

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX**

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In the Matter of the Application of
CHRIS GARRY,
NICOLE CURCIO,
ROXANNE VALDEZ,
LYNN PEPE,
IRENE BASTAS,
MICHELLENE BARRETT,
KIM MODZELEWSKI,
DULCE ALVARADO,
JUDY STAMOS,
KATHERINE PATRYLO,
GERALDA VALCIN,
CHERYL McCLOSKEY,
DIANE NACINOVICH,
AGELIKI HELIOTIS,
KEITH ABBOUD,
TERESA JACKSON DILLIGARD,
MARA GONZALEZ,
ELI WEBER,
MICHAEL VARRIANO,
SHARON BRYANT,
ACISCLO MELENDEZ,
MARY FILLS,
KRZYSZTOF BOGDANOWICZ,
ATHENA CLARKE,
MONIQUE MOORE,
MICHAEL STOLFI,
BRIAN ROMANER,
CURTIS CUTLER,
EMMANUEL ONI,
MARIA ARCODIA,
MOHAMOUD SHAHIN,
RAYMOND WONG,
ANGELO PETRAGLIA,
OKSANA DEKHKANOV,
EMILY ZAPANTIS,
THERESA McALEAVY,
YVONNE COSTELLO,
GINA DEPPERMAN,
ALEXANDRA KOSMETATOS,
AURA MOODY,
DOMINICK IPPOLITO III,
JOHN LOIACONO,

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PETITION

OSCAR BRAVO,
NICOLE BROECKER,
CONNI CALIA,
LETICIA EDGHILL,
IZABELA GLAB,
NANCY ROBINSON,
MARIE LOCASCIO,
CHARLES DeGREGORIO,
VINCENT MAIORINO,
DARIO DeLUCA,
ZUNEY OZUNA,
ALPHONSE PERSICO,
JATNNA BOBADILLA,
JAMES CARNEY,
MICHELLE MARTINEZ,
SALVATORE MAITA,
MATTHEW MORRIS,
PARASKEVE BELTECAS,
JUDE PIERRE,
BRITTANY VELAZQUEZ,
STELLA FINCHUM,
ADRIAN RODRIGUEZ,
ERIKA WEBER,
NICOLE COTILLETTA GORDON,
DAPHNE HALKIAS,
MARIA HARALAMPOPOULOS,
DANIELLE MACKAY,
PAULA MIRITELLO,
VASILIA SKARTSIARIS,
RONALD ZAVALUNOV,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice
Law and Rules

Against

ERIC ADAMS, in his Official Capacity as Mayor of the
City of New York and THE CITY OF NEW YORK,

Respondents.

_____X

Petitioners CHRIS GARRY, NICOLE CURCIO, ROXANNE VALDEZ, LYNN PEPE, IRENE BASTAS, MICHELLENE BARRETT, KIM MODZELEWSKI, DULCE ALVARADO, JUDY STAMOS, KATHERINE PATRYLO, GERALDA VALCIN, CHERYL McCLOSKEY, DIANE NACINOVICH, AGELIKI HELIOTIS, KEITH ABBOD, TERESA JACKSON DILLIGARD, MARA GONZALEZ, ELI WEBER, MICHAEL VARRIANO, SHARON BRYANT, ACISCLO MELENDEZ, MARY FILLS, KRZYSZTOF BOGDANOWICZ, ATHENA CLARKE, MONIQUE MOORE, MICHAEL STOLFI, BRIAN ROMANER, CURTIS CUTLER, EMMANUEL ONI, MARIA ARCODIA, MOHAMOUD SHAHIN, RAYMOND WONG, ANGELO PETRAGLIA, OKSANA DEKHKANOV, EMILY ZAPANTIS, THERESA McALEAVY, YVONNE COSTELLO, GINA DEPPERMAN, ALEXANDRA KOSMETATOS, AURA MOODY, DOMINICK IPPOLITO III, ELIZABETH LOIACONO, OSCAR BRAVO, NICOLE BROECKER, CONNI CALIA, LETICIA EDGHILL, IZABELA GLAB, NANCY ROBINSON, MARIE LOCASCIO, CHARLES DeGREGORIO, VINCENT MAIORINO, DARIO DeLUCA, ZUNEY OZUNA, ALPHONSE PERSICO, JATNNA BOBADILLA, JAMES CARNEY, MICHELLE MARTINEZ, SALVATORE MAITA, MATTHEW MORRIS, PARASKEVE BELTECAS, JUDE PIERRE, BRITTANY VELAZQUEZ, STELLA FINCHUM, ADRIAN RODRIGUEZ, ERIKA WEBER, NICOLE COTILLETTA GORDON, DAPHNE HALKIAS, MARIA HARALAMPOPOULOS, DANIELLE MACKAY, PAULA MIRITELLO, VASILIA SKARTSIARIS, RONALD ZAVALUNOV collectively “Petitioners” through their attorneys, The Mermigis Law Group, P.C., as and for their Article 78 Petition against Eric Adams, the New York City Department of Health and Mental Hygiene, and City of New York (“NYC” or the “City”), as set forth herein, respectfully state and allege, upon information and belief, as follows:

INTRODUCTION

Petitioners have been discriminated against with “*willful or wanton negligence, or recklessness,*” and Respondents have shown a “*conscious disregard of the rights of others or conduct so reckless as to amount to such disregard.*” Petitioners have been ridiculed by Respondents and members of their staff. Petitioners have been mocked for their religious beliefs. Petitioners have been unemployed for over a year and most have lost their homes or the ability to support their families. As a result, Petitioners seek an Order declaring that the Mandate is Arbitrary and Capricious and can no longer be enforced. Petitioners also seek Punitive Damages.

PRELIMINARY STATEMENT

1. President Joe Biden, Governor Kathy Hochul and Senator Chuck Schumer have all declared that the pandemic is over.
2. This action is brought to challenge the Mandate, which requires New York City public sector employees and certain city contractors to be vaccinated against COVID-19. The same or similar requirements have either not been instituted or have been rescinded for virtually everyone else in New York City.
3. On September 20, 2022, Mayor Adams in a press conference announced that there will no longer be a COVID-19 vaccine requirement for private sector employees and students participating in after-school activities but the mandate for public sector employees will remain in place.
4. When asked on September 20, 2022 how he can justify mandating COVID-19 vaccines for the public sector while lifting the same requirement for private sector employees and students, Mayor Adams revealed the complete lack of reason in his response: “I don’t think anything dealing with COVID is makes sense [sic], and there’s no logical pathway of one can

do[sic].” Mayor Adams’ response was fitting, as it perfectly captures the arbitrary and capricious nature of the Mandate.

5. A member of Respondent Mayor Eric Adams’ Advance Team, Chris Baugh recently mocked the Petitioners and made the following admissions about the COVID-19 mandates:

Chris Baugh:

