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HAFSA FODA, a/k/a )  
SOFY FODA )

Plaintiff, )

vs. )

VALLEY HEALTH SYSTEM, INC., and )  
SIMON J. TSIOURIS, )

Defendants. )

**SUPERIOR COURT OF NEW JERSEY**  
**BERGEN COUNTY: ~~LAW~~ DIVISION**  
**CHANCERY**

Docket No. C-163-22

Civil Action

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**PLAINTIFF’S BRIEF IN SUPPORT OF APPLICATION FOR ORDER TO SHOW  
CAUSE FOR TEMPORARY AND PRELIMINARY RESTRAINTS**  
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Table of Contents

I. PRELIMINARY STATEMENT ..... 1

II. STATEMENT OF FACTS..... 3

    A. Ms. Foda Flees Egypt and Becomes a Pharmacist at Valley Health. .... 3

    B. Ms. Foda Has an Ocular Disability..... 4

    C. Ms. Foda’s Doctors Advise that Ms. Foda Avoid Vaccines..... 5

    D. Valley Health Violates Ms. Foda’s Civil Rights by Denying Her Vaccine Exemption Request..... 6

III. LEGAL STANDARD..... 10

IV. ARGUMENT..... 11

    A. Ms. Foda Has a Strong Possibility of Success on Her NJLAD Claims..... 11

        1. Valley Health denied Ms. Foda a reasonable accommodation. .... 12

        2. Valley Health failed to engage in the interactive process with Ms. Foda..... 15

        3. Dr. Tsiouris aided and abetted Valley Health’s illegal conduct..... 17

    B. Ms. Foda Will Suffer Irreparable Harm Without Temporary and Preliminary Restraints. 18

    C. The Balance of Hardships Favor Injunctive Relief..... 21

V. CONCLUSION ..... 22

## Table of Authorities

### **Cases**

<i>Cicchetti v. Morris Cnty. Sheriff’s Office</i> , 194 N.J. 563 (2008).....	17
<i>Crowe v. De Gioia</i> , 90 N.J. 126 (1982).....	10, 19
<i>Delanoy v. Twp. of Ocean</i> , 245 N.J. 384 (2021).....	12
<i>Delaware River &amp; Bay Auth. v. York Hunter Const., Inc.</i> , 344 N.J. Super. 361 (Ch. Div. 2001).....	19
<i>Fitzgerald v. Shore Memorial Hosp.</i> , 92 F. Supp. 3d 214 (D.N.J. 2015) .....	13
<i>Garden State Equal. v. Dow</i> , 216 N.J. 314 (2013).....	10
<i>Hires v. City of Atl. City</i> , No. A-0870-08T3, 2010 WL 2195653 (N.J. Super. Ct. App. Div. June 1, 2010) .....	16
<i>Johnson v. Univ. of Pittsburgh</i> , 395 F. Supp. 1002 (W.D. Pa. 1973).....	21
<i>McNeil v. Legis. Apportionment Comm’n</i> , 176 N.J. 484 (2003).....	10
<i>Ruggiero v. Mount Nittany Med. Ctr.</i> , 736 F. App’x 35 (3d Cir. 2018).....	12, 14
<i>Tarr v. Ciasulli</i> , 181 N.J. 70 (2004).....	17, 18
<i>Tynan v. Vicinage 13 of Superior Ct.</i> , 351 N.J. Super. 385 (App. Div. 2002).....	12, 16
<i>Victor v. State</i> , 203 N.J. 383 (2010).....	14
<i>Victor v. State</i> , 401 N.J. Super. 596 (App. Civ. 2008).....	16
<i>Waste Mgmt. of N.J., Inc. v. Union Cnty. Utils. Auth.</i> , 399 N.J. Super. 508 (App. Div. 2008).....	11
<i>Whelan v. Teledyne Metalworking Prods.</i> , 226 F. App’x 141 (3d Cir. 2007).....	13

### **Statutes**

<i>N.J.S.A. § 10:5–12</i> .....	17
---------------------------------	----

### **Other Authorities**

Centers for Disease Control and Prevention, “Interim Clinical Considerations for Use of COVID-19 Vaccines Currently Approved or Authorized in the United States” (Aug. 22, 2022),

<https://www.cdc.gov/vaccines/covid-19/clinical-considerations/interim-considerations-us.html#contraindications>. ..... 8

Centers for Medicare & Medicaid Services, “Revised Guidance for the Interim Final Rule – Medicare and Medicare Programs; Omnibus COVID-19 Health Care Staff Vaccination” (Apr. 5, 2022), <https://www.cms.gov/files/document/qso-22-07-all-revised.pdf>..... 15

## I. PRELIMINARY STATEMENT

This brief is respectfully submitted in support of Plaintiff Hafsa Foda's, a/k/a/ Sofy Foda ("Ms. Foda"), Application for Order to Show Cause for Temporary and Preliminary Restraints. Ms. Foda seeks temporary and preliminary orders (1) enjoining Defendants Valley Health System, Inc. ("Valley Health") and Simon J. Tsiouris ("Dr. Tsiouris") (collectively, "Defendants") from terminating Ms. Foda's employment with Valley Health; and (2) enjoining Defendants from discriminating, harassing, or retaliating against Ms. Foda for engaging in activity protected by the New Jersey Law Against Discrimination ("NJLAD"), namely seeking a reasonable accommodation for her disability and filing the instant lawsuit. An injunction is necessary to preserve the status quo.

