Pandemic
16 safely.

17 125. He willingly and successfully used all mitigation measures necessary to keep
18 those around him safe.

19 126. After he filled out the paper work to request an accommodation to the COVID-19
20 vaccine, he attempted to submit it to Employee Health.

21 127. Employee Health instructed him to make an appointment with his primary care
22 provider in order to he receive a medical examination to determine if his disability warranted a
23 medical exemption.

24 128. When he attempted to comply with this requirement and asked his Doctor
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1 Randall, who is part of the PeaceHealth system, to fill out an exemption form at the appointment
2 he made, his doctor responded that he did not qualify for an exemption as he did not meet either
3 criteria for an exemption, which included anaphylactic shock to the first dose of the vaccine, or
4 Guillain Barre Syndrome from a previous vaccine.

5 129. On information and belief, the PeaceHealth doctors were being instructed not to
6 fill out these forms except in the case of Guillain Barre or anaphylactic shock after a dose of the
7 vaccine and that if they did write exemptions, they risked losing their jobs.

8 130. Mr. Clark asked Dr. Randall to send the form to Employee Health.

9 131. Mr. Clark was unable to verify that Dr. Randall ever sent the form.

10 132. On August 17, 2021, Mr. Clark submitted his medical request with all supporting
11 documentation to Jeff DeSpain in Employee Health.

12 133. Mr. DeSpain offered to email the information to the appropriate people, which
13 upon Mr. Clark's request, he did.

14 134. Within a couple of days following this submission, PeaceHealth denied Mr.
15 Clark's medical exemption, in effect deciding, without personal knowledge of his medical
16 condition that he did not have the disability he claimed to have.

17 135. Mr. Clark was not allowed any kind of interactive process to deal with the denial
18 of accommodation.

19 136. On August 30, 2021, after doing more research, Mr. Clark chose to submit a
20 written religious objection and request for accommodation to PeaceHealth's Mandatory COVID-
21 19 Vaccination Policy.

22 137. PeaceHealth denied his reasonable accommodation.

23 138. PeaceHealth accepted that his religious belief against getting the vaccine was
24 sincere.

1 139. However, on October 1, 2021, he was required to fill out a second form by
2 October 18, 2021, or they would revoke his religious exemption.

3 140. Mr. Clark put on indefinite unpaid leave.

4 141. Before being put on unpaid leave, Mr. Clark was asked repeatedly and often by
5 his manager whether and when he was going to get vaccinated. This forced Mr. Clark to repeat
6 that he could not be vaccinated for both medical and religious reasons.
7

8 142. Mr. Clark experienced excessive pressure and bullying due to his vaccination
9 status.

10 143. This caused both himself and his family extreme emotional distress and worry..

11 144. Mr. Clark has been rehired by PeaceHealth.

12 145. PeaceHealth did not keep his position open for him and so he had to reapply.

13 146. He was originally placed in a different position.

14 147. He then had to go through more of an application process to be restored to his old
15 position.
16

17 ***PeaceHealth could have Accommodated Unvaccinated Employees***
18 ***without significant difficulty or expense.***

19 148. Prior to PeaceHealth placing all unvaccinated employees on unpaid administrative
20 leave, PeaceHealth employees had been working throughout the pandemic, over a year and a
21 half, using PPE and other countermeasures.

22 149. By July 27, 2021, the CDC acknowledged that “preliminary evidence suggests
23 that fully vaccinated people who do become infected with the Delta variant can spread the virus
24 to others.”¹⁹
25

26 _____
27 ¹⁹Centers for Disease Control and Prevention, COVID-19, Interim Public Health Recommendations for Fully
28 Vaccinated People, <https://web.archive.org/web/20210728032236/https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated-guidance.html>

1 150. PeaceHealth knew that unvaccinated employees could be accommodated as was
2 apparent in the first press release on August 3, 2023, which stated that it would accommodate
3 medical exemptions through the use of PPE and testing.