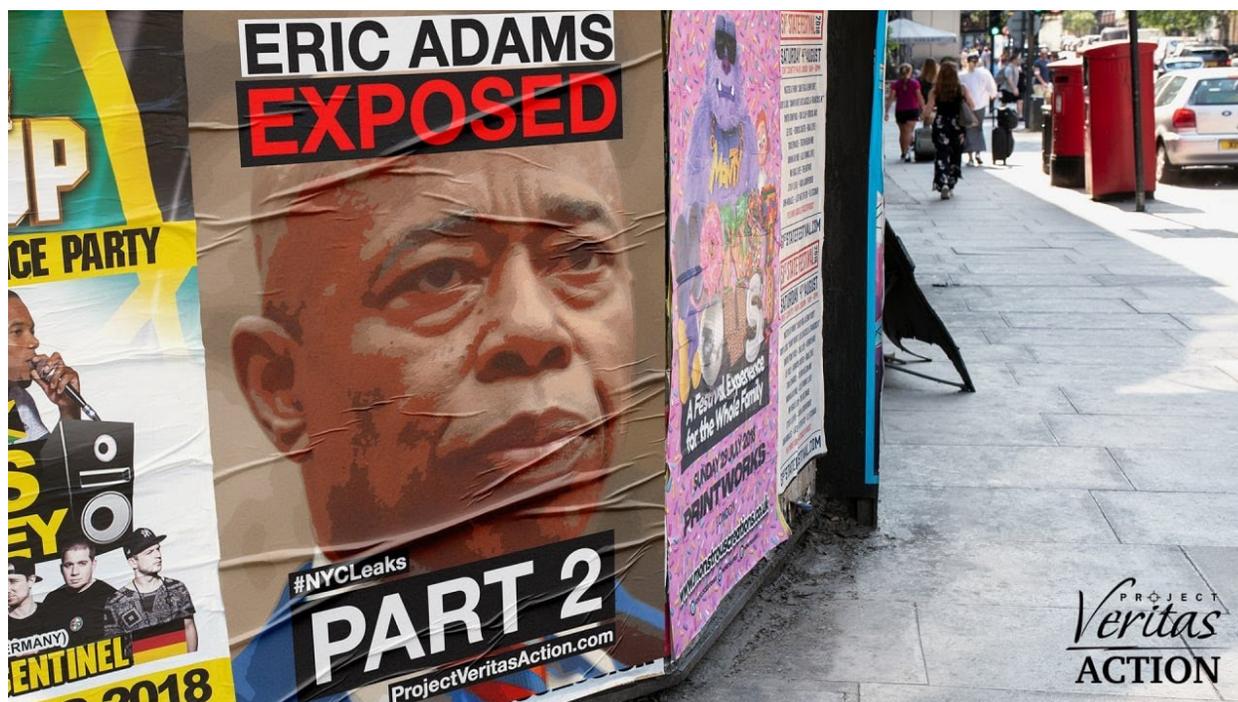
“The cops are mad at us because we rolled back the private sector mandate but we’re not rolling back the public sector mandate.”

“Public Sector employees still have to be vaccinated.”

Reporter: “Why?”

Chris Baugh:

“Who gives a shit? Covid is OVER is the short answer.”



PROJECT
Veritas
ACTION

“Why are we still doing it for the public sector? I don’t know but we will probably stop that in a few months.”

6. New York City now allows everyone within the City, aside from public sector employees, to be unvaccinated. Unvaccinated students, athletes, performers, private sector employers and employees, and tourists can operate within the City without restriction.

Respondents’ Mandate is Arbitrary and Capricious.

7. Judge Porzio in Richmond County Supreme Court recently held that the Mayor: *“made a different decision for similarly situated people based on identical facts. There is nothing in the record to support the rationality of keeping a vaccine mandate for public employees, while vacating the mandate for private sector employees or creating a carveout for certain professions, like athletes, artists, and performers. This is clearly an arbitrary and capricious action because we are dealing with identical unvaccinated people being treated differently by the same administrative agency...The Court finds that in light of the foregoing, the vaccination mandates for public employees and private employees is arbitrary and capricious.”*

Garvey et al. v. The City of New York et al., Index # 85163/2022, October 24, 2022. (Decision and Order, at 5, attached hereto as Exhibit A.)

The Covid-19 Vaccines DO NOT PREVENT Transmission

8. Only months ago, a Pfizer executive confirmed at a hearing in front of the European Parliament that the company **did not test its COVID-19 vaccines before they entered the market to determine whether they prevented the transmission of COVID-19.**

9. During a hearing on the European Union's COVID-19 response, when asked if the Pfizer vaccine was tested on stopping the transmission of the virus before it entered the market,

Pfizer's president of international developed markets stated "[n]o ... we have to really move at the speed of science to really understand what is taking place in the market ... and from that point of view we had to do everything at risk." Special Committee On COVID-19 Pandemic, Eur. Parl. (Oct. 10, 2022), tinyurl.com/ku2w7u3z; [news.com.au](https://www.news.com.au), Pfizer did not know whether Covid vaccine stopped transmission before rollout (Oct. 12, 2022), Youtube, tinyurl.com/4f4vam8z.

10. On August 5, 2021, CDC Director Dr. Rochelle Walensky told CNN's Wolf Blitzer that the Covid-19 vaccine cannot prevent the transmission of the disease. <https://www.thegatewaypundit.com/2021/08/cdc-director-tells-cnn-covid-vaccines-cant-prevent-transmission-video/> **If the covid-19 vaccine no longer prevents transmission of the disease, there should no longer be any mandates for anyone.**

BLITZER: But what about all the fully vaccinated people who get the breakthrough infection? Can they pass it on? Could they pass it on to their children? Could they pass the virus on to older people, especially more vulnerable people with underlying health conditions?

WALENSKY: And that's exactly the point that we made in our guidance.

So, yes, they can with the delta variant. And that was the reason that we changed our guidance last Tuesday. Our vaccines are working exceptionally well. They continue to work well with delta with regard to severe illness and death. They prevent it.

But what they can't do anymore is prevent transmission. So if you are going home to somebody who has not been vaccinated to somebody who can't get vaccinated, somebody who might be immunosuppressed or a little bit frail, somebody who has co-morbidities that put them at high risk, I would suggest you wear a mask in public indoor settings.

11. On December 29, 2020, the World Health Organization's chief scientist, Dr. Soumya Swaminathan, stated that there was a lack of evidence "to be confident that it's going to prevent people from actually getting the infection and therefore being able to pass it on."¹

12. Nearly a year later, **World Health Organization officials admitted that the vaccines "did not fully prevent transmission."**² Indeed, various studies have seriously undermined the narrative that vaccination prevents the transmission of COVID-19, especially the delta and omicron variants.³

The Risks Outweigh the Benefits of Vaccination

13. In April 2021, increased cases of myocarditis and pericarditis were reported in individuals in the United States after receiving the Pfizer and Moderna Covid-19 vaccinations.⁴

14. The Florida Department of Health conducted its own analysis through a self-controlled case series to study mortality risk following mRNA COVID-19 vaccination and found

¹ Sky News Australia, WHO Doesn't have evidence vaccines prevent people transmitting virus to others, Youtube (Dec. 28, 2020), [tinyurl.com/zyeuefzu](https://www.tinyurl.com/zyeuefzu).

² Covid-19 Virtual Press conference transcript, WHO (Nov. 24, 2021), [tinyurl.com/753x25ky](https://www.tinyurl.com/753x25ky).

³ See, e.g., Gunter Kampf, *The epidemiological relevance of the COVID-19-vaccinated population is increasing*, 11 *The Lancet Regl Health, Eur.* 100272 (2021), [tinyurl.com/2jftptbar](https://www.tinyurl.com/2jftptbar); Anika Singanayagam, et al., *Community transmission and viral load kinetics of the SARS-CoV-2 delta (B.1.617.2) variant in vaccinated and unvaccinated individuals in the UK: a prospective, longitudinal, cohort study*, 22 *The Lancet, Infectious Diseases* 183 (2022), [tinyurl.com/2p98x53e](https://www.tinyurl.com/2p98x53e); Carlos Franco-Paredes, *Transmissibility of SARS-CoV-2 among fully vaccinated individuals*, 22 *The Lancet, Infectious Diseases* 16 (2022), [tinyurl.com/yp5d3r66](https://www.tinyurl.com/yp5d3r66); Lihong Liu, et al., *Striking Antibody Evasion Manifested by the Omicron Variant of SARS-CoV-2*, 602 *nature* 676 (2022), [tinyurl.com/mf9dn358](https://www.tinyurl.com/mf9dn358); David W. Eyre, et al., *The impact of SARS-CoV-2 vaccination on Alpha & Delta variant transmission*, [tinyurl.com/34tr2wk](https://www.tinyurl.com/34tr2wk).