Ms. Foda emigrated from Egypt in 2014 to escape persecution from the Egyptian government, then controlled by the Muslim Brotherhood. In 2019, Ms. Foda began working as a pharmacist for Valley Health. She is currently working from home. In 2021, Ms. Foda's lifelong vision problems worsened, and she was diagnosed with uveitis and related ocular conditions, which her ophthalmologist believes stemmed from an underlying autoimmune condition. Even with glasses, Ms. Foda has poor vision in her left eye, and her right eye is the only thing standing between Ms. Foda and blindness. Vaccines of all kinds can trigger uveitis. As a patient with an autoimmune disorder and a history of uveitis, Ms. Foda faces a heightened risk for ocular complications from vaccines, leading two of her treating ophthalmologists to write letters to Valley Health requesting that Ms. Foda be excused from Valley Health's COVID-19 vaccine requirement.

Valley Health's treatment of Ms. Foda has been an abomination. Dr. Tsiouris, who is the final decisionmaker for Valley Health for vaccine exemption requests, initially granted Ms. Foda

a temporary deferral from its vaccine requirement. When Ms. Foda submitted a request for a formal exemption accompanied by a new doctor's letter, Valley Health let months go by without a response. Since then, Valley Health has set one deadline after the next, threatening Ms. Foda with termination. In each instance, Ms. Foda provided Valley Health with additional documentation that Valley Health requested, including documentation from her treating physicians, only for Valley Health to ignore Ms. Foda's doctors' directives and persist in threatening Ms. Foda with termination.

On August 29, 2022, Ms. Foda underwent photodynamic therapy in order to treat her ocular conditions. Two separate ophthalmologists advised that, at a minimum, there be a significant time interval between photodynamic therapy and vaccination. Indeed, the physician who performed the treatment recommended an interval of at least six months. Dr. Tsiouris ignored Ms. Foda's physicians' expert opinions and willfully misrepresented his conversations with one in order to aid Valley Health in denying Ms. Foda's vaccine exemption request. On August 31, 2022, Valley Health gave Ms. Foda another ultimatum: receive a vaccine by September 2, 2022, or face termination upon return from medical leave on September 4, 2022.

Valley Health and Dr. Tsiouris's conduct is not just morally reprehensible. Defendants have violated the robust protections the New Jersey legislature enshrined in the New Jersey Law Against Discrimination ("NJLAD"). Ms. Foda has not only the requisite "reasonable probability" of succeeding on her NJLAD claims for failure to provide a reasonable accommodation, failure to engage in the interactive process, and aiding and abetting illegal conduct, but a strong probability of success on the merits.

If Ms. Foda is terminated, she will face imminent and irreparable harm. Ms. Foda has no family in the United States, and the income she receives from Valley Health is necessary for her

to keep a roof over her and her son's head. Ms. Foda and her son rely on the medical insurance Valley Health provides to treat life-threatening, ongoing medical conditions, in addition to Ms. Foda's severe ocular afflictions. Ms. Foda will be unable to send her son to his current high school. In short, Valley Health is days away from subjecting Ms. Foda and her son to despair and destitution. Only immediate intervention from this Court will prevent irreparable harm.

While the relative hardship facing Ms. Foda is staggering, the hardship to Defendants if the Application is granted would be nil. Ms. Foda is an excellent pharmacist, and Valley Health and its patients would benefit from her continued employment. Nor is there any public health basis or business justification for Defendants' decision—Ms. Foda has been discharging her duties competently and diligently while working from home since November 2021.

The Court should therefore grant the Application and issue temporary and preliminary restraints so that Ms. Foda's rights under the NJLAD are protected during the pendency of this litigation.

## **II. STATEMENT OF FACTS**

The facts underpinning Ms. Foda's Application are set forth in detail in Ms. Foda's Verified Complaint for an Order to Show Cause with Temporary Restraints ("VC" or "Verified Complaint").

### **A. Ms. Foda Flees Egypt and Becomes a Pharmacist at Valley Health.**

Ms. Foda is a pharmacist at Valley Health. VC ¶ 14. Ms. Foda fled Egypt with her minor son to escape persecution from the Muslim Brotherhood and other Islamist organizations and was granted asylum status in the United States. VC ¶ 11. As a secular ex-Muslim, Ms. Foda would have been adjudged an apostate by the Muslim Brotherhood government, a crime punishable by death. *Id.*

## **B. Ms. Foda Has an Ocular Disability.**

Ms. Foda has a history of ocular disorders, suffering from floaters in her left eye since a young age, a condition that causes small dark shapes to appear in one's field of vision. VC ¶ 16. Toward the beginning of 2021, Ms. Foda's condition worsened, and she began experiencing pain in her left eye, and the floaters increased in size and number. VC ¶ 17. In April 2021, Ms. Foda was diagnosed with a uveitis, vitretitis, papillitis, concurrent with optic nerve inflammation, macular edema, and central serous retinal detachment, which caused a lack of depth perception, visual impairment, and vision loss in Ms. Foda's left eye. VC ¶ 18. Ms. Foda's treating ophthalmologist has opined that Ms. Foda's uveitis arose out of an autoimmune disorder. VC ¶ 19.

Ms. Foda's prognosis is poor. VC ¶ 20. While her doctors continue to treat her uveitis, sub-retinal fluid, and retinal detachment, Ms. Foda's likelihood of recovering her vision is uncertain at best. *Id.* Ms. Foda has retained vision in her right eye, though she wears eyeglasses to remedy astigmatism. *Id.* Ms. Foda's glasses only remedy the astigmatism in her right eye, and her poor vision in her left eye and sensitivity to light pose substantial burdens that affect her daily life. *See* VC ¶¶ 21–22. As a result of the multiple conditions afflicting her left eye, Ms. Foda's right eye is the only thing standing between Ms. Foda and blindness. VC ¶ 23.

