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UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

ANNIE AHN, *et al.*,

Plaintiffs,

vs.

SANTA CLARA COUNTY,

Defendant.

Case No.: 5:25-cv-06980-PCP

**PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION TO
DISMISS FIRST AMENDED
COMPLAINT**

Date: April 2, 2026

Time: 10:00 a.m.

Crtrm: 8, 4th Floor

Judge: The Honorable P. Casey Pitts

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I. INTRODUCTION

In this action against Defendant Santa Clara County (“Defendant” or the “County”), Plaintiffs allege the County violated Title VII of the Civil Rights Act, the Fair Housing and Employment Act, and the Free Exercise Clause of the First Amendment to the United States Constitution when it failed to reasonably accommodate their sincerely-held religious beliefs that conflicted with the County’s vaccination requirement. Even though the County granted Plaintiffs (with one exception) religious exemptions from the vaccine mandate, instead of reasonably accommodating them with masking, testing, remote work and/or transfers to lower-risk jobs, the County placed them on indefinite unpaid administrative leave. The County also gave preferential treatment to employees who had disability and medical exemptions over those with religious exemptions by actively assisting them in finding alternative positions that would accommodate their medical disability. Those with religious exemptions were left to apply for new positions and engage in a competitive recruitment process to obtain the positions.

Defendant now moves to dismiss Plaintiffs’ claims, arguing: (1) Plaintiffs’ religious beliefs are not actually religious, but secular; (2) Defendant is immune from FEHA liability under California Government Code section 855.4; and (3) Plaintiffs failed to timely exhaust their administrative remedies. Each of these arguments fails.

First, unlike the plaintiff in *Detwiler v. Mid-Columbia Medical Center*, 156 F.4th 886 (9th Cir. 2025), who objected to COVID-19 *testing* and not *vaccines*, Plaintiffs adequately allege the religious nature of their beliefs that conflicted with the County’s vaccination requirement. *Detwiler* itself acknowledges that an objection to taking a COVID-19 vaccine based upon religious objection to abortion is a valid religious objection (*id.* at 896–97, 896 n.2), and many of the Plaintiffs based their exemption requests on their belief that the vaccines contain or were developed using aborted fetal cells. Whether Plaintiffs’ beliefs are scientifically accurate is irrelevant (and Defendant’s request for judicial notice is improper), so long as they are sincere. Furthermore, courts have found that Plaintiffs’ other reasons for objecting to the vaccines—such as feeling called by God through prayer and their understanding of scripture not to take the vaccine, or reliance on scriptural teaching that their body is the temple of the Holy Spirit and must

1 be kept clean—are indeed religious beliefs. The fact that these religious beliefs may overlap with
 2 secular considerations does not negate their religious nature. The Court should therefore deny
 3 Defendant’s motion to dismiss Plaintiffs’ Title VII, Free Exercise and *Monell* claims.

4 Second, Defendant is not immune under Government Code section 855.4, which only
 5 immunizes discretionary policy decisions and not subsequent ministerial actions implementing
 6 those policy decisions. *See Johnson v. State*, 69 Cal. 2d 782, 793, 796 (1968). Plaintiffs’ FEHA
 7 claims are not based upon the County’s discretionary policy decision to adopt the vaccine mandate
 8 but rather its application of the vaccine mandate to Plaintiffs, which is a ministerial performance
 9 of a mandatory duty and is not subject to immunity. The Court must therefore deny Defendant’s
 10 motion to dismiss Plaintiffs’ FEHA claim.

11 Third, Plaintiffs timely exhausted their administrative remedies. Defendant’s argument
 12 that Annie Ahn, Lourdes Gomez, Danele Howard, William Kozich, Dale Nelson, Aristides
 13 Pulido, Roxanna Ruano, and Arnulfo Sanchez have not adequately alleged they timely exhausted
 14 their administrative remedies is meritless. Whether these eight Plaintiffs failed to timely exhaust
 15 their administrative remedies requires a factual inquiry that is inappropriate at the motion to
 16 dismiss stage. In any event, these Plaintiffs under the single-filing rule, can “piggyback” off the
 17 other twenty-four plaintiffs’ undisputedly timely charges with the EEOC and CRD.

18 Finally, should the Court grant any part of Defendant’s motion, Plaintiffs request an
 19 opportunity to amend the complaint to cure any defect, as is required by rule 15(a) of the Federal
 20 Rules of Civil Procedure.

21 **II. STATEMENT OF FACTS**

22 On August 5, 2021, the County mandated that all County employees must be vaccinated
 23 against COVID-19 or face termination. FAC ¶ 7. Plaintiffs were all County employees at the time
 24 whose religious beliefs prevented them from taking the vaccine or boosters. FAC ¶¶ 7, 9-40. Some
 25 of the Plaintiffs objected that the vaccines contained or were developed using aborted fetal cell
 26 tissue which violated their religious belief that abortion is murder. *Id.* ¶¶ 11, 12, 18, 21, 22, 23,
 27 26, 27, 28, 32, 33, 35, 36, 38, 39. Others objected that they felt called by God through prayer and
 28 through their understanding of scripture to not take the COVID-19 vaccine. FAC ¶¶ 10-13, 15,

17, 18, 20-36, 38-39. Still other Plaintiffs relied on scripture's teaching that their body is the temple of the Holy Spirit and must be kept clean. FAC ¶¶ 10-18, 20, 21-26, 29, 34, 37.¹ The County informed Plaintiffs it would accept requests for exemption from the vaccine mandate for medical, disability, and religious reasons. *Id.* ¶ 7. Plaintiffs all requested religious exemptions from the vaccine mandate, and, except for one Plaintiff, the County granted them all. *Id.* However, the County subsequently informed Plaintiffs that, due to the purportedly high-risk nature of their jobs, they could not continue to work in their current positions without vaccinating. *Id.* Instead of engaging in good faith negotiations to determine reasonable accommodations, Defendant relegated Plaintiffs to unpaid leave and stripped them of their employment benefits. *Id.* By contrast, Defendant assisted individuals with medical and disability exemptions to the COVID-19 vaccine requirement with transfers and reassignments. Those with religious exemptions were left to apply for new positions and engage in a competitive recruitment process to obtain the positions. *Id.* ¶¶ 7, 59. Defendant also allowed some unvaccinated employees to work in high-risk settings in spite of, and in conflict with, its claim that permitting Plaintiffs to continue working unvaccinated would pose an undue hardship to the County. *Id.* ¶ 7.