⁴ *Clinical Considerations: Myocarditis and Pericarditis after Receipt of mRNA COVID-19 Vaccines Among Adolescents and Young Adults*, Ctrs. for Disease Control & Prevention (last updated Sept. 29, 2022), [tinyurl.com/3m5557jr](https://www.tinyurl.com/3m5557jr).

an increase in the relative incidence of cardiac-related deaths among males 18-39 years old within 28 days following mRNA vaccination.⁵

15. Reports from other countries also indicate that there is a connection between COVID-19 vaccines and cardiovascular events, even death. French and Canadian studies recognize an increase in rates of myocarditis or pericarditis following receipt of COVID-19 mRNA vaccines.⁶

16. Furthermore, excess mortality from heart attacks rose significantly during the COVID-19 pandemic, especially among individuals ages 25 to 44.⁷

17. The New York State Department of Health has acknowledged that the mandated vaccine fails to establish its stated goal, i.e., prevent the spread of Covid-19. (See DOH Response to Comments, p. 25 attached as Exhibit B).

Petitioners Have Natural Immunity

18. All Petitioners have passed covid-19 and have natural immunity.

19. The Mandate excludes personnel who are covid recovered and have natural immunity even though having SARS-CoV-2 confers much greater immunity than a vaccine.

⁵ Press Release, State Surgeon General Dr. Joseph A. Ladapo Issues New mRNA COVID-19 Vaccine Guidance, Fla. Dept. of Health (October 7, 2022), [tinyurl.com/2m423a96](https://www.tinyurl.com/2m423a96); *Exploring the relationship between all-cause and cardiac-related mortality following COVID-19 vaccination or infection in Florida residents: a self-controlled case series study*, Fla. Dept. of Health (Oct. 7, 2022), [tinyurl.com/325dau9m](https://www.tinyurl.com/325dau9m).

⁶ Sarah A. Buchan, . et al., *Epidemiology of Myocarditis and Pericarditis Following mRNA Vaccination by Vaccine Product Schedule and Interdose Interval Among Adolescents and Adults in Ontario, Canada*, 5(6) *Jama Network Open* (June 24, 2022), [tinyurl.com/2jaj2afp](https://www.tinyurl.com/2jaj2afp); Stephane Le Vu, et al., *Age and sex-specific risks of myocarditis and pericarditis following COVID-19 messenger RNA vaccines*, *Nature Commc'ns* 7 (Feb. 25, 2022), [tinyurl.com/6j4zpmvc](https://www.tinyurl.com/6j4zpmvc).

⁷ Jee Hui Yeo, et al., *Excess risk for acute myocardial infarction mortality during the COVID-19 pandemic*, *J. of Medical Virology* (Sept. 29, 2022), [tinyurl.com/ydw4nj2z](https://www.tinyurl.com/ydw4nj2z).

20. Dr. Harvey A. Risch, Professor Emeritus of Epidemiology of the Yale School of Public Health states the following under oath:

“There is no rational public health reason to condition the salaries, jobs or benefits of NYPD police officers on receiving a COVID-19 vaccine, particularly where vaccination was required by November 1, 2021. Due to the waning effectiveness of the COVID-19 vaccine against infection, there is no meaningful difference in the risk of infection or transmission between an officer who complied with the vaccine requirement and an unvaccinated officer. Additionally, natural immunity provides more durable, longer-lived and wider-spectrum protection against existing and future COVID-19 virus strains than vaccine immunity, and therefore there is no rational public health reason for a vaccine mandate that deems individuals who were vaccinated to be compliant but that requires the termination of employment of individuals with prior COVID-19 infection.” (Affidavit of Dr. Harvey A. Risch, Attached as Exhibit C).

21. A recent study showed that natural immune protection after a SARS-CoV-2 infection offers a considerably more of a shield against the variants of the pandemic coronavirus than two doses of the Pfizer vaccine. See the “Comparing SARS-CoV-2 natural immunity to vaccine-induced immunity: reinfections versus breakthrough infections.” (See Study attached as Exhibit D.)

22. In one analysis in the aforementioned study, comparing more than 32,000 people in the health system, the risk of developing symptomatic covid-19 was 27 times higher among the vaccinated, and the risk of hospitalization was eight times higher. (Study Attached as Exhibit D.)

23. “Recovered COVID patients have strong, long-lasting protection against severe disease if reinfected, and evidence about protective immunity after natural infection is at least as

good from the vaccines. Hence, it makes no sense to require vaccines for recovered patients. For them, it simply adds a risk, however small, without any benefit.” (Declaration of Dr. Martin Kuldorff and Dr. Jay Bhattacharya attached as Exhibit E, ¶ 15).

24. “There is no reason to presume that vaccine immunity provides a higher level of protection than natural immunity. There is stronger evidence for long lasting immunity from natural infection than from vaccines.” (Declaration of Dr. Martin Kuldorff and Dr. Jay Bhattacharya, ¶ 15 attached as Exhibit E).

25. Respondents have refused to recognize natural immunity as satisfying the Mandate’s immunization requirements, even though the scientific community worldwide has established that natural immunity is superior to vaccine-elicited immunity.⁸

26. Dr. Anthony Fauci has even confirmed that prior infection is the most effective means of immunization.⁹

27. The Mandate is arbitrary and capricious because it fails to acknowledge natural immunity. The overwhelming majority of New Yorkers possess natural immunity, and the scientific community have conclusively established that natural immunity provides strong and durable protection. However, the Mandate refuses to allow public sector employees to satisfy the City’s immunization requirements through proof of natural immunization. Petitioners have each been immunized against COVID-19 naturally, and therefore possess strong and durable protection against the virus, protection that is at least as good as any provided by a vaccine.

⁸ See, e.g., Plotkin’s Vaccines, 7th Edition, at Section 2.

⁹ See https://www.youtube.com/watch?v=s8c_Py1wgGc (regarding immunization from the flu, Dr. Fauci states “the best vaccination is to get infected yourself.”).

28. For the reasons stated throughout this Petition, Respondent's failure to rescind the Mandate requiring COVID-19 vaccination for city employees is arbitrary and capricious as it is not based on fact or sound reason. The Mandate's continued implementation and enforcement is an abuse of discretion.

Respondents Have No Authority to Mandate the Covid-19 Vaccines

29. In addition to their facial and as applied challenges of the Mandate on the grounds that it is arbitrary and capricious, Petitioners bring this action to challenge Respondents' authority to mandate the Covid-19 vaccines.

30. On January 13, 2023, Supreme Court Judge Gerard Neri struck down the State Covid-19 Mandate for health care workers. Judge Neri ruled that the State Respondents are clearly prohibited from mandating any vaccination outside of those specifically authorized by the legislature. Judge Neri further ruled that the State Mandate was beyond the scope of the State Respondent's authority and is therefore null, void, and of no effect, and the State Respondents are prohibited from implementing or enforcing the State Mandate. (Please see Judge Neri's Decision and Order attached as Exhibit F).

31. The Respondents here are also clearly prohibited from mandating any vaccination outside of those specifically authorized by the legislature. The City Mandate is beyond the scope of the Respondents and should be null, void and of no effect and the Respondents should be prohibited from implementing or enforcing the State Mandate.

Respondents Have Violated New York City Human Rights Law

32. Respondents' actions with respect to Petitioners' denied accommodations violate the New York City Human Rights Law ("NYCHRL"), codified in Title 8, Chapter 1 of the New York City Administrative Code. The NYCHRL requires a more rigorous process than its counterpart, the New York State Human Rights Law. Accordingly, courts must construe the NYCHRL broadly in favor of plaintiffs to the extent that such a construction is reasonably possible. *Albino v. City of New York*, 16 NY3d 473 (2011).

33. The NYCHRL places the burden on the employer to show the unavailability of any safe and reasonable accommodation and to show that any proposed accommodation would place an undue hardship on its business. *Jacobsen v. New York City Health and Hospitals Corporation*, 22 NYS3d 824 (2014).

34. Respondents have violated Administrative Code §8-107(19) as Respondents used a discriminatory practice to coerce, intimidate, threaten, or interfere with, or attempt to coerce, intimidate, threaten or interfere with Petitioners in their exercise or enjoyment of their closely held religious beliefs.