4 151. With the CDC's admission that vaccination against COVID-19 does not cease
5 transmission of the disease, PeaceHealth could have adopted alternative COVID-19
6 countermeasures that had worked previously and allowed unvaccinated workers to remain on
7 staff at no extra expense for the hospital.
8

9 152. PeaceHealth never imposed a vaccine mandate upon the patients themselves.

10 **V. FIRST CLAIM FOR RELIEF**
11 **ADA -- Discrimination based on disability – failure to grant exemption**
12 **(Kristine Kittleson and Rory Clark)**

13 153. Plaintiffs reallege all paragraphs above and below as if fully set forth herein.

14 154. PeaceHealth is subject to the ADA, being an employer as defined by 29 CFR §
15 1630.2.

16 155. Plaintiffs are all qualified for their jobs, having worked previously in the
17 positions.

18 156. Plaintiffs had clean employment records.

19 157. Ms. Kittleson and Mr. Clark informed PeaceHealth that they were unable to
20 receive the COVID-19 vaccines due to the high risk of adverse events up to and including death.

21 158. Ms. Kittleson and Mr. Clark submitted their doctor's notes on PeaceHealth
22 prescribed forms stating they had contraindications to the vaccines.
23

24 159. Mr. Clark had received a flu accommodation the year prior for the same risks.

25 160. Contrary to the opinions and recommendations of Ms. Kittleson's and Mr. Clark's
26 doctors, PeaceHealth rejected their requests for exemption based on an anonymous opinion that
27 their disabilities did not require exemption.
28

1 161. This anonymous opinion was not based on any examination or detailed
2 understanding of each of their medical histories or conditions.

3 162. PeaceHealth used an improper standard of ‘having a contraindication’ to arrive at
4 this decision rather than the standard set by the ADA of having a disability that prevented them
5 from receiving a vaccination.

6 163. PeaceHealth thereby disregarded its duties under the ADA to accommodate
7 individuals with a disability.

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9 **VI. SECOND CLAIM FOR RELIEF**
10 **ADA -- Failure to Accommodate**
11 **(all Plaintiffs)**

12 164. Plaintiffs reallege all paragraphs above and below as if fully set forth herein.

13 165. PeaceHealth is subject to the ADA, being an employer as defined by 29 CFR §
14 1630.2.

15 166. Plaintiffs are all qualified for their jobs, worked previously in th positions, with
16 clean employment records.

17 167. Plaintiffs have disabilities causing a higher risk for adverse events due to the
18 vaccine. Their conditions are chronic. These conditions substantially affect life activities
19 because they require them to consider the effect of pharmaceutical products on the function of
20 their immune system, reproductive system, and/or nervous system. All Plaintiffs discussed the
21 vaccine with their doctors before determining whether to take them.

22 168. PeaceHealth forced Plaintiffs out of their positions based on their disabilities even
23 after being informed of such disabilities.

24 169. Plaintiffs submitted doctor’s notes indicating the reason accommodation was
25 needed for each Plaintiff based on their knowledge, examination and treatment of each Plaintiff.

26 170. Plaintiffs were not infected with COVID-19 or otherwise ill when they were
27
28

1 required to go on unpaid leave. They were not a direct threat.

2 171. PeaceHealth subjected Plaintiffs to an adverse employment action by forcing
3 them onto unpaid leave for many months at a time, renewing such leave repeatedly.

4 172. PeaceHealth failed to make a good faith effort to accommodate Plaintiffs'
5 disabilities.

6 173. Such accommodations would not have been an undue hardship to PeaceHealth as
7 it would not require significant difficulty or expense and would have allowed Plaintiffs to
8 continue working with PPE, regular testing, and other countermeasures to protect against the
9 spread of COVID-19, as was done for over a year and a half before the imposition of the
10 COVID-19 vaccine mandate.