Plaintiffs filed this action on August 18, 2025 and seek damages and equitable and injunctive relief related to the County's vaccine orders, policies and conduct that violated California's Fair Employment and Housing Act (FEHA) and Title VII and deprived Plaintiffs of their rights to free exercise of religion. *Id.* ¶ 8. Prior to filing the complaint, Plaintiffs timely exhausted their administrative remedies under Title VII by filing charges with the Equal Employment Opportunity Commission (EEOC) and California Civil Rights Department (CRD) and obtaining right-to-sue letters. *Id.* ¶¶ 9-49 & Ex. A. Plaintiffs timely exhausted their administrative remedies because they were all members of the Class in *UnifySCC v. Cody*, No. 5:22-cv-01019-BLF, and the pendency of the class action tolled Plaintiffs' time to exhaust their administrative remedies from August 23, 2022 until the Court decertified the Class on May 21, 2025. *Id.* ¶ 75.

¹ Similarly, Plaintiffs Ahn, Gomez, and Volle each assert it is a tenet of their religion, and a sincerely held religious belief, that their bodies must be kept natural and clean. FAC ¶¶ 9, 19, 40.

III. LEGAL STANDARDS FOR A MOTION TO DISMISS

Rule 8(a)(2) of the Federal Rules of Civil Procedure requires “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The statement need not be specific as long as it gives “the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (alteration in original) (quotations and citation omitted) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). “[T]he pleading standard Rule 8 announces does not require detailed factual allegations, but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555) (quotations omitted). Statements that are mere labels, conclusions, or “naked assertion[s]” are insufficient. *Id.* (alteration in original) (quoting *Twombly*, 550 U.S. at 557). However, “when ruling on a defendant’s motion to dismiss, a judge must accept as true all of the factual allegations contained in the complaint,” (*Erickson*, 551 U.S. at 94) and dismissal is appropriate “only where there is no cognizable legal theory or an absence of sufficient facts . . . to state a facially plausible claim to relief.” *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (quotations omitted) (quoting *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)) (citing *Iqbal*, 556 U.S. at 667). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). “Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Iqbal*, 556 U.S. at 679 (citation omitted).

IV. ARGUMENT

A. Plaintiffs Adequately Allege That Their Bona Fide Religious Beliefs Conflicted with the County’s Mandatory Vaccination Requirement

Title VII provides that it is unlawful for an employer to “discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . religion” 42 U.S.C. § 2000e-2(a)(1). The term “religion” includes “all aspects of religious observance and practice, as well as belief.” *Id.* § 2000e(j). A

1 plaintiff must establish a prima case by proving that: “(1) he had a bona fide religious belief, the
 2 practice of which conflicted with an employment duty; (2) he informed his employer of the belief
 3 and conflict; and (3) the employer threatened him with or subjected him to discriminatory
 4 treatment, including discharge, because of his inability to fulfill the job requirements.” *Heller v.*
 5 *EBB Auto Co.*, 8 F.3d 1433, 1438 (9th Cir. 1993). Defendant only contests the first element,
 6 arguing that 30 of the 32 plaintiffs have failed to adequately allege they held bona fide religious
 7 beliefs that conflicted with an employment duty. MTD at 5, 8.²

8 Regarding religious beliefs, “it is no business of courts to say . . . what is a religious practice
 9 or activity.” *Heller*, 8 F.3d at 1438 (alteration in original) (citation omitted). And “[i]t is not within
 10 the judicial ken to question the centrality of particular beliefs or practices to a faith, or the validity
 11 of particular litigants’ interpretation of those creeds.” *Hernandez v. Comm’r*, 490 U.S. 680, 699
 12 (1989) (citation omitted). Neither is it within the judicial function to inquire whether a party
 13 “correctly perceived the commands of their . . . faith. Courts are not the arbiters of scriptural
 14 interpretation.” *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 716 (1981). And a court
 15 may not consider whether a religious belief is true or false. *U.S. v. Ballard*, 322 U.S. 78, 86–88
 16 (1944). “The Court’s ‘narrow function . . . is to determine’ whether the plaintiffs’ asserted religious
 17 belief reflects ‘an honest conviction’” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682,
 18 686 (2014) (quoting *Thomas*, 450 U.S. at 716).

19 A plaintiff’s burden when alleging a conflict between an employment requirement and a
 20 religious belief “is fairly minimal.” *Bolden-Hardge v. Off. of Cal. State Controller*, 63 F.4th 1215,
 21

22 ² According to the Declaration of Rick Chang, Exhibit A, Defendant challenges the religious
 23 beliefs of the following 17 plaintiffs as being personal or secular: Annie Ahn, Jorge Alvarez,
 24 Brandon Bowyer, Shirley Childs, Lananh D’Amour, Megan DeDios, Sinora Freeland, Lourdes
 25 Gomez, Lydia Gonzales-Murphy, Danele Howard, Rashaad Malvo, Carlos Padilla, Brenda Perez,
 26 Timothy Perry, Aristides Pulido, Arnulfo Sanchez, and Martha-Kathleen Volle. According to the
 27 Declaration of Rick Chang, Exhibit B, Defendant challenges the religious beliefs of the following
 28 13 plaintiffs as also being personal or secular, although it appears Defendant is primarily
 challenging these plaintiffs’ allegations concerning the vaccines containing or deriving from
 aborted fetal cells: Jeremy Garvin, William Kozich, Brandon Lim, Brian Miller, Rustyn Mooney,
 Duane Moten, Suzanne Nichols, Prabhakar Isaac, Dalen Nelson, Christina Rodriguez, Roxana
 Ruano, Adam Valle, and Brandi Villegas. Defendant does not challenge the religious beliefs of
 Lawanda Avila and Coorina Ayala.

1 1223 (9th Cir. 2023) (citing *Thomas*, 450 U.S. at 715). That other individuals have alleged the
 2 same conflicts supports the notion that the alleged beliefs reflect an “honest conviction.” *Id.*, 63
 3 F.4th at 1223 n.5. “Courts should not undertake to dissect religious beliefs . . . because [they] are
 4 not articulated with the clarity and precision that a more sophisticated person might
 5 employ.” *Thomas*, 450 U.S. at 715. The employee seeking an accommodation only needs to
 6 provide “enough information . . . to permit the employer to understand the existence of a conflict
 7 between the employee’s religious practices and the employer’s job requirements.” *Heller*, 8 F.3d
 8 at 1439.