After she was diagnosed with uveitis, Ms. Foda learned that uveitis was a reported side effect of *all* vaccines and was advised to refrain from taking further vaccines. VC ¶ 26. As Ms. Foda already has a pre-existing ocular inflammatory disorder in one eye, uveitis, she faces a markedly higher risk of a reoccurrence, relapse, and future incidents of ocular adverse effects from vaccination than someone without a history of uveitis. *Id.*

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**C. Ms. Foda’s Doctors Advise that Ms. Foda Avoid Vaccines.**

Ms. Foda has never shied away from vaccines until her affliction with uveitis. *See* VC ¶ 24. Ms. Foda complied with Valley Health’s influenza vaccine requirement in 2019 and 2020 without question or incident. VC ¶ 25.

In addition to its influenza vaccine requirement, Valley Health also mandated that its employees complete a COVID-19 vaccination, effective November 1, 2021. VC ¶ 27. On August 16, 2021, Ms. Foda’s then-treating ophthalmologist, Dr. Brian Marr, the director of ophthalmology at Columbia University, requested in writing that Ms. Foda be permitted to refrain from taking the COVID-19 vaccine until her ocular condition resolved. VC ¶ 28. Dr. Tsiouris, the final decisionmaker at Valley Health with regard to vaccine exemption requests, granted Ms. Foda a temporary “deferral” from Valley Health’s vaccination requirement until February 1, 2022, in light of Ms. Foda’s uveitis diagnosis and Dr. Marr’s August 16, 2021, letter. VC ¶¶ 29, 31.

Ms. Foda has complied with the conditions Valley Health imposed in connection with the deferral; she takes weekly COVID-19 tests and works from home. VC ¶¶ 32–33. Ms. Foda is able to perform her specific duties as a medication reconciliation pharmacist from home. VC ¶ 34. In fact, all or almost all of Valley Health’s pharmacists performing medication reconciliation worked remotely at the beginning of the COVID-19 pandemic, and some continue to work from satellite locations. *Id.* Ms. Foda successfully completed hundreds of “admissions’ reconciliations,” engages in active conversations with healthcare providers, corrects medication administration errors, and has prevented several adverse drug interactions and “near-misses.” VC ¶ 35.

Ms. Foda continued to seek treatment for her uveitis. VC ¶ 36. Dr. Marr referred Ms. Foda to Dr. C. Michael Samson, a Professor of Ophthalmology at the Donald and Barbara Zucker School of Medicine at Hofstra/Northwell, and a renowned expert on uveitis within the medical community. *Id.* Dr. Samson strongly cautioned Ms. Foda against taking any vaccine. *Id.*

On November 29, 2021, Dr. Samson wrote a letter stating that Ms. Foda “is diagnosed with an autoimmune condition called intermediate uveitis concurrent with central serous retinopathy;” that Ms. Foda is “starting [a] new medication for this condition (high dose Prednisone); that “[a]t this time, it is recommended to postpone any vaccine as she is currently in a flare up;” and that “[w]e can reassess post treatment.” VC ¶ 37; **Ex. A.** Dr. Tsiouris denied the request contained in Dr. Samson’s November 29, 2021, letter, stating he needed a detailed letter explaining why Ms. Foda’s condition precluded her from taking any vaccines. VC ¶ 38.

**D. Valley Health Violates Ms. Foda’s Civil Rights by Denying Her Vaccine Exemption Request.**

On December 13, 2021, Dr. Samson wrote a new letter regarding Ms. Foda’s condition to satisfy Dr. Tsiouris’s demand, which Ms. Foda presented to Dr. Tsiouris. Critically, Dr. Samson wrote:

Given the patient’s condition discussed above, her current vision impairment, and poor prognosis, she is at risk of developing bilateral uveitis as a possible side effect of any vaccine administration which might compromise the patient’s vision in the right eye as well and put her at risk of vision loss. The patient is not a candidate of receiving any vaccines and such administration is not recommended at the time being because the risks outweigh the benefits.

VC ¶ 39; **Ex. B.** Ms. Foda formally applied for a vaccine exemption on December 15, 2021, in a letter to Dr. Tsiouris. VC ¶ 40; **Ex. C.**

Valley Health let months go by before acting on Ms. Foda’s request, informing her in April 2022 that its deferral would end on May 1, 2022, and that she was required to provide

another update from Dr. Samson. VC ¶¶ 41–43. On June 29, 2022, Dr. Samson wrote another letter, stating in pertinent part:

Based on the patient’s continued disease status, significant visual impairment, and her upcoming photodynamic therapy, it’s medically advised she continues holding off on taking any vaccines, including the COVID-19 vaccine, as the risks of vaccines in her case outweigh the benefits and may even endanger the outcome of her eye treatment.

VC ¶ 44; **Ex. D.** Rather than engage in the interactive process, Valley Health simply told Ms. Foda on July 7, 2022, that she had until the last day of the month to get vaccinated, or face termination. *See* VC ¶ 46.

