APPENDIX TABLE OF CONTENTS

OPINIONS AND ORDERS

Opinion, U.S. Court of Appeals for the Eleventh Circuit (July 10, 2026)..... 1a

Judgment, U.S. Court of Appeals for the Eleventh Circuit (July 10, 2026)..... 14a

Order Dismissing the Third Amended Complaint with Prejudice, U.S. District Court for the Southern District of Florida (March 19, 2024)..... 16a

Final Judgment, U.S. District Court for the Southern District of Florida (March 19, 2024)..... 24a

Order Dismissing the Second Amended Complaint Without Prejudice, U.S. District Court for the Southern District of Florida (September 20, 2023)..... 26a

Order Dismissing the First Amended Complaint Without Prejudice, U.S. District Court for the Southern District of Florida (July 10, 2023) 45a

STATUTORY PROVISIONS

Relevant Statutory Provisions 49a

42 U.S.C. § 2000e(j) 49a

42 U.S.C. § 2000e-2(a)(1)..... 49a

APPENDIX TABLE OF CONTENTS (Cont.)

OTHER DOCUMENTS

Complaint, Excerpts
(October 27, 2022) 50a

Defendants' Consolidated Motion to Dismiss the Second Amended Complaint, Excerpts
(August 2, 2023) 52a

Plaintiffs' Opposition to Defendants' Motion to Dismiss the Second Amended Complaint, Excerpts (August 16, 2023) 56a

First Amended Complaint, Excerpt
(March 1, 2023) 59a

Defendants' Motion to Dismiss the First Amended Complaint, Excerpt
(March 15, 2023) 61a

Third Amended Complaint, Excerpts
(October 11, 2023) 63a

Statement of James Villella
(Captioned 'Sworn Declaration'),
Exhibit 3 to Plaintiffs' Opposition to Defendants' Motion to Dismiss the Second Amended Complaint (August 16, 2023) 97a

Parties' Joint Stipulation Regarding the Third Amended Complaint (October 27, 2023) 105a

Paperless Order Approving Joint Stipulation
(October 30, 2023) 109a

Plaintiffs' Opposition to Motion to Dismiss Third Amended Complaint (November 15, 2023) ... 111a

OPINION, U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT (JULY 10, 2026)

FOR PUBLICATION

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PATRICK AKERLUND,
MICHAEL ALZATI, ERIC W. ANDERSON,
MICHAEL G. BALLARD, JR., ET AL.,

Plaintiffs-Appellants,

v.

ATLAS AIR, INC.,
FLIGHT SERVICES INTERNATIONAL, LLC,

Defendants-Appellees.

No. 24-11033
Non-Argument Calendar

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:22-cv-23519-KMM

Before: ROSENBAUM, GRANT, and
KIDD, Circuit Judges.

GRANT, Circuit Judge:

A group of plaintiffs, employees in the commercial aviation business, personally reject their companies' pandemic-era policies on masks, testing, and vaccination. The district court dismissed the third amended complaint for lack of personal jurisdiction and failure to state a claim, and we affirm.

The claims in this case are remarkably weak, at least as pleaded. We are more candid than usual in this assessment because the plaintiffs' counsel Anthony F. Sabatini has not been candid with us. Sabatini filed multiple briefs replete with fake and hallucinated citations. Even after being warned. "Always a bad idea." Chief Justice John G. Roberts, Jr., *2023 Year-End Report on the Federal Judiciary*, at 6 (2023). By outsourcing his legal work to an AI algorithm, Sabatini violated his ethical duties to both his clients and this Court.

I.

Atlas Air is a commercial airline, and Flight Services International hires contractors to staff Atlas Air's flights. During the Covid-19 pandemic, both companies required employees to vaccinate against Covid-19, unless they obtained a religious or medical exemption—in which case, they had to undergo periodic testing and wear a mask on the job.