9 Plaintiffs allege various sincerely held religious beliefs that conflicted with the County’s
 10 vaccine mandate. Defendant relies entirely on *Detwiler v. Mid-Columbia Med. Ctr.*, 156 F.4th 886,
 11 893 (9th Cir. 2025)³ to argue (MTD at 5-10) that 30 of the plaintiffs’ objections to taking the
 12 vaccine were based on medical or secular preferences rather than religious beliefs. This misreads
 13 and misapplies *Detwiler*. In *Detwiler*, the plaintiff requested and received a religious exemption
 14 from her employer’s COVID-19 vaccine requirement. *Detwiler*, 156 F.4th at 890–91. The plaintiff
 15 objected to taking the vaccines because they were “created from fetal cell lines” and contained
 16 “harmful substances,” which violated her beliefs against abortion and the introduction of harmful
 17 substances into her body. *Id.* Her employer granted her exemption request and accommodated her
 18 by allowing her to use personal protective equipment and to submit to weekly antigen testing for
 19 COVID-19, which “required a participant to insert a cotton swab dipped in ethylene oxide (“EtO”)
 20 into one’s nostril.” *Id.* at 891. Plaintiff requested further accommodation, this time seeking
 21 exemption from the antigen testing because of her belief that EtO is a carcinogenic substance. *Id.*
 22 She proposed she be allowed to either submit to saliva testing instead or work remotely full-time.
 23 *Id.* The district court granted the defendant’s motion to dismiss finding that the plaintiff’s
 24 complaint was couched in religious terms, but her belief was not based “on the Bible or any other
 25
 26

27 ³ On October 21, 2025, Appellant Sherry H. Detwiler filed a Petition for Panel Rehearing and
 28 Petition for Rehearing En Banc, and on December 22, 2025, Appellees Mid-Columbia Medical
 Center and Cheri McCall filed a Response to the Petitions. *Detwiler v. Mid-Columbia Medical
 Center, et al.*, Case No. 23-3710 (9th Cir.), Dkt. Nos. 72, 99.

1 religious tenet or teaching, but rather on her research-based scientific medical judgments.” *Id.* at
2 892.

3 Breaking with, as the dissent puts it, “every published circuit court decision on this issue”
4 (*id.* at 903 (Van Dyke, J., dissenting)), the Ninth Circuit affirmed the district court’s dismissal of
5 the plaintiff’s complaint, holding that the plaintiff had not sufficiently pled a religious belief that
6 conflicted with an employment duty. *Id.* at 898–99. Importantly, the Court did not question
7 whether her religious beliefs conflicted with taking the COVID-19 vaccine; it held her belief that
8 the antigen test contained a harmful substance was a personal medical belief, not a religious one.

9 The present matter is distinguishable because, unlike the employer in *Detwiler*, Defendant
10 contests the religious nature of Plaintiffs’ objections to taking the COVID-19 vaccine. *See North*
11 *v. Washington*, No. 3:23-cv-05552, 2025 WL 2721207, at *9 (W.D. Wash. Sept. 24, 2025)
12 (“*Detwiler* does not foreclose North’s argument that she held a sincerely religious belief that
13 conflicted with her ability to receive the vaccine. Importantly, the Ninth Circuit held that
14 *Detwiler*’s basis for seeking an exemption from *antigen testing*, not vaccination, was secular in
15 nature.”). The *Detwiler* court itself explicitly distinguished that case from the cases decided by
16 other circuit courts upholding a plaintiff’s exemption request in relation to vaccine mandates as
17 opposed to testing requirements. *Detwiler*, 156 F.4th at 899 n. 5.

18 Here, Plaintiffs were willing to undergo testing and only objected to the vaccine
19 requirement, so *Detwiler* is inapplicable. Every other circuit court that has directly assessed the
20 claim that one’s religious beliefs that their body is a temple or the religious opposition to the use
21 of fetal cells in the development or testing of the vaccine has held that such beliefs are religious in
22 nature and conflicted with an employer’s vaccine mandate. *See, e.g., Bazinet v. Beth Israel Lahey*
23 *Health, Inc.*, 113 F.4th 9, 16 (1st Cir. 2024) (holding objection to taking the vaccine grounded in
24 a religious belief opposing abortion conflicted with employer’s COVID-19 vaccine requirement);
25 *Gardner-Alfred v. Fed. Rsrv. Bank of N.Y.*, 143 F.4th 51, 66 (2d Cir. 2025) (holding religious
26 objection to receiving vaccines that are “derived from,” “manufactured with,” or “produced with
27 aborted [fetal] cell lines” conflicted with employer’s vaccine requirement); *Barnett v. Inova Health*
28 *Care Servs.*, 125 F.4th 465, 471 (4th Cir. 2025) (holding that belief that taking the vaccine would

1 be sinful given personal reading of the Bible, personal instruction from God through prayer, and
 2 that her body was the temple were sufficient to allege a conflict with employer's vaccine
 3 requirement); *Lucky v. Landmark Med. of Mich.*, 103 F.4th 1241, 1243–44 (6th Cir. 2024) (holding
 4 belief that the body is a temple and answer to prayer were sufficiently connected to objection to
 5 vaccine mandate); *Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1009–12 (7th Cir. 2024) (holding
 6 allegations that the plaintiff's body was a temple and that taking the vaccine violated her religious
 7 conscience to sufficient demonstrate a conflict with employer's vaccine requirement); *Ringhofer*
 8 *v. Mayo Clinic, Ambulance*, 102 F.4th 894, 901–02 (8th Cir. 2024) (reversing dismissal and
 9 holding that religious beliefs about body being a temple and faith in God were sufficiently
 10 connected to objections to the employer's vaccine mandate).

11 **1. Plaintiffs' Various Objections are Religious in Substance**

12 In arguing that “at least 17 Plaintiffs” have not adequately alleged a conflict between their
 13 religious beliefs and a job requirement, Defendant mischaracterizes their beliefs as personal or
 14 secular, rather than religious. But, much like the cases listed above that concerned religious
 15 objections to vaccine mandates (as opposed to the testing in *Detwiler*), Plaintiffs' objections are
 16 religious in nature.

17 For example, many of the Plaintiffs allege that they felt called by God through prayer and
 18 through their understanding of scripture to not take the COVID-19 vaccine. FAC ¶¶ 10-13, 15, 17,
 19 18, 20-36, 38-39. That an individual believes he or she was specifically told by God to abstain
 20 from a certain act is quintessentially a religious belief. *See, e.g., Ballard*, 322 U.S. at 87 (describing
 21 various religious teachings, including the “power of prayer,” as “deep in the religious convictions
 22 of many”); *Barnett*, 125 F.4th at 470 (allegations about personal instruction from God through
 23 prayer sufficient); *Lucky*, 103 F.4th at 1243 (holding answer to prayer sufficiently connected to
 24 objection to vaccine mandate).