On July 14, 2022, Ms. Foda again stated her case to Dr. Tsiouris. Dr. Tsiouris, who is an infectious disease specialist, and not an ophthalmologist and uveitis specialist like Dr. Samson, stated to Ms. Foda that he “simply disagree[s] with [her] doctor.” VC ¶ 49. ***Dr. Tsiouris further stated that he would speak with Dr. Samson, but it “would not change a thing.”*** *Id.* In a horrifying display of callousness, Dr. Tsiouris stated that “only” twenty-two people had developed uveitis that failed to resolve following vaccine administration, and that it was unlikely to happen to Ms. Foda. *Id.*

Faced with no choice, Ms. Foda retained counsel, who renewed Ms. Foda’s request for a reasonable accommodation on July 18, 2022. *See* VC ¶ 51. Valley Health’s assistant general counsel, Joseph A. Fischetti, Esq., first promised that Valley Health would respond on the week of July 25, 2022, just days before the threatened termination date of July 31, 2022. VC ¶ 52; **Ex. E.** Mr. Fischetti then vacated the July 31, 2022, deadline, not out of any concern for Ms. Foda, but because “certain staff necessary to that decision [regarding Ms. Foda’s request] are presently out of the office and unavailable.” VC ¶ 53; **Ex. E.**

On August 4, 2022, just three days before the new threatened termination date, Mr. Fischetti denied Ms. Foda’s request, again without making any effort to accommodate her request in good faith. VC ¶ 54; **Ex. F.** Mr. Fischetti relied on a pedantic and misleading statement that Dr. Samson “advised that there is no medical contraindication to COVID-19 vaccination for Ms. Foda” in order to deny Ms. Foda’s request. VC ¶ 55. As explained in greater detail in the Verified Complaint, Dr. Samson’s statement simply means that the United States Centers for Disease Control and Prevention (“CDC”) did not list uveitis as a contraindication for the COVID-19 vaccines—Dr. Samson has and continues to advise Ms. Foda not to take any vaccines, and his letters speak for themselves. *See id.* In fact, the CDC only “considered COVID-19 vaccination to be contraindicated” in two specific scenarios. *See* Centers for Disease Control and Prevention, “Interim Clinical Considerations for Use of COVID-19 Vaccines Currently Approved or Authorized in the United States” (Aug. 22, 2022), <https://www.cdc.gov/vaccines/covid-19/clinical-considerations/interim-considerations-us.html#contraindications>.

Once again, Ms. Foda kept trying to reason with Valley Health. As Mr. Fischetti recognized that Dr. Samson noted the need for a temporal interval between photodynamic therapy and vaccination, Ms. Foda’s counsel let Valley Health know that Ms. Foda was scheduled to receive photodynamic therapy and requested that Valley Health honor its prior representation regarding a temporal interval between photodynamic therapy and vaccination. VC ¶¶ 57; **Ex. E.** Rather than honor its word, Valley Health moved the goal posts again, giving Ms. Foda just two days (between Friday and Sunday) to furnish a separate letter from Dr. Barbazetto, who would be performing the photodynamic therapy. VC ¶ 58; **Ex. E.** Valley Health silently backed down from this absurd requirement after Ms. Foda’s counsel protested, letting the August 7, 2022, deadline pass without comment. VC ¶¶ 58–60; **Ex. E.**

On August 12, 2022, Valley Health’s human resources representative informed Ms. Foda that she must provide a letter from Dr. Barbazetto by August 16, 2022 (one day after Ms. Foda’s scheduled photodynamic therapy appointment) containing the information Mr. Fischetti previously demanded. VC ¶ 40. On August 15, 2022, Ms. Foda’s counsel provided Mr. Fischetti with a detailed letter from Dr. Barbazetto, thereby satisfying Valley Health’s unreasonable and arbitrary requirement. VC ¶ 62. Dr. Barbazetto’s letter stated, in pertinent part,

The patient is scheduled to undergo photodynamic therapy for active [central serious chorioretinopathy]. She understands that outcomes are not guaranteed and she might require multiple sessions of treatment. However, due to an ongoing infection the PDT treatment was rescheduled today. Her next appointment is in 2 weeks.

Of note; given the patient’s complex medical history, I would agree with Dr. Samson, her uveitis specialist, who recommended avoiding pro-inflammatory stimuli, including vaccines for the next 6 months.

*Id.*; **Ex. G.**

On August 29, 2022, Ms. Foda underwent photodynamic therapy, requiring her to take unpaid medical leave for both the procedure and the subsequent week during her convalescence.

VC ¶ 64. On August 31, 2022, while Ms. Foda recovered from photodynamic therapy, Mr.

Fischetti wrote to Ms. Foda’s counsel, stating:

Dr. Barbazetto yesterday returned Dr. Tsiouris’s call. Dr. Barbazetto advised that she performed photodynamic therapy on Ms. Foda on Monday. Dr. Barbazetto also stated that although Ms. Foda should have no exposure to bright lights or sunlight for five days, there is no contraindication to vaccination in relation to this therapy or any therapy that she may perform in the future. Ms. Foda’s request for an exemption therefore remains denied.

Ms. Foda is presently on a leave of absence. Valley will not suspend, terminate, or otherwise interfere with Ms. Foda’s employment while she is on leave. However, if Ms. Foda does not provide proof of vaccination for COVID-19 at least two days before the scheduled conclusion of her leave on September 4, then upon the conclusion of her leave, she will be terminated for failure to comply with Valley’s COVID-19 vaccination policy.

VC ¶ 65; **Ex. E.** Once again, Mr. Fischetti engaged in bad-faith word games by exploiting the technical definition of “contraindication.” VC ¶ 66. Dr. Barbazetto’s letter speaks for itself: Dr. Barbazetto advised Ms. Foda to avoid vaccines for a period of six months following photodynamic therapy. *See id.*; **Ex. G.**

When Ms. Foda shared Mr. Fischetti’s statements with Dr. Barbazetto, Dr. Barbazetto stated that Mr. Fischetti misrepresented the conversation she had had with Dr. Tsiouris, and that she was shocked that Valley Health twisted her words. VC ¶ 67. Dr. Barbazetto further confirmed that she told Dr. Tsiouris that she agreed with Dr. Samson’s guidance that Ms. Foda not take a vaccine in her condition, a remark Mr. Fischetti conveniently left out of his email. *Id.*

If Valley Health terminates Ms. Foda’s employment on September 4, 2022, she will face severe, irreparable harm. *See* VC at 15–17; Section IV.C, *infra*.