The plaintiffs say they object on religious grounds to what they perceive as "a dangerous social and medical experiment." They explain that, among other things, their "conscience prohibits them from being inoculated with any experimental foreign substance," and that their religious rights were violated as a

result of "the Biden Administration's goal of achieving universal vaccination and to unlawfully acquire [their] personal, genetic information." And in their view, the companies' accommodations for religious objectors to the vaccination requirement were unreasonable: monthly testing imposed "substantial burdens," and masks were "functionally useless" "symbols" that accomplished "nothing more than political advertising." Some plaintiffs say that they "succumbed to the pressure" and took the vaccine; others begrudgingly wore masks and tested. The complaint does not allege that anyone lost their job, but does allege that some plaintiffs were assigned to less desirable, lower-paying flights.

The plaintiffs assert that their employers' Covid-19 protocols led to a hostile work environment under Title VII; a Federal Food, Drug, and Cosmetic Act violation; a federal constitutional deprivation; a tortious invasion of privacy; a negligent disclosure of private medical information; and an infliction of emotional distress. The district court dismissed all claims against Flight Services International and some claims against Atlas Air for lack of personal jurisdiction, and the remaining claims against Atlas Air for failure to state a claim.

II.

We review de novo a district court's dismissal of a complaint for lack of personal jurisdiction and for failure to state a claim. *See Carmouche v. Tamborlee Mgmt., Inc.*, 789 F.3d 1201, 1203 (11th Cir. 2015); *Quality Auto Painting Ctr. of Roselle, Inc. v. State Farm Indem. Co.*, 917 F.3d 1249, 1260 (11th Cir. 2019) (en banc).

III.

Federal Rule of Civil Procedure 4(k)(1)(A) offers personal jurisdiction over a defendant "who is subject to the jurisdiction of a court of general jurisdiction in the state where the district court is located." To meet that requirement, "the exercise of jurisdiction must (1) be appropriate under the state long-arm statute and (2) not violate the Due Process Clause of the Fourteenth Amendment." *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1274 (11th Cir. 2009). "A plaintiff bears the burden of establishing a prima facie case of personal jurisdiction over the non-resident defendant." *Jekyll Island-State Park Auth. v. Polygroup Macau Ltd.*, 140 F.4th 1304, 1315 (11th Cir. 2025).

Exercising personal jurisdiction over Flight Services International in this lawsuit would violate due process because neither general nor specific jurisdiction is available in Florida for this company.[1]

Those two concepts match their terminology. General jurisdiction is broader, allowing a court "to hear any and all claims" against an out-of-state company when its "affiliations with the State are so 'continuous and systematic' as to render them essentially at home in the forum State." *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011) (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 317 (1945)). Though general jurisdiction allows a broad set of claims to be litigated, it is available only in relatively narrow circumstances. *See*

[1] We do not reach Atlas Air's personal jurisdiction arguments because it concedes that the district court may decide claims brought by employees who work in Florida. As we explain in part IV, all claims against Atlas Air fail on the merits.

Daimler AG v. Bauman, 571 U.S. 117, 137 (2014). A corporation's "place of incorporation and principal place of business are paradigm bases for general jurisdiction." *Id.* (alterations adopted and quotation omitted). Beyond that, only in an "exceptional case" will a corporation's operations in a forum be "so substantial and of such a nature as to render the corporation at home." *Carmouche*, 789 F.3d at 1204 (quotations omitted).

Specific jurisdiction, on the other hand, "covers defendants less intimately connected with a State, but only as to a narrower class of claims." *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 359 (2021). Specific jurisdiction attaches if the defendant "purposefully avails itself of the privilege of conducting activities within the forum State," and there is "an affiliation between the forum and the underlying controversy." *Hanson v. Denckla*, 357 U.S. 235, 253 (1958); *Bristol-Myers Squibb Co. v. Superior Ct. of Cal., San Francisco Cnty.*, 582 U.S. 255, 262 (2017) (quotation omitted).

Neither general nor specific jurisdiction is available here. To start, Flight Services International is incorporated and headquartered in Texas. The general jurisdiction inquiry ordinarily ends here. Even so, the plaintiffs insist that the company is "at home" in Florida because it sends employees to attend "annual or biannual" training sessions in Miami. That is not enough. An employee's "brief presence" in the forum state "for the purpose of attending the training sessions" does not establish general jurisdiction. *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 417–18 (1984).