11 174. Instead of finding a reasonable accommodation or set of accommodations for
12 Plaintiffs, PeaceHealth engaged in a series of adverse employment actions including requiring
13 Plaintiffs to go on unpaid leave, not allowing them to return to their previous positions, and
14 ultimately terminating their employment.

15 175. As a direct and proximate result of the aforesaid complained of conduct and
16 violation of the ADA, each respective Plaintiff sustained pecuniary and non-economic injuries in
17 an amount that exceeds \$75,000.00, including lost wages, benefits, retirement funds, the denial
18 of promotional opportunity, humiliation, embarrassment, unnecessary pain and suffering,
19 attorneys' fees, and costs associated with this action.

20 176. Plaintiffs have filed charges with the EEOC complaining of these discriminatory
21 actions.

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25 **VII. THIRD CLAIM FOR RELIEF**
26 **ADA – VILATION OF § 12203(b)**
27 **(all Plaintiffs)**

28 177. Plaintiffs reallege all paragraphs above and below as if fully se forth herein.

1 178. Plaintiffs were engaged in ADA protected activity when they applied for
2 accommodation for their disabilities.

3 179. Under the ADA, PeaceHealth had an obligation to treat their medical records as
4 confidential and Plaintiffs had a right to have their medical records treated as confidential.

5 180. Contrary to Plaintiffs right to privacy, PeaceHealth told Mr. Clark that Employee
6 Health was not reviewing the disability accommodation requests but had hired an anonymous
7 third party to do so.

8 181. PeaceHealth did not ask for consent or have Plaintiffs complete a HIPAA
9 authorization request to have the third party review the requests.

10 182. This release of medical information has damaged all Plaintiffs.

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13 **VIII. FOURTH CLAIM FOR RELIEF**
14 **ADA—PROHIBITED INQUIRIES**
15 **(Kristine Kittleson)**

16 183. Plaintiffs reallege all paragraphs above and below as if fully set forth herein.

17 184. All inquiries PeaceHealth or its employees made in pursuance of the vaccination
18 mandate were prohibited inquiries.

19 185. Ms. Kittleson was forced to appeal PeaceHealth's denial of her exemption.

20 186. In so doing, PeaceHealth, through her manager, stated that her doctor needed to
21 write more than one sentence on the form.

22 187. Her manager then resent the form without further information.

23 188. Ms. Kittleson was damaged by these and other prohibited inquiries.

24
25 **IX. FIFTH CLAIM FOR RELIEF**
26 **ADA - Disparate Treatment**
27 **(all Plaintiffs)**

28 189. Plaintiffs reallege all paragraphs above and below as if fully set forth herein.

1 190. PeaceHealth is subject to the ADA, being an employer as defined by 29 CFR §
2 1630.2.

3 191. Plaintiffs are all qualified for their jobs, worked previously int the positions, with
4 clean employment records.

5 192. Plaintiffs have disabilities causing a higher risk for adverse events due to the
6 vaccine. Their conditions are chronic. These conditions substantially affect life activities
7 because they require them to consider the effect of pharmaceutical products on the function of
8 their immune system, reproductive system, and/or nervous system. All Plaintiffs discussed the
9 vaccine with their doctors before determining whether to take them.
10

11 193. PeaceHealth engaged in a series of adverse employment actions including
12 requiring Plaintiffs go on unpaid leave, not allowing them to return to their previous positions,
13 and ultimately terminating their employment.
14

15 194. All Plaintiffs were damaged by the actions of PeaceHealth.

16 **X. SIXTH CLAIM FOR RELIEF**
17 **ADA-Retaliation**
18 **(all Plaintiffs)**

19 195. Plaintiffs reallege all paragraphs above and below as if fully set forth herein.

20 196. Plaintiffs engaged in protected activities when they requested an exemption.

21 197. Ms. Kittleson engaged in protected activity when she attempted to appeal the
22 denial of her exemption.

23 198. All Plaintiffs engaged in protected activity in requesting accommodation under
24 the ADA.