35. The NYCHRL requires Respondents to engage in a cooperative dialogue prior to making a determination on Petitioner's request for a reasonable accommodation.

36. "The term '*cooperative dialogue*' means the process by which a covered entity and a person entitled to an accommodation, or who may be entitled to an accommodation under the law, engage in good faith in a written or oral dialogue concerning the person's accommodation needs; potential accommodations that may address the person's accommodation

needs, including alternatives to a requested accommodation; and the difficulties that such potential accommodations may pose for the covered entity.” N.Y.C. Admin. Code § 8-102.

37. The NYCHRL prohibits Respondents from failing to engage in a cooperative dialogue regarding Petitioner’s request for a reasonable accommodation.

“It shall be an unlawful discriminatory practice for an employer, labor organization or employment agency or an employee or agent thereof to refuse or otherwise fail to engage in a cooperative dialogue within a reasonable time with a person who has requested an accommodation or who the covered entity has notice may require such an accommodation: (1) For religious needs as provided in subdivision 3 of this section.”

N.Y.C. Admin. Code § 8-107 (28)(a).

38. However, the ***Respondents failed to engage in a cooperative dialogue.*** Respondents ***denied Petitioners’ requests for a reasonable accommodation and terminated them without engaging in any cooperative dialogue*** or contacting Petitioners regarding their accommodation requests.

39. By failing to engage in cooperative dialogue with Petitioners, Respondents have shown a ***conscious disregard of the rights of Petitioners.*** As a result, Petitioners are entitled to Punitive Damages.

40. Respondents have shown a willful or wanton negligence by randomly terminating Petitioners without engaging in cooperative dialogue. As a result, Petitioners are entitled to Punitive Damages.

41. Petitioners have been discriminated against with “*willful or wanton negligence, or recklessness,*” and Respondents have shown a “*conscious disregard of the rights of others or conduct so reckless as to amount to such disregard.*”

42. For the reasons stated throughout this Petition, Respondents violated NYCHRL, were arbitrary and capricious, were affected by an error of law, and were an abuse of discretion.

43. As a result, Petitioners are entitled to a reasonable accommodation, reinstatement and Punitive Damages.

PARTIES

44. Petitioner Chris Garry was employed with the DOE for over 23 years. Garry was subject to the Public Sector Mandate, and his religious accommodation request was denied with no cooperative dialogue. After 23 years of dedication and hard work, Petitioner was terminated on February 11, 2022. Petitioner is ready, willing and able to work with the DOE.

45. Petitioner Nicole Curcio was employed with the DOE for over 15 years. Curcio was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After 15 years of dedication and hard work, Petitioner was terminated on February 11, 2022. Petitioner is ready, willing and able to work with the DOE.

46. Petitioner Roxanne Valdez was employed with the DOE for over 15 years. Valdez was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After 15 years of dedication and hard work, Petitioner was terminated on February 11, 2022. Petitioner is ready, willing and able to work with the DOE.

47. Petitioner Lynn Pepe was employed with the DOE for over 21 years. Pepe was subject to the Public Sector Mandate, and her religious accommodation request was denied with

no cooperative dialogue. After 21 years of dedication and hard work, Petitioner was terminated on September 5, 2022. Petitioner is ready, willing and able to work with the DOE.

48. Petitioner Irene Bastas was employed with the DOE for over 14 years. Bastas was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After 14 years of dedication and hard work, Petitioner was terminated. Petitioner is ready, willing and able to work with the DOE.

49. Petitioner Michellene Barrett was employed with the DOE for over 15 years. Barrett was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After 7 years of dedication and hard work, Petitioner was terminated on March 17, 2022. Petitioner is ready, willing and able to work with the DOE.

50. Petitioner Kim Modzelewski was employed with the DOE. Modzelewski was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After years of dedication and hard work, Petitioner was terminated. Petitioner is ready, willing and able to work with the DOE.

51. Petitioner Judy Stamos was employed with the DOE. Stamos was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After years of dedication and hard work, Petitioner was terminated on March 17, 2022. Petitioner is ready, willing and able to work with the DOE.

52. Petitioner Katherine Patrylo was employed with the DOE for over 16 years. Patrylo was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After 16 years of dedication and hard work, Petitioner was terminated. Petitioner is ready, willing and able to work with the DOE.

53. Petitioner Cheryl McCloskey was employed with the DOE for over 5 years. McCloskey was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After over 5 years of dedication and hard work, Petitioner was terminated on February 11, 2022. Petitioner is ready, willing and able to work with the DOE.

54. Petitioner Diane Nacinovich was employed with the DOE for over 7 years. Nacinovich was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After 7 years of dedication and hard work, Petitioner was terminated on April 7, 2022. Petitioner is ready, willing and able to work with the DOE.

55. Petitioner Ageliki Heliotis was employed with the DOE for over 21 years. Heliotis was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After 21 years of dedication and hard work, Petitioner was terminated on March 17, 2022. Petitioner is ready, willing and able to work with the DOE.

56. Petitioner Mara Gonzalez was employed with the DOE for over 16 years. Gonzalez was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After 16 years of dedication and hard work, Petitioner was terminated on March 17, 2022. Petitioner is ready, willing and able to work with the DOE.

57. Petitioner Eli Weber was employed with the DOE for over 20 years. Weber was subject to the Public Sector Mandate, and his religious accommodation request was denied with no cooperative dialogue. After 20 years of dedication and hard work, Petitioner was terminated on February 11, 2022. Petitioner is ready, willing and able to work with the DOE.

58. Petitioner Sharon Bryant was employed with the FDNY for over 17 years. Bryant was subject to the Public Sector Mandate, and her religious accommodation request was denied

with no cooperative dialogue. After 15 years of dedication and hard work, Petitioner was terminated on March 15, 2022. Petitioner is ready, willing and able to work with the FDNY.

59. Petitioner Acisclo Melendez was employed with the FDNY. Melendez was subject to the Public Sector Mandate, and his religious accommodation request was denied with no cooperative dialogue. After years of dedication and hard work, Petitioner was terminated. Petitioner is ready, willing and able to work with the FDNY.

60. Petitioner Mary Fills was employed with the DOE for over 25 years. Fills was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After 25 years of dedication and hard work, Petitioner was terminated on October 31, 2021. Petitioner is ready, willing and able to work with the DOE.

61. Petitioner Athena Clarke was employed with the DOE for over 6 years. Clarke was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After 6 years of dedication and hard work, Petitioner was terminated on April 7, 2022. Petitioner is ready, willing and able to work with the DOE.

62. Petitioner Michael Stolfi was employed with the DSNY for over 21 years. Stolfi was subject to the Public Sector Mandate, and his religious accommodation request was denied with no cooperative dialogue. After 21 years of dedication and hard work, Petitioner was terminated on November 18, 2021. Petitioner is ready, willing and able to work with the DSNY.

63. Petitioner Brian Romaner was employed with the FDNY. Romaner was subject to the Public Sector Mandate, and his religious accommodation request was denied with no cooperative dialogue. After over 4 years of dedication and hard work, Petitioner was terminated. Petitioner is ready, willing and able to work with the FDNY.

64. Petitioner Curtis Cutler Jr. was employed with the DSNY for over 7 years. Cutler was subject to the Public Sector Mandate, and his religious accommodation request was denied with no cooperative dialogue. After 7 years of dedication and hard work, Petitioner was terminated on February 11, 2022. Petitioner is ready, willing and able to work with the DSNY.

65. Petitioner Emmanuel One was employed with the Mayor's Office for 2 years. Oni was subject to the Public Sector Mandate, and his religious accommodation request was denied with no cooperative dialogue. After 2 years of dedication and hard work, Petitioner was terminated on October 26, 2021. Petitioner is ready, willing and able to work.