### **III. LEGAL STANDARD**

The standard for obtaining a temporary or preliminary restraint is well-established. Both forms of relief are extraordinary remedies that should be issued “when necessary to prevent irreparable harm.” *Crowe v. De Gioia*, 90 N.J. 126, 132 (1982) (citation omitted). The movant must demonstrate by clear and convincing evidence that (1) there is a reasonable probability of eventual success on the merits in accordance with settled law; (2) the moving party will suffer irreparable harm if restraints are not entered; and (3) comparing the “relative hardships to the parties reveals that greater harm would occur if [preliminary relief] is not granted than if it were.” *Garden State Equal. v. Dow*, 216 N.J. 314, 320 (2013) (quoting *McNeil v. Legis. Apportionment Comm’n*, 176 N.J. 484, 486 (2003) (LaVecchia, J., dissenting)).

The issuance of an interlocutory injunction must be squarely based on an appropriate exercise of sound judicial discretion . . . , which—when limited to preserving the status quo during the suit’s pendency—may permit the

court to place less emphasis on a particular . . . factor if another greatly requires the issuance of the remedy.

*Waste Mgmt. of N.J., Inc. v. Union Cnty. Utils. Auth.*, 399 N.J. Super. 508, 520 (App. Div. 2008)

(internal citations omitted).

#### IV. ARGUMENT

Ms. Foda readily satisfies each of the three requirements for temporary and preliminary injunctive relief. Ms. Foda has a strong possibility of prevailing on her three NJLAD claims as Defendants' insistence that Ms. Foda defy her doctors' recommendations that she refrain from taking vaccines in order to risk grievous damage to her eyes and vision under threat of termination of employment violates the rights of disabled New Jersey employees. If Ms. Foda loses her employment, she and her family will incur tremendous harm to their livelihood, health, and security. The balance of hardships strongly favors Ms. Foda as the hardship to Defendants of complying with the Order Ms. Foda seeks would be nil (if not ultimately beneficial to Valley Health and its patients).

##### **A. Ms. Foda Has a Strong Possibility of Success on Her NJLAD Claims.<sup>1</sup>**

Valley Health has violated Ms. Foda's rights under the NJLAD by refusing to grant her a reasonable accommodation for her disability and refusing to engage in the interactive process with her. Dr. Tsiouris aided and abetted Valley Health's illegal conduct by denying Ms. Foda the reasonable accommodation her doctors advised, and through misrepresenting his conversation with Dr. Foda's doctor, and generally operating in bad faith. Ms. Foda therefore has a strong

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<sup>1</sup> In addition to her three NJLAD claims, the Verified Complaint contains a claim for intentional infliction of emotional distress ("IIED") against both Defendants. VC at 21–23. While Ms. Foda is confident that she will prevail on her IIED claim, this Brief will focus on the NJLAD claims as these are the claims most related to the imminent and irreparable harm Ms. Foda faces.

possibility of success as to all three NJLAD claims—far greater than the reasonable probability of eventual success required for a temporary or preliminary restraint.

1. Valley Health denied Ms. Foda a reasonable accommodation.

When Ms. Foda requested a vaccine exemption from Valley Health, Valley Health was required by the NJLAD to grant it. Ms. Foda is disabled as a result of her ocular conditions, and the administration of *any* vaccine could jeopardize Ms. Foda’s eyesight. In order to protect the health of its disabled employee, Ms. Foda, Valley Health should have provided Ms. Foda with an exemption from its COVID-19 vaccine requirement as a reasonable accommodation for Ms. Foda’s disability. Instead, Valley Health gave Ms. Foda a choice: ignore her doctors’ advice, risk her eyesight, and take the vaccine—or face termination.

New Jersey “courts have uniformly held that the law nevertheless requires an employer to reasonably accommodate an employee’s handicap.” *Tynan v. Vicinage 13 of Superior Ct.*, 351 N.J. Super. 385, 396 (App. Div. 2002) (collecting cases). “[A] plaintiff in [an NJLAD] disability case alleging an employer’s failure to provide reasonable accommodation must establish these elements: (1) the plaintiff had a disability; (2) the plaintiff was able to perform the essential functions of the job; (3) the employer was aware of the basic need for an accommodation; and (4) the employer failed to provide a reasonable accommodation.” *Delanoy v. Twp. of Ocean*, 245 N.J. 384, 403 (2021) (citation and internal quotation marks omitted).