The plaintiffs' theory of specific jurisdiction likewise hinges on Flight Services International's

training sessions in Miami. But their claims do not "arise out of or relate to" these sessions. *Ford Motor Co.*, 592 U.S. at 359 (quotation omitted). The plaintiffs do not so much as allege that any one of them ever traveled to Florida to attend those training sessions while the vaccination requirement was in place. Nor do they contend that anyone was barred from attending those sessions because of their vaccination status. To the extent any plaintiff was aggrieved, it was not in Florida.[2]

The district court was correct that it lacked personal jurisdiction over Flight Services International.

IV.

We now turn to the plaintiffs' claims against Atlas Air. Because some of the plaintiffs work in the airline's Florida facilities, the district court had jurisdiction over at least those employees' claims. But none are plausible.

A.

The plaintiffs first allege that Atlas Air created a work environment hostile to their religious beliefs, in violation of Title VII. They say that Atlas Air's "repeated attempts to coerce" them into getting vaccinated constituted "unwelcomed harassment."

To prevail on this claim, "the plaintiff is required to prove that the defendant had a discriminatory intent or motive." *Watson v. Fort Worth Bank & Tr.*, 487 U.S. 977, 986 (1988). But the plaintiffs do not allege any

---

[2] Because the plaintiffs fail to establish a prima facie case for personal jurisdiction, they are not entitled to jurisdictional discovery. *Butler v. Sukhoi Co.*, 579 F.3d 1307, 1314 (11th Cir. 2009).

facts indicating that Atlas Air intended to discriminate against their religious beliefs. In fact, the allegations suggest the opposite. Under its policy, Atlas Air exempted from its vaccine requirement employees who professed a sincere religious objection to the Covid-19 vaccine. Instead, they had to wear a mask at work and test once a month.

The plaintiffs now seem to assert that these accommodations are also hostile to their religion. The problem with this argument is that there is nothing to back it up in the pleadings. The plaintiffs do not allege any religious objections to masks or tests—only political and logistical ones. Masks, they say, are "functionally useless" "political symbols" that "serve no other purpose than identifying 'dissident' employees." And the plaintiffs offer no real problem with testing, other than a generalized complaint that it entails "substantial burdens." What those burdens are, and whether they are religious in nature, the plaintiffs do not say. Nor do they allege that employees who received religious exemptions were treated any worse than those who received medical exemptions.

Whatever one makes of the plaintiffs' dislike of masks and tests, they have alleged no facts signaling animosity from Atlas Air toward their religious beliefs. The allegation that Atlas Air harbored a discriminatory motive is not only conclusory, but "wildly implausible." *Miller v. Donald*, 541 F.3d 1091, 1100 (11th Cir. 2008).

B.

The plaintiffs also bring claims under the Federal Food, Drug, and Cosmetic Act, alleging that Atlas Air unlawfully required its employees to take medical products authorized for emergency use. *See* 21 U.S.C.

§ 360bbb-3. But they cannot sue to enforce such claims; only the federal government can bring enforcement actions under that statute. *See* 21 U.S.C. § 337(a); *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 349 n.4 (2001).

C.

The plaintiffs also allege various constitutional harms, attempting to sue under § 1983 and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971). Of course, § 1983 allows suits against state officers, and *Bivens*, to the limited extent it applies, is for suits against federal officers. So we need not elaborate further on why these claims against Atlas Air—a private company—fail. And even if we were to assume (though it would be a stretch to do so) that Atlas Air qualifies as a state actor because as a federal contractor it introduced its vaccine requirement to comply with President Biden's Executive Order 14042, § 2, 86 Fed. Reg. 50985 (Sept. 9, 2021), "recognizing a cause of action under *Bivens* is a disfavored judicial activity." *Goldey v. Fields*, 606 U.S. 942, 944 (2025) (quotations omitted). We decline to make the dramatic *Bivens* extension that the plaintiffs request. *See Ziglar v. Abbasi*, 582 U.S. 120, 135 (2017).

D.