25 199. PeaceHealth put them all on unpaid administrative leave and ultimately fired Ms.
26 Kittleson and Ms. Schaeffer because they were not vaccinated after requesting an exemption and
27 accommodation.
28

1 200. Plaintiffs being put on unpaid leave, terminated, and coerced into vaccination
2 would have dissuaded any reasonable employee in a similar situation from requesting an
3 exemption and accommodation in the first place.

4 201. PeaceHealth also interfered with the exercise and enjoyment of Plaintiffs ADA
5 rights.

6 202. Each Plaintiff was penalized in some way for exercising their rights.

7 203. All plaintiffs were denied access to email, and thus unable to appeal
8 determinations or defend their rights.

9 204. Ms. Kittleson and Ms. Schaeffer were fired without notice.

10 205. All of this was punitive in nature and interfered with Plaintiffs' ability to invoke
11 and assert their rights under the ADA.

12 206. PeaceHealth's failure to keep Plaintiffs' positions available and the requirement
13 that they reapply, while failing to rehire them into the same position at the same level, was
14 retaliatory.

15 207. Plaintiffs were damaged as a result of the interference and retaliation suffered at
16 PeaceHealth's hands.

17 **XI. SEVENTH CLAIM FOR RELIEF**

18 ADA- Regarded as Claim
19 (all Plaintiffs)

20 208. Plaintiffs reallege all paragraphs above and below as if fully set forth herein.

21 209. At the same time that PeaceHealth refused to recognize Plaintiffs' disabilities for
22 purposes of determining whether to accommodate them, PeaceHealth wrongfully regarded
23 Plaintiffs as having a different disability. Specifically, PeaceHealth regarded Plaintiffs as having
24 a substantial impairment to their immune systems due to not being vaccinated and discriminated
25 against them on this basis.
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1 210. Plaintiffs were damaged by PeaceHealth's discrimination against them based on
2 the fact that they were wrongfully regarded as disabled in this way.

3 **XII. JURY DEMAND**

4 211. Plaintiffs demand a jury.

5 **XIII. REQUEST FOR RELIEF**

6 212. WHEREFORE, the Plaintiffs pray:

7 213. A judgment in favor of Plaintiffs and against Defendant on all claims in an
8 amount to be determined at trial but exceeding \$5,000,000.00.

9 214. A finding that Defendant has discriminated against Plaintiffs on the basis of
10 Plaintiffs' disabilities.

11 215. A finding that Defendant has discriminated against Plaintiffs because Defendant
12 thought of them as disabled.

13 216. A finding that Defendant did not adhere to its obligations under the ADA to
14 accommodate their disabilities.

15 217. A finding that Defendant retaliated against Plaintiffs based on the exercise of their
16 rights under the ADA.

17 218. A declaration from this Court that PeaceHealth has exceeded its authority.

18 219. A declaration from this Court that the Plaintiffs are entitled to their wages and
19 benefits.

20 220. A preliminary and permanent injunction from being prevented from working for
21 PeaceHealth based on vaccination status.

22 221. Attorney fees and exemplary damages as authorized by the ADA, other statute,
23 contract or recognized ground of equity, as applicable.

24 222. That the Plaintiffs be granted such other, further, and different relief as the nature
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1 of the case may require or as may be just, equitable, and proper to the Court.

2 **RESPECTFULLY SUBMITTED** this 17th day of **January 2024**.

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4
5 **SILENT MAJORITY FOUNDATION**

6
7 */s/Karen Louise Osborne*

Karen Louise Osborne, WSBA No. 51433

8 5238 Outlet Dr.

Pasco, WA 99301

9 (530) 906-9666

karen@silentmajorityfoundation.org

10
11 Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of January 2024, I electronically filed the foregoing document with the Clerk of the United States District Court using the CM/ECF system which will send notification of such filing to all parties who are registered with the CM/ECF system.

DATED this 17th day of January 2024.

/s/Karen Louise Osborne
Karen Louise Osborne

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