66. Petitioner Mahmoud Shahin was employed with Maimonides Medical Center for 3 years. Shahin was subject to the Public Sector Mandate, and his religious accommodation request was denied with no cooperative dialogue. After 3 years of dedication and hard work, Petitioner was terminated on November 22, 2021. Petitioner is ready, willing and able to work.

67. Petitioner Angelo Petraglia was employed with the New York City Cyber Command for 4 years. Petraglia was subject to the Public Sector Mandate, and his religious accommodation request was denied with no cooperative dialogue. After over 4 years of dedication and hard work, Petitioner was terminated on February 1, 2022. Petitioner is ready, willing and able to work.

68. Petitioner Monique Moore was employed with the DOE for over 18 years. Moore was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After 18 years of dedication and hard work, Petitioner was terminated on February 11, 2022. Petitioner is ready, willing and able to work with the DOE.

69. Petitioner Leticia Edghill was employed with the DOE for over 20 years. Edghill was subject to the Public Sector Mandate, and her religious accommodation request was denied

with no cooperative dialogue. After 20 years of dedication and hard work, Petitioner was terminated on March 17, 2022. Petitioner is ready, willing and able to work with the DOE.

70. Petitioner Emily Zapantis was employed with the DOE for over 22 years. Zapantis was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After 22 years of dedication and hard work, Petitioner was terminated on March 17, 2022. Petitioner is ready, willing and able to work with the DOE.

71. Petitioner Oksana Dekhkanov was employed with the DOE for over 11 years. Dekhkanov was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After 11 years of dedication and hard work, Petitioner was terminated on March 21, 2022. Petitioner is ready, willing and able to work with the DOE.

72. Petitioner Theresa McAleavey was employed with the DOE for over 16 years. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After 16 years of dedication and hard work, Petitioner was terminated. Petitioner is ready, willing and able to work with the DOE.

73. Petitioner Yvonne Costello was employed with the DOE for over 22 years. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After 22 years of dedication and hard work, Petitioner was terminated on February 11, 2022. Petitioner is ready, willing and able to work with the DOE.

74. Petitioner Gina Depperman was employed with the DOE for over 8 years. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After 8 years of dedication and hard work, Petitioner was terminated on October 29, 2021. Petitioner is ready, willing and able to work with the DOE.

75. Petitioner Aura Moody was employed with the DOE for over 23 years. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After 23 years of dedication and hard work, Petitioner was terminated. Petitioner is ready, willing and able to work with the DOE.

76. Petitioner Alexandra Kosmetatos was employed with the DOE for over 24 years. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After 24 years of dedication and hard work, Petitioner was terminated. Petitioner is ready, willing and able to work with the DOE.

77. Petitioner Nicole Broecker was employed with the DOE. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After years of dedication and hard work, Petitioner was terminated. Petitioner is ready, willing and able to work with the DOE.

78. Petitioner Conni Calia was employed with the DOE. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After years of dedication and hard work, Petitioner was terminated. Petitioner is ready, willing and able to work with the DOE.

79. Petitioner Marie Locascio was employed with the New Jewish. Home. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After years of dedication and hard work, Petitioner was terminated. Petitioner is ready, willing and able to work.

80. Petitioner Nancy Robinson was employed with the DOE. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied with no

cooperative dialogue. After years of dedication and hard work, Petitioner was terminated on March 17, 2022. Petitioner is ready, willing and able to work with the DOE.

81. Petitioner Raymond Wong was employed with the Dept. of Parks. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After years of dedication and hard work, Petitioner was terminated on February 4, 2022. Petitioner is ready, willing and able to work with the Dept. of Parks.

82. Petitioner Dominick Ippolito was employed with Shop Rite. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After years of dedication and hard work, Petitioner was terminated. Petitioner is ready, willing and able to work.

83. Petitioner Izabela Glab was employed with the DOH. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After years of dedication and hard work, Petitioner was terminated. Petitioner is ready, willing and able to work.

84. Petitioner Geralda Valcin was employed with the DOE. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After years of dedication and hard work, Petitioner was terminated. Petitioner is ready, willing and able to work with the DOE.

85. Petitioner Charles DeGregorio was employed with the DOE. Petitioner was subject to the Public Sector Mandate, and his religious accommodation request was denied with no cooperative dialogue. After years of dedication and hard work, Petitioner was terminated. Petitioner is ready, willing and able to work with the DOE.

86. Petitioner Erika Weber was employed with NYC Early Intervention. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. Petitioner is ready, willing and able to work.

87. Petitioner Stella Finchum was employed with the DOE for 25 years. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After years of dedication and hard work, Petitioner was terminated. Petitioner is ready, willing and able to work with the DOE.

88. Petitioner Jatna Bobadilla was employed with NYC Health and Hospitals for over 9 years. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. Petitioner is ready, willing and able to work.

89. Petitioner Vincent Maiorino was employed with DSNY for over 16 years. Petitioner was subject to the Public Sector Mandate, and his religious accommodation request was denied with no cooperative dialogue. After over 16 years of dedication and hard work, Petitioner was terminated on February 11, 2022. Petitioner is ready, willing and able to work.

90. Petitioner Dario DeLuca was employed with NYCHA for over 12 years. Petitioner was subject to the Public Sector Mandate, and his religious accommodation request was denied with no cooperative dialogue. After over 12 years of dedication and hard work, Petitioner was terminated on February 11, 2022. Petitioner is ready, willing and able to work.

91. Petitioner James Carney was employed with the DOT. Petitioner was subject to the Public Sector Mandate, and his religious accommodation request was denied with no cooperative dialogue. Petitioner is ready, willing and able to work with the DOT.

92. Petitioner Salvatore Maita was employed with the FDNY. Maita was subject to the Public Sector Mandate, and his religious accommodation request was denied with no cooperative dialogue. After 16 years of dedication and hard work, Petitioner was terminated on February 13, 2022. Petitioner is ready, willing and able to work with the FDNY.

93. Petitioner Matthew Morris was employed with the FDNY. Morris was subject to the Public Sector Mandate, and his religious accommodation request was denied with no cooperative dialogue.

94. Petitioner Jude Pierre was employed with the FDNY. Pierre was subject to the Public Sector Mandate, and his religious accommodation request was denied with no cooperative dialogue.

95. Petitioner Paraskeve Beltecas was employed with the DOE for 15 years. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After years of dedication and hard work, Petitioner was terminated. Petitioner is ready, willing and able to work with the DOE.

96. Petitioner Daphne Halkias was employed with the DOE. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After years of dedication and hard work, Petitioner was terminated. Petitioner is ready, willing and able to work with the DOE.

97. Petitioner Vasilias Skartsiaris was employed with the DOE for 7 years. Petitioner was subject to the Public Sector Mandate. After years of dedication and hard work, Petitioner was terminated. Petitioner is ready, willing and able to work with the DOE.

98. Petitioner Danielle Mackey was employed with the DOE for 15 years. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied

with no cooperative dialogue. After years of dedication and hard work, Petitioner was terminated on April 11, 2022. Petitioner is ready, willing and able to work with the DOE.

99. Petitioner Michelle Martinez was employed as a Detective with the NYPD. Martinez was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue.

100. Petitioner Nicole Cotilletta Gordon was employed with the DOE for 17 years. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After years of dedication and hard work, Petitioner was terminated on March 17, 2022. Petitioner is ready, willing and able to work with the DOE.

101. Petitioner Paula Miritello was employed with the NYC Environmental Bureau for 24 years. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After 24 years of dedication and hard work, Petitioner was terminated on February 11, 2022. Petitioner is ready, willing and able to work.

102. Petitioner Adrian Rodriguez was employed with the DOE for 4 years. Petitioner was subject to the Public Sector Mandate. After 4 years of dedication and hard work, Petitioner was terminated on February 12, 2022. Petitioner is ready, willing and able to work with the DOE.

103. Petitioner Maria Haralampopoulos was employed with the DOE. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After years of dedication and hard work, Petitioner was terminated. Petitioner is ready, willing and able to work with the DOE.