The plaintiffs also allege several state tort claims. The first is that Atlas Air tortiously invaded their privacy by disclosing private medical information—namely, vaccination status—to company administrators in charge of enforcing Covid-19 protocols. "In Florida, except in cases of physical invasion, the tort of

invasion of privacy must be accompanied by publication to the public in general or to a large number of persons." *Steele v. Offshore Shipbuilding, Inc.*, 867 F.2d 1311, 1315 (11th Cir. 1989); *see also Williams v. City of Minneola*, 575 So. 2d 683, 689 (Fla. Dist. Ct. App. 1991). And publicity "requires that a matter be made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge." *Hunstein v. Preferred Collection & Mgmt. Servs., Inc.*, 48 F.4th 1236, 1246 (11th Cir. 2022) (en banc) (quotation omitted). The plaintiffs do not allege sufficient facts on this score.

Indeed, their theory of publicity is even further afield than the theory we rejected in *Hunstein*. There, we explained that the defendant's disclosure of personal information to a third-party intermediary does not, by itself, satisfy publicity. *Id.* at 1247. Here, the plaintiffs allege that Atlas Air "circulate[d] the information about which crewmembers (vaccinated or unvaccinated) would qualify for certain flights involving company imposed COVID-19 restrictions." In other words, Atlas Air disseminated employees' vaccination status *internally*—to assign shifts and rearrange work schedules based on compliance with the company's vaccination, testing, and masking rules. An internal email or memo disclosing an employee's medical information for legitimate work-related reasons does not amount to public disclosure. That information does not reach, nor is it sure to reach, the public. *Id.* The tortious invasion of privacy claims were properly dismissed.[3]

---

[3] Separately, the plaintiffs arguably assert that Atlas Air's masking rules constituted compelled disclosure of one's vaccination status. But the complaint does not plausibly allege that an employee's

In a similar vein, the plaintiffs assert that Atlas Air negligently disclosed their private medical information to the public. But these negligence claims fail for the same reason: their medical information did not reach, nor was it sure to reach, the public.

We also reject the plaintiffs' intentional infliction of emotional distress claims. Those would require showing that Atlas Air intentionally or recklessly caused "severe emotional distress" through "extreme and outrageous conduct." *E. Airlines, Inc. v. King*, 557 So. 2d 574, 575–76 (Fla. 1990) (quoting Restatement (Second) of Torts § 46 (A.L.I. 1965)). The challenged conduct must "go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community."[4] *Id.* at 576 (quotation omitted).

Like many other employers at the time, Atlas Air required certain precautions designed to prevent the spread of Covid-19. But the fact that the plaintiffs disagree with the steps Atlas Air took does not put the airline's actions beyond all possible bounds of decency. The district court correctly dismissed the plaintiffs' intentional infliction of emotional distress claims.

---

vaccination status could be readily inferred from the fact that she is masked.

[4] To the extent the plaintiffs allege negligent infliction of emotional distress claims, they concede that Florida law generally requires a plaintiff to allege "that the emotional stress suffered flowed from injuries sustained in an impact." *Fernander v. Bonis*, 947 So. 2d 584, 590 (Fla. Dist. Ct. App. 2007) (quotation omitted). That requirement is not satisfied here.

V.

Though the filings in this case were substandard in a variety of ways, we have saved the worst for last. The plaintiffs' counsel Anthony F. Sabatini's filings are riddled with citations to nonexistent, "hallucinated" cases. His opening brief relies on at least eight such cases, including one purportedly decided by this Court.[5] After the defendants identified this problem, Sabatini acknowledged in his (untimely) proposed reply brief that those citations were "erroneous or unverifiable," and sought to withdraw his reliance on eight listed cases.[6] At this point, things go from bad to worse: the eight cases Sabatini "withdrew" did not match *a single one* of the eight hallucinated cases in

---

[5] These include *Doe v. Roe*, 638 So. 2d 87 (Fla. 4th DCA 1994); *Spilfogel v. Fox Broadcasting Co.*, 792 So. 2d 1254 (Fla. 4th DCA 2001); *Doe v. University of Miami*, 2020 WL 7647634 (S.D. Fla. Dec. 23, 2020); *Jewell v. New York Life Insurance Co.*, 2018 WL 1792348 (M.D. Fla. Apr. 16, 2018); *Lofton v. Kravitz*, 672 So. 2d 591 (Fla. 4th DCA 1996); *Tillery v. ATSI, Inc.*, 2005 WL 81628 (11th Cir. Jan. 14, 2005); *Koutsouradis v. Delta Air Lines, Inc.*, 427 So. 2d 1105 (Fla. 3d DCA 1983); *Weinstein v. City of North Bay Village*, 977 So. 2d 703 (Fla. 3d DCA 2008); *Draper v. United Airlines, Inc.*, No. 22-cv-02985, 2023 WL 3002478 (D. Colo. Apr. 19, 2023).