25 Furthermore, some of the plaintiffs rely on scripture's teaching that their body is the
 26 temple of the Holy Spirit and must be kept clean, or something very similar. FAC ¶¶ 9, 10, 11-
 27 14, 15-18, 19, 20, 21-26, 29, 34, 37, 40. This is also a religious belief. *See, e.g., Barnett*, 125 F.4th
 28 at 471 (holding plaintiff's belief that her body is a temple is a religious belief); *Lucky*, 103 F.4th

at 1243 (holding belief that the body is a temple is sufficiently connected to objection to vaccine mandate); *Ringhofer*, 102 F.4th at 901 (same); *North*, 2025 WL 2721207, at *9 (“The Ninth Circuit’s decision [in *Detwiler*] did not affect the district court’s acknowledgement of ‘the sincerity and religiosity of Detwiler’s belief in her body as a temple and even the implied prohibition on ingesting harmful substances’ that led to her employer’s acceptance of her religious objection to the vaccine itself.”). While there are also secular reasons for making “clean” choices, that does not negate Title VII’s protections because a plaintiff’s religious exemption may be based in part on beliefs that are not religious in nature. *See Passarella*, 108 F.4th at 1010 (“[T]he fact that an accommodation request also invokes or, as here, even turns upon secular considerations does not negate its religious nature”); *Kather v. Asante Health Sys.*, No. 1:22-cv-01842, 2023 WL 4865533, at *3 (D. Or. July 28, 2023) (noting that a plaintiff’s “overlapping secular and religious objections do not place a requested accommodation outside the scope of Title VII”); *Shafer v. Legacy Health*, No. 3:23-cv-01543, 2024 WL 1932544, at *4 (D. Or. May 2, 2024) (where the plaintiff informed the defendant “that her Catholic faith and associated anti-abortion beliefs conflict with [the] vaccine mandate,” her “additional references to following her conscience, therapeutic proportionality, and moral duty [did] not change [the court’s] analysis”). “A court generally may not discount a plaintiff’s religious belief based on the court’s determination that the belief is inconsistent, unreasonable, or at odds with the beliefs of the plaintiff’s co-religionists; what matters is whether the position is based on an honest conviction.” *Varkonyi v. United Launch All., LLC*, No. 2:23-cv-00359, 2024 WL 1677523, at *3 (C.D. Cal. Feb. 21, 2024) (citing *Thomas*, 450 U.S. at 715–16).

“[T]he burden to allege a conflict with religious beliefs is fairly minimal.” *Bolden-Hardge*, 63 F.4th at 1223 (citing *Thomas*, 450 U.S. at 715). Plaintiffs have met that burden. *See, e.g., Little v. L.A. Cnty. Fire Dep’t*, No. 2:24-cv-04353, 2025 WL 409427, at *4 (C.D. Cal. Jan. 25, 2025) (where the court held the plaintiff had adequately alleged a conflict by alleging he “is a devout Christian with bona fide religious beliefs on marriage, sex, and family” and that his compliance with a requirement that he raise the Progress Pride Flag or ensure that it be raised and properly flown, would conflict with those beliefs.”).

2. Plaintiffs' Objections Based Upon Presence or Use of Aborted Fetal Cells Are Religious in Nature

Some of the plaintiffs objected to taking the vaccine because aborted fetal cells were used in the manufacture or development of the vaccine or because of their belief that the vaccines contain aborted fetal cells. These plaintiffs believe the vaccines are products of abortion, which is murder. FAC ¶¶ 11, 12, 18, 21, 22, 23, 26, 27, 28, 32, 33, 35, 36, 38, 39. Courts have recognized similar fetal-cell objections as constituting sincere religious beliefs that conflict with vaccine mandates. *See North*, 2025 WL 2721207, at *8 (collecting cases); *see also Detwiler*, 156 F.4th at 896–97, 896 n.2 (recognizing opposition to the use of fetal cells used in developing COVID-19 vaccines as a “specific religious belief” capable of supporting Title VII claims); *Bazinet*, 113 F.4th at 16 (objection to taking the vaccine grounded in a religious belief opposing abortion); *Gardner-Alfred*, 143 F.4th at 66 (belief that vaccines that are “derived from,” “manufactured with,” or “produced with aborted [fetal] cell lines” religious in nature).

Defendant argues (MTD at 8) that Plaintiffs’ beliefs about fetal cells are not scientifically accurate, but that is not a requirement of a religious belief. *Keene v. City & Cnty. of S.F.*, No. 22-16567, 2023 WL 3451687, at *2 (9th Cir. May 15, 2023) (remanding a COVID vaccine case where the plaintiff asserted a religious conflict based on supposed fetal cell lines in the vaccine because “it seems that the district court erroneously held that Appellants had not asserted sincere religious beliefs because their beliefs were not scientifically accurate.”); *cf. Detwiler*, 156 F.4th at 896 n.2 (noting that the *Keene* plaintiff had pled a specific religious belief); *Doe v. S.D. Unified Sch. Dist.*, 19 F.4th 1173, 1176 n.3 (9th Cir. 2021) (“We may not and do not question the legitimacy of Jill Doe’s religious beliefs regarding COVID-19 vaccinations.”). Whether the vaccines actually contain or were developed or manufactured using aborted fetal cells is therefore of no consequence as long as the plaintiffs sincerely believed they were. *See Thomas*, 450 U.S. at 715 (noting it is not the court’s job to determine what beliefs are reasonable); *Bazinet*, 113 F.4th at 16–17 (noting that employer’s claim that she was mistaken about vaccines being derived from aborted fetal cells was “irrelevant” as the question is about the religious character of the belief, not the factual foundation); *Rockmond Dunbar v. Twentieth Century Fox Television, et al.*, No. 22-cv-1075, 2025 WL 3211432, at *1 (C.D. Cal. Sept. 23, 2025) (“[T]he *Detwiler* standard ‘does not direct [district]

1 courts to examine the sincerity or the reasonableness of a belief.”) (alteration in original) (citation
2 omitted).

3 Accepting these plaintiffs’ allegations as true, as the Court must at this stage, they have
4 also sufficiently pleaded a religious belief that conflicts with receiving the COVID-19 vaccine.

5 **B. Plaintiffs Adequately Allege Defendant’s Violation of the Free Exercise**
6 **Clause and Their *Monell* Claim**

7 “The Free Exercise Clause provides that ‘Congress shall make no law . . . prohibiting the
8 free exercise’ of religion.” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 524 (2022) (alteration
9 in original). “The Clause protects not only the right to harbor religious beliefs inwardly and
10 secretly. It does perhaps its most important work by protecting the ability of those who hold
11 religious beliefs of all kinds to live out their faiths in daily life through ‘the performance of (or
12 abstention from) physical acts.’” *Id.* (citations omitted). “[A] plaintiff may carry the burden of
13 proving a free exercise violation in various ways, including by showing that a government entity
14 has burdened his sincere religious practice pursuant to a policy that is not ‘neutral’ or ‘generally
15 applicable.’” *Id.* at 525 (citations omitted). “The determination of what is a ‘religious’ belief or
16 practice is more often than not a difficult and delicate task However, the resolution of that
17 question is not to turn upon a judicial perception of the particular belief or practice in question;
18 religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order
19 to merit First Amendment protection.” *Thomas*, 450 U.S. at 714. *See also Waln v. Dysart Sch.*
20 *Dist.*, 54 F.4th 1152, 1165 (9th Cir. 2022) (“Because Waln sufficiently alleged that beading her
21 graduation cap and adorning it with an eagle feather was rooted in her religion, the First
22 Amendment presumptively protects this practice.”). If a plaintiff makes this showing, the Court
23 should find a violation of the First Amendment “unless the government can satisfy ‘strict scrutiny’
24 by demonstrating its course was justified by a compelling state interest and was narrowly tailored
25 in pursuit of that interest.” *Kennedy*, 597 U.S. at 525 (quoting *Church of Lukumi Babalu Aye, Inc.*
26 *v. Hialeah*, 508 U.S. 520, 546 (1993)).