104. Petitioner Alphonse Persico was employed with the NYCDOC. Persico was subject to the Public Sector Mandate, and his religious accommodation request was denied with no cooperative dialogue. Persico was terminated on February 11, 2022.

105. Petitioner Maria Arcodia was employed with the DOE for 10 years. Petitioner was subject to the Public Sector Mandate, and her medical accommodation request was denied with no cooperative dialogue. After years of dedication and hard work, Petitioner was terminated on February 11, 2022. Petitioner is ready, willing and able to work with the DOE.

106. Petitioner Teresa Marie Jackson Dilligard was employed with the DOE for 28 years. Petitioner was subject to the Public Sector Mandate, and her religious accommodation request was denied with no cooperative dialogue. After 28 years of dedication and hard work, Petitioner was terminated on February 11, 2022. Petitioner is ready, willing and able to work with the DOE.

107. Petitioner Brittany Velazquez was employed with the DOE for 10 years. Petitioner was subject to the Public Sector Mandate. After years of dedication and hard work, Petitioner was terminated on October 4, 2021. Petitioner is ready, willing and able to work with the DOE.

108. Petitioner Krzysztof Bogdanowicz is employed with the NYPD for 17 years. Petitioner was subject to the Public Sector Mandate. After years of dedication and hard work, Petitioner is awaiting the appeal of his denial of his application for a religious accommodation.

109. Petitioner John Loiacono was employed with Union Building 32 BJ for 8 years. Petitioner was subject to the Private Sector Mandate. After years of dedication and hard work, Petitioner was terminated. Petitioner is ready, willing and able to work with the Union.

110. Petitioner Ronald Zavalunov was employed with the FDNY as an EMT. Petitioner was subject to the Public Sector Mandate and was terminated on July 6, 2022. Petitioner is ready, willing and able to work.

111. Respondent Eric Adams is the Mayor of the City of New York and has issued the arbitrary and capricious Order. The Mayor is being sued in his official capacity. On September 20, 2022, Eric Adams announced that there will no longer be a COVID-19 vaccine requirement for private sector employees and students participating in after-school activities but the mandate for public sector employees will remain in place.

112. Respondent, City of New York, is a municipality organized and existing under the laws of New York State. The City of New York was and is responsible for the policy, practice, supervision, and conduct of its Officers and Agencies at all relevant times hereto, including the Mandate. The City of New York is a body within the meaning of Article 78 of the New York Civil Practice Law and Rules (“CPLR”). The City of New York’s principal office is located at 1 Centre Street, New York, New York 10007.

VENUE

113. Venue is proper in Bronx County because it is where Respondents implement and enforce the Mandate, and it is where Respondents made some of the determinations to deny Petitioners’ religious or medical accommodation requests. Thus, it is where the material events otherwise took place in accordance with CPLR 506(b).

FIRST CLAIM FOR RELIEF

Public Sector Mandate - Arbitrary and Capricious Under Article 78

114. Petitioners repeat and re-allege each and every allegation contained in the preceding paragraphs of this Petition as though fully set forth herein.

115. Petitioners commenced this special proceeding under CPLR §§ 3001 and 7803.

116. The Court's role in an Article 78 proceeding is to determine, upon the facts before an administrative body, whether a challenged administrative body determination had a "rational basis" in the record or was "arbitrary and capricious." See *Matter of Pell v. Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck*, Westchester County, 34 NY2d 222 (1974); *Matter of E.G.A. Assoc. v. New York State Div. of Haus. & Community Renewal*, 232 AD2d 302 (1st Dept 1996). An administrative decision is "arbitrary and capricious" if it is "without sound basis in reason, and in disregard of the facts." See *Matter of Century Operating Corp. v. Popolizio*, 60 NY2d 483, 488 (1983), citing *Matter of Pell*, 34 NY2d 222 at 231.

117. The Court may overturn administrative action where it is "taken without sound basis in reason" or "regard to the facts." *Id.* A rational basis exists where the determination is "[supported] by proof sufficient to satisfy a reasonable [person], of all the facts necessary to be proved in order to authorize the determination." *Ador Realty, LLC v. Division of Housing and Community Renewal*, 25 AD3d 128, 139-140 (2d Dept 2005), quoting *Matter of Pell*, 34 NY2d 222 at 231).

118. For the reasons set forth throughout this Petition, Respondents' implementation and enforcement of the Mandate is arbitrary and capricious under Article 78 of the CPLR. For all Petitioners, the Mandate on its face is and has been arbitrary and capricious from the date of its implementation. Alternatively, the Mandate was rendered arbitrary and capricious by Mayor Adams' rescission of all other NYC mandates.

119. The Mandate is not supported by a sound basis in reason in a variety of ways. First, it is heavily based on other COVID-19 vaccine mandates that have already been rescinded, specifically the former Governor's "Key to NYC" COVID-19 vaccine mandate that required

employees and patrons of all private businesses in NYC that interact with others in a public setting to be vaccinated against COVID-19. Professional athletes, performers, and their entourages were mysteriously exempted soon after the “Key to NYC” was implemented. On March 7, 2022, this mandate was changed, lifting the vaccine requirement for patrons while still requiring employees to show proof of vaccination. On September 20, 2022, the remaining mandate on private sector employers and employees was rescinded due to the updated guidance regarding COVID-19 transmission. Likewise, mandates have been lifted in other jurisdictions to reflect the change in current guidance. As such, Respondents’ basis for the Mandate is foundationless, as the primary order it relies on has been rescinded.

120. New York City now allows everyone within the City, aside from public sector employees, to be unvaccinated. Unvaccinated students, athletes, performers, private sector employers and employees, and tourists can operate within the City without restriction. Respondents’ Mandate is Arbitrary and Capricious.

121. A member of Respondent Mayor Eric Adams’ Advance Team, Chris Baugh recently made the following admissions about the COVID-19 mandates:

Chris Baugh:

“The cops are mad at us because we rolled back the private sector mandate but we’re not rolling back the public sector mandate.”

“Public Sector employees still have to be vaccinated.”

Reporter: “Why?”

Chris Baugh:

“Who gives a shit? Covid is OVER is the short answer.”

122. Respondent Mayor Adams himself blatantly admitted that there was no rhyme or reason to the Mandate in his press conference on September 20, 2022, when he said: “I don’t think anything dealing with COVID makes sense [sic], and there’s no logical pathway one can do [sic].”¹⁶ No explanations were offered as to why requiring public sector employees to be vaccinated while allowing virtually everyone else in the City to be unvaccinated would somehow ensure the safety of NYC. The singling out of such a small group of the population (who dedicated their careers to serving the citizens of NYC throughout the pandemic) without explanation is punitive. More importantly, it is clearly arbitrary.

123. By reason of the foregoing, Respondents’ refusal to lift the COVID-19 vaccine requirement for city workers should be declared arbitrary and capricious and the Mandate should be immediately rescinded.

124. Second, the Mandate ignores the current scientific data surrounding the infection and transmission of COVID-19, specifically the role that COVID-19 vaccines play in preventing infection and transmission. The CDC Director, the World Health Organization and the New York State Department of Health have stated publicly that the vaccines do not prevent transmission of covid-19:

- A. In 2021, World Health Organization officials admitted that the vaccines **“did not fully prevent transmission.”** tinyurl.com/753x25ky
- B. On August 5, 2021, CDC Director Dr. Rochelle Walensky told CNN’s Wolf Blitzer that the Covid-19 vaccine cannot prevent the transmission of

the disease.

BLITZER: But what about all the fully vaccinated people who get the breakthrough infection? Can they pass it on? Could they pass it on to their children? Could they pass the virus on to older people, especially more vulnerable people with underlying health conditions?

WALENSKY: And that's exactly the point that we made in our guidance.

So, yes, they can with the delta variant. And that was the reason that we changed our guidance last Tuesday. Our vaccines are working exceptionally well. They continue to work well with delta with regard to severe illness and death. They prevent it.