It is beyond dispute that Ms. Foda is disabled. To establish disability, Ms. Foda must only show that her ocular conditions substantially affect one or more life activities. *See Ruggiero v. Mount Nittany Med. Ctr.*, 736 F. App’x 35, 40 (3d Cir. 2018) (holding that the employer’s argument that the employee was not disabled “lacks merit” where the employee “identified her specific impairments” and “alleged that those impairments limited certain life activities”); *see*

*also Fitzgerald v. Shore Memorial Hosp.*, 92 F. Supp. 3d 214, 236 (D.N.J. 2015) (explaining that the NJLAD’s “definition [of] a disability is very broad in scope” and includes even substance abuse and obesity) (collecting cases). Ms. Foda’s uveitis and visual impairment force her to take uncomfortable measures including holding items very close to her eye and enlarging the text on her screen when she’s at work (even with her glasses on). Ms. Foda has difficulty driving, particularly at night. Whenever Ms. Foda engages in tasks that required prolonged visual focus, she experiences pain in her eye. As a result, Ms. Foda deliberately avoids activities that involve any unnecessary stress on her eyes, such as reading during her free time, to preserve her limited visual acuity for her work activities. Ms. Foda must avoid light and sequester herself in a dark room several times a day. *See* VC ¶¶ 21–22, 83. Indeed, courts recognize that “a degenerative eye disease” constitutes a disability under the more-restrictive ADA. *See Whelan v. Teledyne Metalworking Prods.*, 226 F. App’x 141, 145 (3d Cir. 2007) (mem. disp.).

Not only can Ms. Foda perform the essential functions of her job, but she does so with diligence and competence. Despite working from home, Ms. Foda has successfully completed hundreds of “admissions’ reconciliations,” engages in active conversations with healthcare providers, corrects medication administration errors, and has prevented several adverse drug interactions and “near-misses.” VC ¶ 35.

Ms. Foda made Valley Health aware of her disability, as well as her request for a reasonable accommodation, in August 2021, November 2021, December 2021, June 2022, July 2022, and August 2022. *See generally* VC. Valley Health knew that Ms. Foda suffered from uveitis and other ocular conditions, and Valley Health did not care.

Finally, Valley Health denied Ms. Foda a reasonable accommodation by failing to grant her an exemption from its COVID-19 vaccine requirement. Even under the federal Americans

with Disabilities Act (“ADA”), the denial of vaccine exemption to a disabled employee can constitute a failure to reasonably accommodate. *See Ruggiero*, 736 F. App’x at 40–41 (3d Cir. 2018) (vacating district court’s dismissal of ADA failure to accommodate claim where nurse requested exemption from hospital’s TDAP vaccine requirement); *see also Victor v. State*, 203 N.J. 383, 420–21 (2010) (noting the NJLAD’s “broad remedial purposes and wide scope of its coverage for disabilities as compared to the ADA”).

For the past year, Ms. Foda has made very clear to Valley Health that she cannot receive a COVID-19 vaccine without compromising her eyesight. Drs. Marr, Sampson, and Barbazetto have each informed Dr. Tsiouris of their professional recommendation that Ms. Foda not receive any vaccine at this time. Dr. Tsiouris does not care about their professional opinions, which are informed by their specialized expertise (as opposed to Dr. Tsiouris’s generalized zeal for the vaccines), as demonstrated by Dr. Tsiouris’s statement that his anticipated conversation with Dr. Samson “**would not change a thing.**” VC ¶ 49. Valley Health indicated that it would grant Ms. Foda an exemption if she were to receive photodynamic therapy. When Valley Health learned that Ms. Foda was indeed scheduled to receive photodynamic therapy, it next insisted on a letter from Dr. Barbazetto (giving Ms. Foda little more than one business day to provide such a letter). When Ms. Foda obtained *that* letter, Valley Health let two weeks pass before summarily denying Ms. Foda’s exemption, giving her two days to get vaccinated or face termination. To make matters worse, Defendants misrepresented what Dr. Barbazetto told Dr. Tsiouris in order to create a contrived basis to deny Ms. Foda’s request. VC ¶ 67. Defendants’ conduct makes clear that they made no effort to provide Ms. Foda with a reasonable accommodation.

Valley Health will be unable to muster any excuse or justification for its malicious and harmful actions. Ms. Foda has dutifully complied with Valley Health’s COVID-19 testing policy

and has been working from home since November 2021. VC ¶ 33. Ms. Foda has been able to perform her work conducting medication reconciliation at home with diligence and competence. VC ¶¶ 34–35. Ms. Foda’s ability to perform her work from home itself establishes that Valley Health has no overriding reason why it should not grant Ms. Foda’s vaccine exemption request. Even in the healthcare setting, businesses may not enforce vaccine requirements to the detriment of employees’ civil rights. The Centers for Medicare & Medicaid Services imposed a COVID-19 vaccine mandate for certain healthcare workers, but nonetheless acknowledged in its revised guidance that “[t]he COVID-19 vaccination requirements and policies and procedures required by this [interim final rule] must comply with applicable federal non-discrimination and civil rights laws and protections, including providing reasonable accommodations to individuals who are legally entitled to them because they have a disability[.]” *See* Centers for Medicare & Medicaid Services, “Revised Guidance for the Interim Final Rule – Medicare and Medicare Programs; Omnibus COVID-19 Health Care Staff Vaccination” (Apr. 5, 2022), <https://www.cms.gov/files/document/qso-22-07-all-revised.pdf>. Valley Health has at no point informed Ms. Foda of any detriment to its business operations that would result from granting Ms. Foda the reasonable accommodation she requested. *See Exhibits E & F*.

Ms. Foda is therefore likely to prevail on Count I of the Verified Complaint against Valley Health, and, at a minimum, has the requisite reasonable possibility of success.

2. Valley Health failed to engage in the interactive process with Ms. Foda.

Valley Health violated the NJLAD by failing to engage in the interactive process with Ms. Foda while she made efforts to obtain a reasonable accommodation for her disability. “Upon the employee’s request for a reasonable accommodation, the employer has a duty to engage in an informal interactive process to identify potential reasonable accommodations that would allow

the disabled employee to perform the job. *Hires v. City of Atl. City*, No. A-0870-08T3, 2010 WL 2195653, at \*5 (N.J. Super. Ct. App. Div. June 1, 2010) (citing *Tynan*, 351 N.J. Super. at 400).