27 Plaintiffs allege Defendant violated the Free Exercise Clause because its “vaccine orders
28 and policies were not neutral and generally applicable because, prior to Court intervention,
Defendant prioritized medical exemptions over religious exemptions.” FAC ¶ 80; *see also id.* ¶¶

81-82. Plaintiffs’ FAC explains under the County’s vaccine mandate, medically exempt employees were “entitled to priority consideration for placement in or selection for vacant positions as part of the accommodation process, consistent with disability law.” *See* FAC, Ex. C. In practice, this resulted in the County referring religiously exempt and medically exempt employees in high-risk settings to different departments that offered different accommodation processes. Employees with medical exemptions were referred to work with the County’s Equal Opportunity Division (“EOD”), which assisted medically exempt employees in identifying positions that would accommodate the employee’s medical disability. Once a vacancy was identified, the EOD would work with the department to directly place the medically exempt employee into the identified position. The medically exempt employee did not have to apply or compete for the position. In contrast, employees with religious exemptions were referred to work with the County’s Employment Services Agency (“ESA”), who created a VaxJobReview Team. This team merely assisted religiously exempt employees in identifying open County positions. The employee was required to apply for the position themselves and engage in a competitive recruitment process to obtain the position. Religiously exempt employees did not know the risk tier of the position they were applying for until they applied for the new position. Religiously exempt employees were not granted automatic placement/transfer or preferential treatment. After Judge Freeman in *UnifySCC v. Cody, et al.*, No. 5:22-cv-01019-BLF (N.D. Cal.) issued a preliminary injunction enjoining this practice on June 30, 2022 (*see id.*, Dkt. No. 44), the County responded by no longer providing transfers or reassignments to any employees with exemptions—religious or medical. Instead, all unvaccinated employees with exemptions were required to apply for a new position. *See* FAC ¶¶ 37 n.2, 57-59.

Defendant argues (MTD at 11) that the Court should dismiss the Free Exercise claim as to 30 of the plaintiffs because they “plead insufficient facts about their religious beliefs or have failed to demonstrate a nexus between their religion and the specific belief in conflict with the work requirement.” To state a Free Exercise claim, Plaintiffs are required to plead that a government entity has burdened their sincere religious practice or belief pursuant to a policy that is not neutral or generally applicable, and Plaintiffs have more than met this burden. In *Thomas*,

the Supreme Court found that the plaintiff’s testimony that continuing to work with armaments “would be against all of the . . . religious principles that . . . I have come to learn . . .” was sufficient evidence that the plaintiff “terminated his employment for religious reasons.” *Thomas*, 450 U.S. at 714, 716 (citation omitted). This is not a case where the plaintiffs’ religious beliefs are “so bizarre, so clearly nonreligious in motivation, as not to be entitled to protection under the Free Exercise Clause . . .” *Id.* at 715. “Courts are not arbiters of scriptural interpretation.” *Id.* at 716. The question for this Court is whether Plaintiffs have adequately alleged that their objections to the County’s vaccine mandate were made “because of [] honest conviction[s]” that taking the vaccine was forbidden by their religions. *Id.* A court must make a sincerity inquiry with “a light touch, or judicial shyness,” limited “almost exclusively [to] a credibility assessment.” *Moussazadeh v. Tex. Dep’t of Crim. Just.*, 703 F.3d 781, 792 (5th Cir. 2012), *as corrected* (Feb. 20, 2013) (cleaned up). “Repeatedly and in many different contexts, [the Supreme Court has] warned that courts must not presume to determine the place of a particular belief in a religion or the plausibility of a religious claim.” *Emp. Div., Dept. of Hum. Res. of Or. v. Smith*, 494 U.S. 872, 877 (1990), *superseded by statute on other grounds. See also Burwell*, 573 U.S. at 686 (“It is not for the Court to say that the religious beliefs of the plaintiffs are mistaken or unreasonable.”). Whether Plaintiffs’ religious convictions are honest or sincere is a factual inquiry the Court should not decide on a motion to dismiss. *U.S. v. Seeger*, 380 U.S. 163, 185 (1965) (sincerity of belief is “a question of fact”).

All of the cases Defendant cites are inapposite because the plaintiffs did not specify *any* religious beliefs. *Sefeldeen v. Alameida*, 238 F. App’x 204, 206 (9th Cir. 2007) (“Petitioner identifies no evidence in the record suggesting that eating the offered vegetarian meal plan violated any principles of his personal religious beliefs.”); *Gumienny v. McDowell*, No. 17-cv-01592, 2018 WL 6113084, at *5 (C.D. Cal. May 25, 2018) (“he has not demonstrated that consuming a diet that lacks chicken forces him to violate his sincerely held religious beliefs”); *Hill v. Bonnifield*, No. 2:19-cv-08989, 2024 WL 647410, at *7 (C.D. Cal. Jan. 3, 2024), *report and recommendation adopted in part*, No. CV 19-8989, 2024 WL 1619276 (C.D. Cal. Apr. 12, 2024) (“Plaintiff notably does not allege that any RMA program foods were required by the

1 dietary laws of his religion”); *White v. Davenport*, No. 8:23-cv-02300-, 2024 WL 1329780, at *5
 2 (C.D. Cal. Mar. 26, 2024) (plaintiff’s religious beliefs were “unspecified”); *George v. Grossmont*
 3 *Cuyamaca Cmty. Coll. Dist. Bd. of Governors*, No. 22-cv-0424, 2022 WL 16722357, at *4 (S.D.
 4 Cal. Nov. 4, 2022) (court did not analyze whether plaintiffs had sincerely-held religious beliefs
 5 since defendant “approved all Plaintiffs’ requests for sincerely-held religious belief exemptions);
 6 *Babcock v. Clarke*, 373 F. App’x 720, 721 (9th Cir. 2010) (plaintiff “points to no particular
 7 religious observance that requires him to go by the name ‘Ms. Sarah.’ Nor does he point to any
 8 religion or religious belief that mandated his name change.”).⁴

9 Because Plaintiffs have adequately alleged violation of the Free Exercise Clause, the
 10 Court should also deny Defendant’s motion to dismiss Plaintiffs’ *Monell* claim. *See* MTD at 11-
 11 12 (arguing only that the Court should dismiss Plaintiffs’ *Monell* claim for lack of a properly pled
 12 constitutional claim).