But what they can't do anymore is prevent transmission. So if you are going home to somebody who has not been vaccinated to somebody who can't get vaccinated, somebody who might be immunosuppressed or a little bit frail, somebody who has co-morbidities that put them at high risk, I would suggest you wear a mask in public indoor settings.

C. The New York State Department of Health has acknowledged that the mandated vaccine fails to establish its stated goal, i.e., prevent the spread of Covid-19. (See DOH Response to Comments, p. 25 attached as Exhibit B).

D. Dr. Anthony Fauci—the chief medical advisor to the President—contracted COVID-19 on June 15, 2022. Dr. Fauci is fully vaccinated and has been boosted twice.

124. The Mandate also excludes personnel who are covid recovered and have natural immunity even though having SARS-CoV-2 confers much greater immunity than a vaccine.

125. “Recovered COVID patients have strong, long-lasting protection against severe disease if reinfected, and evidence about protective immunity after natural infection is at least as

good from the vaccines. Hence, it makes no sense to require vaccines for recovered patients. For them, it simply adds a risk, however small, without any benefit.” (Declaration of Dr. Martin Kuldorff and Dr. Jay Bhattacharya attached as Exhibit E, ¶ 15).

126. “There is no reason to presume that vaccine immunity provides a higher level of protection than natural immunity. There is stronger evidence for long lasting immunity from natural infection than from vaccines.” (Declaration of Dr. Martin Kuldorff and Dr. Jay Bhattacharya, ¶ 15 attached as Exhibit E).

127. The Mandate is arbitrary and capricious because it fails to acknowledge natural immunity. The overwhelming majority of New Yorkers possess natural immunity, and the scientific community have conclusively established that natural immunity provides strong and durable protection. However, the Mandate refuses to allow public sector employees to satisfy the City’s immunization requirements through proof of natural immunization. Petitioners have each been immunized against COVID-19 naturally, and therefore possess strong and durable protection against the virus, protection that is at least as good as any provided by a vaccine.

128. For the reasons stated throughout this Petition, Respondent’s failure to rescind the Mandate requiring COVID-19 vaccination for city employees is arbitrary and capricious as it is not based on fact or sound reason. The Mandate’s continued implementation and enforcement is an abuse of discretion.

SECOND CLAIM OF RELIEF

Error Of Law Under Article 78

129. Petitioners repeat and re-allege each and every allegation contained in the preceding paragraphs of this Petition as though fully set forth herein.

130. Petitioners commenced this special proceeding under CPLR §§ 3001 and 7803.

131. Pursuant to the NYCHRL, “[i]t shall be an unlawful discriminatory practice for an employer or an employee or agent thereof to impose upon a person as a condition of obtaining or retaining employment any terms or conditions, compliance with which would require such person to violate, or forego a practice of, such person’s creed or religion . . . and the employer shall make reasonable accommodation to the religious needs of such person.” N.Y.C. Admin. Code § 8-107(3)(a).

132. Respondents are required to apply the NYCHRL in determining Petitioners’ requests for a reasonable accommodation to the Mandate. However, the Respondents failed to apply the standards of law properly and failed to meet the requirements under the NYCHRL in making accommodation determinations; thus, their decisions are affected by an error of law pursuant to CPLR § 7803 (3).

133. Additionally, regarding accommodation, the NYCHRL requires Respondents to engage in a cooperative dialogue prior to making a determination. *“It shall be an unlawful discriminatory practice for an employer . . . to refuse or otherwise fail to engage in a cooperative dialogue within a reasonable time with a person who has requested an accommodation....”* N.Y.C. Admin. Code § 8-107 (28)(a)(1). See also N.Y.C. Admin. Code § 8-107 (28)(e) (stating “[t]he determination that no reasonable accommodation would enable the person requesting an accommodation to satisfy the essential requisites of a job or enjoy the right or rights in question may only be made after the parties have engaged, or the covered entity has attempted to engage, in a cooperative dialogue.”); *Jacobsen*, 22 NY3d 824, 838 n.2 (2014) (holding that an “employer’s failure to hold a constructive dialogue about the possibility of a reasonable accommodation may indicate that the employer has discriminated . . . within the

meaning of . . . the [NYCHRL.]”); *Wellner v. Montefiore Med. Ctr.*, No. 17 CIV. 3479, 2019 U.S. Dist. LEXIS 147844, 2019 WL 4081898, at *11 (SDNY Aug. 29, 2019) (holding that “a court can consider a defendant’s failure to engage in an interactive process as evidence that the defendant engaged in discrimination or retaliation.”); *Citywide Administrative Services*, “Reasonable Accommodation Procedural Guidelines” (2021), p. 14, available at https://www1.nyc.gov/assets/dcas/downloads/pdf/agencies/reasonable_accommodation_procedural_guidelines.pdf

(stating that “[t]he cooperative dialogue is critical. Failure to engage in the cooperative dialogue within a reasonable time with a person who has requested an accommodation . . . is a violation of law.”).

134. “The term ‘cooperative dialogue’ means the process by which a covered entity and a person entitled to an accommodation, or who may be entitled to an accommodation under the law, engage in good faith in a written or oral dialogue concerning the person’s accommodation needs; potential accommodations that may address the person’s accommodation needs, including alternatives to a requested accommodation; and the difficulties that such potential accommodations may pose for the covered entity.” N.Y.C. Admin. Code § 8 (emphasis added).

135. Respondents denied Petitioners’ requests for reasonable accommodations, despite their natural immunity and terminated them without engaging in any cooperative dialogue.

136. “The determination that no reasonable accommodation would enable the person requesting an accommodation to satisfy the essential requisites of a job or enjoy the right or rights in question may only be made after the parties have engaged, or the covered entity has attempted to engage, in a cooperative dialogue.” N.Y.C. Admin. Code § 8-107 (28)(e).

137. Furthermore, the NYCHRL places the burden on Respondents to show that no safe and reasonable accommodations are available and that any proposed accommodation would cause an undue hardship on its business. Jacobsen, 22 NY3d at 835. Respondents' denial lacks any reasoning and does not meet the obligations imposed by the NYCHRL.

138. By reason of the foregoing, Respondents' denial of Petitioners' religious accommodation requests should be declared an error of law, and Respondents' decision to deny Petitioners' reasonable accommodation requests should be annulled, voided, and vacated. All Petitioners should be reinstated with a reasonable accommodation.

THIRD CLAIM OF RELIEF

Abuse of Discretion under Article 78

139. Petitioners repeat and re-allege each and every allegation contained in the preceding paragraphs of this Petition as though fully set forth herein.

140. Petitioners commenced this special proceeding under CPLR §§ 3001 and 7803. 89. In evaluating the appropriateness of discipline, constituting an abuse of discretion, the Court is limited to evaluating whether the penalty imposed is so disproportionate to the offense as to be shocking to one's sense of fairness. *Powers v. St. John's Univ. School Of Law*, 25 NY3d (2015); *Beilis v. Albany Medical Coll. of Union Univ.*, 136 AD2d 42, 45 (3d Dept 1988). A result is shocking to one's sense of fairness if the sanction imposed is so grave in its impact on the individual subjected to it that it is disproportionate to the misconduct, incompetence, failure or turpitude of the individual, or to the harm or risk of harm to the agency or institution, or to the public generally visited or threatened by the derelictions of the individuals." *Pell*, 34 N.Y.2d 222 at 234.

141. Respondent Mayor Eric Adams is the Chief Executive of the City of New York.

142. The Mayor shall be responsible for the effectiveness and integrity of city government operations and shall establish and maintain such policies and procedures as are necessary and appropriate to accomplish this responsibility. See New York City Charter, Ch. 1, §8.a.

143. Initially, the Respondents justified the emergency mandates on the assumption that vaccines could meaningfully prevent transmission.