To establish this duty,

the employee must show that (1) the employee was disabled; (2) the employer knew about the disability; (3) the employee requested accommodations or assistance for the disability; (4) the employer did not make a good faith effort to assist the employee in seeking accommodations by engaging in the interactive process; (5) the employee could have been reasonably accommodated but for the employer's lack of good faith in failing to engage in the interactive process; and (6) the employee was terminated.

*Id.* (citing *Victor v. State*, 401 N.J. Super. 596, 624–25 (App. Civ. 2008)).

Ms. Foda readily satisfies the first three elements. *See* Section IV.A.1, *supra*.

Valley Health's conduct could not be further from the good faith required by New Jersey law. Valley Health let months go by when Ms. Foda made her first formal request for an exemption from Valley Health's COVID-19 vaccination requirement in December 2021. VC ¶ 42. Throughout the summer of 2022, Ms. Foda has made every possible effort to engage in the interactive process with Valley Health. Ms. Foda submitted new letters from Drs. Samson and Barbazetto, and both she and her counsel did everything in their power to convince Valley Health to grant Ms. Foda an exemption from its COVID-19 vaccine requirement, or, at the very least, grant her the six-month exemption Dr. Barbazetto referenced in her letter.

Valley Health has made no effort whatsoever to find a solution that could accommodate Ms. Foda's medical needs and its own (so far, undisclosed) need to impose a COVID-19 vaccine. Instead, Valley Health threatened to terminate Ms. Foda on July 31, 2022; August 7, 2022; August 16, 2022; and September 4, 2022. To make matters worse, Mr. Fischetti's August 31, 2022, email relied on a gross misrepresentation of the discussion between Drs. Barbazetto and

Tsiouris. Repeated threats to terminate an employee combined with ever-shifting demands for new documentation and willful misrepresentations can be described only as bad faith.

As explained above, Valley Health could easily have reasonably accommodated Ms. Foda—all it needed to was grant Ms. Foda’s medical exemption, just as the federal government has recognized even healthcare employers must do.

Ms. Foda has not yet been terminated, but absent immediate court intervention, by all accounts, she will be. Valley Health has promised as much several times.

Ms. Foda is therefore likely to prevail on Count II of the Verified Complaint against Valley Health, and, at a minimum, has the requisite reasonable possibility of success.

3. Dr. Tsiouris aided and abetted Valley Health’s illegal conduct.

Dr. Tsiouris is individually liable for his role in Valley Health’s illegal treatment of Ms. Foda. The NJLAD makes it unlawful for “any person, whether an employer or an employee or not, to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this act.” *N.J.S.A.* § 10:5–12(e). New Jersey courts have held that an individual can aid and abet, not only the conduct of another person, but that person’s own conduct. *See Cicchetti v. Morris Cnty. Sheriff’s Office*, 194 N.J. 563, 594 (2008) (holding that “individual liability of a supervisor for acts of discrimination or for creating or maintaining a hostile environment can . . . arise through the ‘aiding and abetting’ mechanism.”). Aiding and abetting “requires active and purposeful conduct.” *Id.* (quoting *Tarr v. Ciasulli*, 181 N.J. 70, 80 (2004)). An aiding and abetting claim has three elements:

‘(1) the party whom the defendant aids must perform a wrongful act that causes an injury; (2) the defendant must be generally aware of his role as part of an overall illegal or tortious activity at the time that he provides the assistance; [and] (3) the defendant must knowingly and substantially assist the principal violation.’

*Id.* (quoting *Tarr*, 181 N.J. at 84).

The Verified Complaint is replete with wrongful acts on Dr. Tsiouris's part that contributed to Valley Health's failure to reasonably accommodate and failure to engage in the interactive process. Dr. Tsiouris let months go by before acting on Ms. Foda's December 15, 2021, vaccine exemption request. VC ¶ 42. Dr. Tsiouris ignored Dr. Samson's detailed, informed opinion, stating that he "simply disagree[s] with [Ms. Foda's] doctor." VC ¶ 49. Dr. Tsiouris stated that he would speak with Dr. Samson, but it "would not change a thing." *Id.* Dr. Tsiouris twisted Dr. Barbazetto's words and misrepresented the substance of what she told him in order to give the impression that Dr. Barbazetto had cleared Ms. Foda to get vaccinated in the immediate aftermath of photodynamic therapy, when, in reality, Dr. Barbazetto had told Dr. Tsiouris the exact opposite. VC ¶¶ 65–68.

In each of these instances, Dr. Tsiouris knowingly and substantially assisted Valley Health in violating Ms. Foda's rights as the final decisionmaker at Valley Health with regard to employees' requests for vaccine exemptions. *See* VC ¶ 29. Dr. Tsiouris has denied the vast majority of medical and religious vaccine exemption requests that Valley Health employees submitted, and his personal zeal for the COVID-19 vaccinations has led him to treat Ms. Foda in an inhumane and outrageous manner. VC ¶¶ 30, 68.

Ms. Foda is therefore likely to prevail on Count III of the Verified Complaint against Dr. Tsiouris, and, at a minimum, has the requisite reasonable possibility of success.

**B. Ms. Foda Will Suffer Irreparable Harm Without Temporary and Preliminary Restraints.**

This Court is the only body that can prevent Valley Health from terminating Ms. Foda's employment on Sunday, September 4, 2022, at which point she would be without health insurance and the ability to care for her son financially. The consequences to Ms. Foda and her

minor son will be devastating, and potentially catastrophic. Ms. Foda easily satisfies the irreparable harm requirement for temporary and preliminary restraints. “Harm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages.” *Delaware River & Bay Auth. v. York Hunter Const., Inc.*, 344 N.J. Super. 361, 365 (Ch. Div. 2001) (quoting *Crowe v. De Gioia*, 90 N.J. 126, 132–33 (1982)).