13 C. Government Code Section 855.4 Does Not Immunize the County from 14 Plaintiffs’ FEHA Claims

15 Defendant’s argument that Government Code section 855.4 (“Section 855.4”) requires
 16 dismissal of Plaintiffs’ FEHA claim lacks merit. Plaintiffs adequately allege that Defendant
 17 violated FEHA when it failed to reasonably accommodate Plaintiffs’ religious when implementing
 18 its COVID-19 vaccine mandate. “[A]lthough a basic policy decision . . . may be discretionary and
 19 hence warrant governmental immunity, *subsequent ministerial actions in the implementation of*
 20 *that basic decision still must face case-by-case adjudication . . .*” *Johnson*, 69 Cal. 2d at 797
 21 (emphasis added).

22 Section 855.4 does immunize the County here. Plaintiffs’ FEHA claims are not based upon
 23 the County’s discretionary policy decision to adopt the vaccine mandate but rather its failure of a
 24 mandatory duty required by FEHA to accommodate Plaintiffs’ religious beliefs. Section 855.4
 25 only applies “if the decision whether the act was or was not to be performed was the result of the

26 ⁴ *Ohno v. Yasuma*, 723 F.3d 984 (9th Cir. 2013) is inapposite since it only addressed a church’s
 27 religious freedom to defraud members, not Title VII or the issue of a sincerely held religious belief.
 28 Defendant also cites to *Malik v. Brown*, 16 F.3d 330, 333 (9th Cir. 1994), *supplemented*, 65 F.3d
 148 (9th Cir. 1995), but the court in that case found the plaintiff’s had stated a valid free exercise
 claim: “Malik’s name change is indisputably related to his conversion to Islam.”

exercise of discretion vested in the public entity” Cal. Gov’t Code § 855.4(a). Section 855.4 therefore only applies to discretionary policy decisions “on how to protect the ‘public health of the community’ or ‘prevent[] disease or control[] the communication of disease within the community’” *Greenwood v. City of L.A.*, 89 Cal. App. 5th 851, 863 (2023) (alteration in original). It does not protect a “ministerial performance of a mandatory duty.” *Id.* at 864. A policy decision is discretionary in “those areas of quasi-legislative policy-making which are sufficiently sensitive to justify a blanket rule that courts will not entertain a tort action alleging that careless conduct contributed to the governmental decision.” *Johnson*, 69 Cal. 2d at 794. But complying with anti-discrimination laws is not such an area of quasi-legislative policymaking. “The County has an ‘affirmative and mandatory’ duty to prevent discrimination . . . under the FEHA.” *Yphantides v. Cnty. of S.D.*, 660 F. Supp. 3d 935, 961–62 (S.D. Cal. 2023), *appeal dismissed*, No. 24-395, 2024 WL 3507758 (9th Cir. Mar. 7, 2024) (quoting *Northrop Grumman Corp. v. Workers’ Comp. Appeals Bd.*, 103 Cal. App. 4th 1021, 1035 (2002) (“The employer’s duty to prevent harassment and discrimination is affirmative and mandatory.”)).

The County’s application of its vaccine policies to Plaintiffs were ministerial acts not subject to immunity. “A ministerial act is an act pursuant to an order, or an act where a person had no choice.” *Steinle v. City & Cnty. of S.F.*, 230 F. Supp. 3d 994, 1020 (N.D. Cal. 2017) (quoting *Trujillo v. City of Ont.*, 428 F. Supp. 2d 1094, 1123 (C.D. Cal. 2006)); *see also Johnson*, 69 Cal. 2d at 788 (“[D]iscretionary act is one which requires personal deliberation, decision and judgment while an act is said to be ministerial when it amounts only to the performance of a duty in which the officer is left no choice of his own.”) (quotations and citations omitted). *Caldwell v. Montoya* is helpful in explaining the difference between immune policy decisions and ministerial acts. *Caldwell*, 10 Cal. 4th 972, 981–83 (1995). It draws a line between “‘planning’ and ‘operational’ functions of government.” *Id.* at 981 (quoting *Johnson*, 69 Cal. 2d at 793–74). “Immunity is reserved for those ‘basic policy decisions [which have] ... been [expressly] committed to coordinate branches of government,’ and as to which judicial interference would thus be ‘unseemly.’” *Id.* (alterations in original) (quoting *Johnson*, 69 Cal. 2d at 793). In contrast,

[T]here is no basis for immunizing lower-level, or “ministerial,” decisions that merely implement a basic policy already formulated. . . . Moreover, we cautioned,

immunity applies only to *deliberate and considered* policy decisions, in which a “[conscious] balancing [of] risks and advantages . . . took place. The fact that an employee normally engages in ‘discretionary activity’ is irrelevant if, in a given case, the employee did not render a considered decision.”

Id. (some alterations in original) (citations omitted). Here, the application of the risk tiers and implementation of accommodation process as to each of the Plaintiffs were operational functions of government in implementing the County’s vaccine mandate. Plaintiffs’ claims do not challenge the County’s decision to implement the vaccine mandate or even to create a risk tier system; rather, Plaintiffs challenge Defendant’s application of these policy decisions to Plaintiffs. *See Brink v. Cnty. of S.D.*, No. 23-cv-1756, 2024 WL 3315992, at *10 n.5 (S.D. Cal. July 3, 2024) (describing Section 855.4 as providing immunity for “failure to prevent disease”); *Schmidt v. City of Pasadena*, No. 21-cv-08769, 2024 WL 1640913, at *18 (C.D. Cal. Mar. 21, 2024), *reconsideration denied*, 2024 WL 3915097 (C.D. Cal. Aug. 6, 2024) (Section 855.4 held not to apply to “non-discretionary act of ‘appl[ying]’ [policy decisions on tests and masks] to Plaintiff”) (first alteration in original); *Barbour v. State*, No. 22-cv-00926, 2023 WL 6369787, at *17 (C.D. Cal. Aug. 1, 2023) (Section 855.4 held not applicable to acts that were “deliberately indifferent to the rights and safety of inmates”); *Garcia v. City of L.A.*, 611 F. Supp. 3d 918, 936 (C.D. Cal. 2020) (“discretionary immunity [does not] apply to police actions that constitute ‘operational decision[s] by the police purporting to apply the law.’”) (second alteration in original) (citations omitted).