144. This assumption turned out to be false. There is no longer any credible basis to argue that vaccines can meaningfully stop the spread of COVID.

145. Exempting athletes, performing artists, student-athletes, and private-sector workers from the Mandate while terminating city employees is unjustifiable and an abuse of discretion.

146. Further, exempting athletes, performing artists, student-athletes, and private-sector workers from the Mandate while terminating city employees who hold sincerely held religious convictions that prevent them from vaccination is unjustifiable and an abuse of discretion.

147. Removing the Mandate for professional athletes and Broadway performers to “put New-York-City-based performers on a level playing field” without affording “normal citizens” the same opportunity while terminating or threatening to terminate public sector employees is an abuse of discretion.

148. Further, removing the Mandate for professional athletes and Broadway performers “because the city has to function” while terminating or threatening to terminate

public sector employees who hold religious convictions that prevent them from receiving a COVID-19 vaccine is an abuse of discretion.

149. This Mandate has had crippling economic and other consequences for the city employees and all persons in New York City, who are now made substantially less safe by the staffing crisis.

150. Based on the interview with a Member of Eric Adams' Advance Team, the Respondents have acted with animus in denying religious exemptions and reasonable accommodations from the Mandate, which is an abuse of discretion.

151. The only demonstrable impact from Respondents' denial of Petitioners' reasonable accommodation requests is to inflict irreparable and continuing harm upon Petitioners.

152. Respondents' denial of Petitioners' requests for reasonable accommodations and their subsequent consequences for not being vaccinated and exempting athletes, performing artists, student-athletes, and private-sector workers from the Mandate while terminating city employees is based on social and economic consideration that are unrelated to the goals of protecting the public health.

153. By reason of the foregoing, Respondents' denial of Petitioners' requests for reasonable accommodations and their subsequent consequences for not being vaccinated and exempting athletes, performing artists, student-athletes, and private-sector workers from the Mandate while terminating city employees who hold sincerely held religious convictions that prevent them from vaccination is unjustifiable and should be declared an abuse of discretion, and the Respondents' Mandate should be annulled, voided, and vacated.

FOURTH CLAIM OF RELIEF

Violation of NYAC §8-107 of the NYCHRL

154. Petitioners repeat and re-allege each and every allegation contained in the preceding paragraphs of this Petition as though fully set forth herein.

155. Pursuant to the NYCHRL at NYAC §8-107(3)(a),” it shall be an unlawful discriminatory practice for an employer or an employee or agent thereof to impose upon a person as a condition of obtaining or retaining employment any terms or conditions, compliance with which would require such person to violate, or forego a practice of, such person’s creed or religion . . . and the employer shall make reasonable accommodation to the religious needs of such person.”

156. Respondents violated Administrative Code §8-107(19) by using a discriminatory practice to coerce, intimidate, threaten, or interfere with, or attempt, coerce, intimidate, threaten or interfere with Petitioners in their exercise or enjoyment of their closely held religious beliefs and protection of their rights to reasonable accommodation.

157. The NYCHRL requires a more rigorous process than the State Human Rights Law. Courts “must construe Administrative Code § 8-107 (7), like other provisions of the City’s Human Rights Law, broadly in favor of discrimination plaintiffs, to the extent that such a construction is reasonable possible.” *Albino v. City of New York*, 16 NY3d 473 (2011). Unlike the NYSRHL, the NYCHRL places the burden on the employer to show the unavailability of any safe and reasonable accommodation and to show that any proposed accommodation would place an undue hardship on its business. *Jacobsen v. New York City Health and Hospitals Corporation*, 22 NYS3d 824 (2014).

158. The failure to provide an accommodation to Petitioners who qualify for religious or medical accommodations from the Mandate, violates NYAC §8-107 and is discriminatory, arbitrary, capricious, has been made in violation of lawful statutory procedure, was affected by an error of law, and was an abuse of discretion.

FIFTH CLAIM OF RELIEF

PUNITIVE DAMAGES under the NYCHRL

159. Petitioners repeat and re-allege each and every allegation contained in the preceding paragraphs of this Petition as though fully set forth herein.

160. The New York City Human Rights Law makes clear that punitive damages are available for violations of the statute.

161. A plaintiff is entitled to punitive damages where the wrongdoer's actions amount to willful or wanton negligence, or recklessness, or where there is "a conscious disregard of the rights of others or conduct so reckless as to amount to such disregard." (*see Home Ins. Co. v American Home Prods. Corp.*, 75 NY2d 196, 203-204 [1990] [internal quotation marks omitted]).

162. Punitive damages are intended not only to "punish the tortfeasor" but also to "deter future reprehensible conduct" ([Ross v Louise Wise Servs., Inc.](#), 8 NY3d 478, 489 [2007]

163. Punitive damages represent punishment for wrongful conduct that goes beyond mere negligence and are warranted only where aggravating factors demonstrate an additional level of wrongful{**30 NY3d at 332} conduct (*see Home Ins. Co.*, 75 NY2d at 203-204).

Accordingly, there must be some heightened standard for such an award.

164. The standard for determining punitive damages under the NYCHRL is whether the wrongdoer has engaged in discrimination with willful or wanton negligence, or recklessness, or a "conscious disregard of the rights of others or conduct so reckless as to amount to such disregard" (*see Home Ins. Co.*, 75 NY2d at 203-204).

165. New York City now allows everyone within the City, aside from public sector employees, to be unvaccinated. Unvaccinated students, athletes, performers, private sector employers and employees, and tourists can operate within the City without restriction.

166. When a member of Respondent Adams Advance Team was asked:

“Public Sector employees still have to be vaccinated.”

Reporter: “Why?”

Chris Baugh:

“Who gives a shit? *Covid is OVER is the short answer.*” See Above Exchange between Reporter and Chris Baugh.

167. Respondents have mocked and ridiculed Petitioner’s religious beliefs and have shown a callous disregard to the religious convictions of Petitioners. Respondents failed to engage in any cooperative dialogue as required by New York City Human Rights Law.

168. Respondents never engaged in any discussion for a reasonable accommodation with any of the Petitioners.

169. Instead, Petitioners were “*thrown to the curb*” and callously terminated without being engaged in any cooperative dialogue or having discussions of accommodations for their sincerely held religious beliefs.

170. Respondents have brazenly and willfully violated New York City Human Rights Law and have clearly shown a conscious disregard of the New York City Human Rights Law for their failure to engage in any cooperative dialogue as required by the NYCHRL.

171. Punitive damages **MUST** be awarded to punish the Respondents and to deter future reprehensible conduct by Respondents.

172. As a result of Respondents' willful conduct and their conscious disregard of NYCHRL, Petitioners have been unemployed for over a year and most have lost their homes, their livelihoods and the ability to support their families.

173. By reason of the foregoing, Petitioners respectfully request Punitive Damages in the amount of \$250,000,000.00.

WHEREFORE, Petitioners respectfully request an order and judgment:

1. Declaring the Mandate is arbitrary and capricious and an abuse of discretion;
2. Declaring that Respondents' Mandate is unenforceable;
3. Declaring that Respondents' denial of Petitioners' requests for religious or medical accommodation to the Mandate is arbitrary, capricious, an error of law, and an abuse of discretion;
4. Declaring that Respondents' decision to deny Petitioners' religious and or medical exemptions is annulled, voided, and vacated;
5. Ordering that Petitioners are reinstated to their respective jobs;
6. Declaring that Respondents violated Petitioners' rights under the NYCHRL and NYAC §8-107; and
7. Awarding Petitioners Punitive Damages in the amount of \$250,000,000.00;

8. Awarding Petitioners their reasonable attorneys' fees, costs, and expenses because, *inter alia*, the Respondents' position was not "substantially justified;" and

9. Granting such further relief to which Petitioners may be entitled as a matter of law or equity, or which the Court determines to be just and proper.

Dated: Syosset, New York
January 18, 2023

THE MERMIGIS LAW GROUP, P.C.
Attorneys for Petitioners

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