The Verified Complaint contains numerous ways Ms. Foda and her minor son will be irreparably harmed if the Court does not issue temporary and preliminary restraints. *See generally* VC at 15–17. Despite seeking work at eighteen different pharmacies and healthcare providers, Ms. Foda has been unable to obtain another job as a pharmacist. VC ¶ 71. If Valley Health terminates her, Ms. Foda’s ability to provide for herself and her son will be severely compromised. *Id.* Ms. Foda relies on her income from Valley Health to pay her \$2,650.00 monthly rent, along with her utility bills, which are about \$500.00 per month, and fears imminent eviction if she loses her job. VC ¶ 72. Ms. Foda has a genuine belief that if she loses her job with Valley Health, she and her son may face homelessness. *Id.*

Both Ms. Foda and her son rely on the medical coverage Valley Health provides. VC ¶ 73. At present, Ms. Foda must seek frequent medical care because of her ocular conditions. *Id.* Ms. Foda further has thyroid nodules and must undergo frequent ultrasounds and biopsies to assess whether the nodules are cancerous. *Id.* Failure to detect a cancerous nodule would be catastrophic and could even cause Ms. Foda’s premature death. *Id.* Ms. Foda has further been diagnosed with fibrocystic breast disorder, for which Ms. Foda requires frequent mammograms and ultrasounds. *Id.* Ms. Foda has a mass in her right breast, which requires frequent monitoring. *Id.* Ms. Foda also uses her income for psychotherapy in order to mitigate post-traumatic stress disorder relating to her persecution in Egypt. *Id.* If Ms. Foda and her son lacked medical

insurance in 2021, their out-of-pocket medical expenses would have been \$84,343, exclusive of dental expenses. VC ¶ 76. Ms. Foda and her son rely on the dental insurance Valley Health provides. Ms. Foda has numerous fillings and multiple root canals that require frequent attention. VC ¶ 78.

Ms. Foda's son has a blood disorder, G6PD deficiency disorder, a life-threatening disorder that has previously caused hospitalization and necessitated blood transfusions. VC ¶ 74. Ms. Foda's son likewise relies on Ms. Foda's health insurance to monitor this condition. *Id.* If Ms. Foda's son experienced a hemolytic crisis as a result of his blood disorder, the out-of-pocket expense of immediate treatment would cost at least \$10,000. *Id.*

Ms. Foda's son has poor eyesight and uses Ms. Foda's insurance for optical exams and eyeglasses. VC ¶ 75. Ms. Foda too uses her insurance to obtain eyeglasses. *Id.* Given her already-compromised vision, it is essential for Ms. Foda that she keep her glasses prescription up to date. *Id.*

Ms. Foda's ocular conditions worsen when she experiences stress. VC ¶ 77. Valley Health and Dr. Tsiouris's wrongful conduct have already caused Ms. Foda intense, unbearable stress, causing the vision loss associated with her ocular conditions to worsen. *Id.* Ms. Foda's stress will only worsen if Valley Health terminates her employment. *Id.*

Ms. Foda is eligible to receive a Board of Pharmacy specialty certification, which will result in significant professional advancement for Ms. Foda. VC ¶ 79. To receive this certification, however, Ms. Foda must demonstrate three continuous years of employment. Ms. Foda will meet the three-year mark at Valley Health on September 9, 2022. *Id.* If Valley Health terminates her on September 4, 2022, as threatened, Ms. Foda will lose the opportunity to obtain this important credential. *Id.*

Ms. Foda's son attends public school in a school district well-tailored for his needs, in which Ms. Foda could no longer afford to live if she loses her job with Valley Health. VC ¶ 80. Ms. Foda's son has undergone significant psychological hardships and relies on the counseling his school provides. *Id.* Ms. Foda's son is about to begin his freshman year of high school. *Id.*

### **C. The Balance of Hardships Favor Injunctive Relief.**

Ms. Foda is simply asking that this Court to maintain the status quo while she vindicates her rights under the NJLAD. If the Court does not issue an injunction, Ms. Foda will lose her job with Valley Health; her ability to provide for herself and her son, her and her son's medical, dental, and vision insurance; her ability to obtain a Board of Pharmacy specialty certification; and her ability to send her son to a school that suits his needs.

There is no harm to Defendants if they cannot terminate Ms. Foda. Valley Health will simply have to keep paying an excellent pharmacist to keep doing her job.

When an employee faces imminent and unlawful termination, courts can and should step in to enjoin the employer from unlawfully terminating the employee. *See, e.g., Johnson v. Univ. of Pittsburgh*, 395 F. Supp. 1002, 1011 (W.D. Pa. 1973) (issuing a preliminary injunction preventing a professor's termination when the professor made a "prima facie case of intentional discrimination on the basis of her sex which will result in termination of employment").

*[continued on following page.]*

**V. CONCLUSION**

Plaintiff Hafsa Foda, a/k/a Sofy Foda, respectfully requests that this Honorable Court grant her Application for Order to Show Cause for Temporary and Preliminary Restraints and issue the proposed Order to Show Cause with Temporary Restraints Pursuant to Rule 4:52 filed concurrently herewith.

DATED: September 2, 2022.

Respectfully submitted,

**DHILLON LAW GROUP INC.**

By: */s/ Josiah A. Contarino*

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