Defendant misplaces its reliance on *Allos v. Poway Unified School District*, 112 Cal. App. 5th 822 (2025). There was no question of accommodation in *Allos*, 112 Cal. App. 5th at 831–34, and the court narrowly decided in *Allos* whether immunity applied to a *policy* decision. Whether the lower-level decisions of accommodation are also subject to immunity was not decided in *Allos*. The court held that the defendant’s “decisions to allow employees to work from home and subsequently to require their return to in-office work” and “concerning vaccine requirements” were “barred by the immunity afforded by section 855.4.” *Id.* at 834. In *Allos*, the court *did not* hold that every decision or act by a public entity, whether discretionary or mandatory, related in *any way* to public health measures is immune from liability. Notably, Defendant provides no

1 citation to support its argument that *Allos* found immunity extended to the accommodation
2 process.⁵

3 At this pleading stage, Plaintiffs have sufficiently alleged a violation of FEHA based upon
4 conduct that is not subject to immunity under Section 855.4. *See, e.g., Donahoe v. Arpaio*, 869 F.
5 Supp. 2d 1020, 1068 (D. Ariz. 2012) (finding it could not dismiss any claims on the basis of
6 qualified immunity because plaintiffs have pleaded sufficient facts and there was an “asymmetry
7 of information”); *Brothers v. Monaco*, 363 F. Supp. 3d 1138, 1150 (D. Mont. 2019) (finding that
8 dismissal on “qualified immunity grounds would be premature [w]ithout the benefit of further
9 factual development”); *Hampton v. California*, No. 21-cv-03058, 2022 WL 838122, at *13 (N.D.
10 Cal. 2022), *reversed in part on other grounds by, Hampton v. California*, No. 22-15481, 2023 WL
11 6443897 (9th Cir. Oct. 3, 2023) (“plaintiffs pleaded sufficient facts to overcome the statutory
12 immunity at the pleadings stage” where they “challenge[d] [defendant’s] acts surrounding the
13 transfer as deliberately indifferent to the rights and safety of inmates and staff.”).

14 **D. Plaintiffs Timely Exhausted Their Administrative Remedies**

15 Defendant argues the Court should dismiss the claims of eight of the Plaintiffs (Annie Ahn,
16 Lourdes Gomez, Danele Howard, William Kozich, Dale Nelson, Aristides Pulido, Roxanna
17 Ruano, and Arnulfo Sanchez) because they failed to timely exhaust their administrative remedies.
18 This argument is meritless for two reasons.

19 First, whether these eight Plaintiffs failed to timely exhaust their administrative remedies
20 requires a factual inquiry that is inappropriate at the motion to dismiss stage. “[I]t is now crystal-
21 clear that ‘[w]hether a plaintiff in a Title VII action has timely exhausted her administrative
22 remedies is an affirmative defense, so the defendant bears the burden of pleading and proving it.’”
23 *Fox v. MHM Health Pros. LLC*, No. 23-cv-00190, 2024 WL 4364133, at *15 (D. Ariz. Sept. 30,
24 2024) (quoting *Kraus v. Presidio Tr. Facilities Div./Residential Mgmt. Branch*, 572 F.3d 1039,
25 1046 n.7 (9th Cir. 2009) (cleaned up)). “[Therefore], it is difficult to see how that defense is
26 properly raised via a Rule 12(b)(6) motion to dismiss.” *Id.* The Ninth Circuit has held that “such a
27

28 ⁵ *Seaplane Adventures, LLC v. Cnty. of Marin*, 71 F.4th 724 (9th Cir. 2023) did not concern immunity or the FEHA.

1 defense should generally be raised on summary judgment. A defendant may raise the defense under
 2 Rule 12(b)(6) [only] in the rare event that a failure to exhaust is clear on the face of the complaint.”
 3 *McIntyre v. Eugene Sch. Dist. 4J*, 976 F.3d 902, 909 n.6 (9th Cir. 2020) (cleaned up) (applying
 4 this rule in an action under the Individuals with Disabilities Education Act). *See also Albino v.*
 5 *Baca*, 747 F.3d 1162, 1168–70 (9th Cir. 2014) (en banc) (concluding that a motion to dismiss “is
 6 not the appropriate procedural device for pretrial determination of whether administrative remedies
 7 have been exhausted” and that although “[i]n a few cases, a prisoner’s failure to exhaust may be
 8 clear from the face of the complaint,” “a motion for summary judgment, as opposed to an
 9 unenumerated Rule 12(b) motion,” is usually the appropriate way “to decide exhaustion”),
 10 *disagreed with on other grounds*; *Marcos v. U.S. Dep’t of Navy*, No. 22-cv-00418, 2023 WL
 11 6283257, *2 (D. Haw. 2023) (applying these authorities when denying motion to dismiss Title VII
 12 claim for failure to exhaust administrative remedies). Nor is this a “rare” case where “a failure to
 13 exhaust is clear on the face of the complaint.” *McIntyre*, 976 F.3d at 909 n.6 (quotations and
 14 citation omitted). To the contrary, each of the Plaintiffs alleges they exhausted their administrative
 15 remedies and the FAC attaches each Plaintiffs’ right-to-sue letter. FAC ¶¶ 9-40 & Ex. A. Plaintiffs
 16 also allege their claims are timely because they “filed administrative charges with the EEOC and/or
 17 CRD within three hundred days from the last act of discrimination and distinct adverse
 18 employment actions.” *Id.* ¶ 77. *See also id.* ¶¶ 75-76.

20 Defendant argues that the time within which all of these Plaintiffs had to file an
 21 administrative claim began to run on November 1, 2021, citing to an attachment to the FAC that
 22 states, “[T]he County set November 1st as the date to ensure unvaccinated staff were no longer
 23 working in high-risk roles to the maximum extent possible.” MTD at 15 (citing FAC, Ex. C at 1).
 24 But, November 1, 2021 may not be the appropriate start date for the time period that any or all of
 25 these Plaintiffs had to file a charge with the EEOC because Plaintiffs were placed on administrative
 26 leave on different dates. For example, as Defendant knows, William Kozich was not placed on
 27 administrative leave until after the County implemented the booster mandate that required certain
 28 employees to be “both fully vaccinated and boosted against COVID-19” by January 24, 2022.

1 FAC, Ex. D at 3; *see also id.* ¶ 22 (alleging sincerely held religious beliefs that prevent Plaintiff
 2 Kozich from taking the “COVID-19 booster”). He was not placed on administrative leave until
 3 March 11, 2022. Similarly, Danele Howard was on medical maternity leave until January 23, 2022.
 4 She requested a vaccine exemption while on maternity leave and was placed on unpaid
 5 administrative leave on January 24, 2022. These examples highlight the fact-intensive nature of
 6 the inquiry and why the Court should not decide this issue on a motion to dismiss.

7 Second, Defendant impliedly admits that the other twenty-four plaintiffs timely exhausted
 8 their administrative remedies, and under the single filing rule, the eight plaintiffs Defendant
 9 challenges—even if Defendant is correct that their filings with the EEOC were not timely
 10 (something Plaintiffs do not concede)—can “piggyback” off of the other twenty-four plaintiffs’
 11 charges with the EEOC and CRD because they were all timely filed as to all Plaintiffs and their
 12 claims “arise out of similar discriminatory treatment in the same timeframe.” *Berndt v. Cal. Dep’t*
 13 *of Corr.*, No. 3-cv-3174, 2013 WL 4554953, at *2 (N.D. Cal. Aug. 27, 2013). “Although the Ninth
 14 Circuit has not yet applied the single filing rule outside of the class action context, it has not
 15 foreclosed the rule’s application, and other circuits have applied the rule in non-class actions.” *Id.*
 16 (citing cases). *See also Renati v. Wal-Mart Stores, Inc.*, No. 19-cv-02525, 2019 WL 5536206, at
 17 *11 (N.D. Cal. Oct. 25, 2019) (“the [single-filing] rule applies . . . to plaintiffs with joined claims.”)
 18 (citation omitted).

19 Even if all of the Plaintiffs were placed on administrative leave as early as November 1,
 20 2021 (they were not), they had *at least* until August 28, 2022, to file a charge with the EEOC. The
 21 CRD/EEOC Worksharing Agreement provides that initiating a proceeding with CRD
 22 automatically initiates proceedings with the EEOC as well. *See* FAC ¶ 9 n.1 (citing the
 23 worksharing agreement);⁶ *Green v. L.A. Cnty. Superintendent of Schs.*, 883 F.2d 1472, 1476 (9th
 24 Cir. 1989) (“under the worksharing agreement the [CRD] was an agent of the EEOC”). For
 25 example, Plaintiff Coorina Ayala was placed on administrative leave on November 1, 2021. 295
 26

27 ⁶ The worksharing agreement for fiscal year 2022 is now available at:
 28 <https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2022/10/California-FY-2022-Worksharing-Agreement.pdf> (last visited Feb. 19, 2026).

1 days elapsed before she became a class member in *UnifySCC v. Cody* with the filing of the class
 2 action complaint. FAC ¶ 75. She then filed a charge with the EEOC on March 26, 2025, and
 3 received her right-to-sue letter on April 1, 2025 (*see* Dkt. No. 32-1 at 8); she also filed a charge
 4 with the CRD on March 22, 2025, and she received a right-to-sue letter the same day (dual filing
 5 occurred on March 26, 2025) (*see* Dkt. No. 32-1 at 9). Judge Freeman decertified the class in
 6 *UnifySCC* on May 21, 2025, after Plaintiff Ayala timely exhausted her administrative remedies.
 7 Many of the other Plaintiffs also indisputably timely exhausted their administrative remedies.
 8 Therefore, under the single-filing rule, the eight plaintiffs Defendant challenges also timely
 9 exhausted their administrative remedies.

10 **E. The Court Should Deny Defendant’s Improper Request for Judicial Notice**

11 When ruling on a motion to dismiss brought under Federal Rule of Civil Procedure
 12 12(b)(6), a court may not consider matters outside the pleadings—such as party declarations,
 13 medical reports, or government websites—without converting the motion to a motion for summary
 14 judgment under Federal Rule of Civil Procedure 56. *Lee v. City of L.A.*, 250 F.3d 668, 688 (9th
 15 Cir. 2001), *abrogated on other grounds by*, *Galbraith v. Cnty. of Santa Clara*, 307 F.3d 1119 (9th
 16 Cir. 2002). *See Cervantes v. City of S.D.*, 5 F.3d 1273, 1274 (9th Cir. 1993) (“Review [on a motion
 17 to dismiss] is limited to the complaint; evidence outside the pleadings ... cannot normally be
 18 considered in deciding a 12(b)(6) motion.”) (second alteration in original) (quotations and citation
 19 omitted). There are two exceptions to this rule. The first is that a court may consider by
 20 incorporation “material which is properly submitted as part of the complaint.” *Lee*, 250 F.3d at
 21 688 (citation omitted). The second allows a court to take judicial notice of **matters of public record**
 22 if the facts are not “subject to reasonable dispute.” *Id.* at 688–89; *see* Fed. R. Evid. 201(b).

23 Defendant improperly asks (MTD at 8 n.1) the Court to take judicial notice of a fact by
 24 citing to a website that is outside the complaint, not referenced in the FAC, and not properly the
 25 subject of judicial notice, namely “that the COVID-19 vaccines do not contain aborted fetal cells.”
 26 This fact is not a matter of public record, is not undisputed, and is not one that can be “accurately
 27 and readily determined” by the Court “from sources whose accuracy cannot reasonably be
 28

questioned,” as required by rule 201(b) of the Federal Rules of Evidence. Indeed, courts have recognized that the vaccines are derived from aborted fetal cell lines. *See, e.g., Keene*, 2023 WL 3451687, at *2 (“[T]he record reflects that the COVID-19 vaccines are, albeit remotely, ‘derived’ from aborted fetal cell lines.”). The Court should deny Defendant’s request for judicial notice.

F. In the Alternative, Plaintiffs Request Leave to Amend

Should the Court grant any part of Defendant’s motion, Plaintiffs request leave to amend to add additional facts. Under rule 15(a) of the Federal Rules of Civil Procedure, courts should “freely” grant leave to amend “when justice so requires,” *i.e.*, absent “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party . . ., futility of the amendment, etc.” *Foman v. Davis*, 371 U.S. 178, 182 (1962) (quoting Fed. R. Civ. P. 15(a)). A court should grant leave to amend “even if no request to amend the pleading was made, unless [the court] determines that the pleading could not possibly be cured by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc) (quotations omitted), *overruled in part on other grounds by, Peralta v. Dillard*, 744 F.3d 1076 (9th Cir. 2014), and, *Moore v. Dunlap*, No. 24-2704, 2026 WL 184223 (9th Cir. Jan. 23. 2026).

Here, if necessary and given leave to amend, Plaintiffs could add additional facts concerning the religious nature of their claims, the ministerial nature of Defendant’s duties toward Plaintiffs, and facts concerning Plaintiffs’ timely exhaustion of their administrative remedies (e.g., the dates they were placed on leave).

V. CONCLUSION

For all the reasons stated above, the Court should deny Defendant’s Motion to Dismiss, or, in the alternative, grant Plaintiffs leave to amend.

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