[6] These are *Truong v. Waste Pro USA, Inc.*, 175 So. 3d 929 (Fla. 4th DCA 2015); *Marvin v. Dade County School Board*, 2020 WL 603633 (S.D. Fla. Feb. 7, 2020); *Morrison v. Palm Beach County School Board*, 2018 WL 6727067 (S.D. Fla. Dec. 21, 2018); *Scott v. Eglin Federal Credit Union*, 2022 WL 1558341 (N.D. Fla. May 17, 2022); *Hansen v. Florida*, 2022 WL 2980744 (M.D. Fla. July 28, 2022); *Palmer v. McDonald's Corp.*, 2022 WL 413680 (S.D. Fla. Feb. 10, 2022); *Negron v. School Board of Miami-Dade County*, 2021 WL 4948181 (S.D. Fla. Oct. 22, 2021). While *Koutsouradis v. Delta Air Lines, Inc.* appears in both filings, the reply brief attributes it to a different court.

his opening brief. And not only were they not the right cases—all eight were also hallucinated.

We are far from the first court to see lawyers uncritically rely on artificial intelligence software and submit briefs citing nonexistent cases. *See* Chief Justice John G. Roberts, Jr., *2023 Year-End Report on the Federal Judiciary*, at 5–6 (2023). The typical response when this kind of violation is identified is some version of an apology from the attorney, often with sanctions to follow. It is rare to see the kind of blatant and repeated misconduct that Sabatini has committed in this case.

The first rule of our profession is that a lawyer "shall provide competent representation to a client"—"competent" in the sense that it requires "legal knowledge, skill, thoroughness and preparation." Model Rules of Pro. Conduct r. 1.1 (A.B.A. 1983). It goes without saying that completely outsourcing one's legal work to artificial intelligence software is not competent. *See* A.B.A. Comm. on Ethics & Pro. Resp., Formal Op. 512, at 3–4 (2024). Doing so is a dramatic violation of the client's interests.

But it does not stop there, because lawyers are also officers of the Court. We expect that when lawyers submit briefs, they give us their best view of what the law is, and how that law supports their clients. We read those briefs carefully—not just because they are the product of counsel's time, effort, and skill, but because they help us as we try to reach the right answer. All that is lost if a lawyer decides that it is not worthwhile to do the work to persuade us—if he is willing to sign his name on whatever a machine churns out without so much as checking it for accuracy. We cannot do our job the same way unless lawyers do theirs.

Whatever the merits of artificial intelligence, it is no substitute for actual intelligence. Any "use of AI requires caution and humility." Roberts, *2023 Year-End Report on the Federal Judiciary*, at 5. When lawyers rely on AI tools, there is no way to get around the obligation to verify that the software got it right, and that what it got wrong will not end up in court filings.[7] By signing his name on briefs filled with hallucinated citations—not once but twice— Sabatini violated his professional obligations, both to his clients and to this Court. If he thinks these claims are not worth the effort, he should either tell his clients they fall short or advise them to hire another lawyer—not file obviously insufficient pleadings and briefs generated by AI tools. In a separate order, this Court, through the Chief Judge, will refer the matter to the Committee on Lawyer Qualifications and Conduct. *See* 11th Cir. Rules, Addendum 8, r. 2(C).

* * *

We AFFIRM the dismissal of the third amended complaint for lack of personal jurisdiction and failure to state a claim.

---

[7] AI algorithms are notorious for producing "outputs that echo users' opinions and beliefs, even when those views are incorrect." Lujain Ibrahim et al., *Training Language Models to Be Warm Can Reduce Accuracy and Increase Sycophancy*, 652 *Nature* 1159, 1162 (2026). This tendency presents a particular danger in legal filings, as one of a lawyer's chief duties is to give his clients a clear-eyed view of whether the law says what the client wants it to say.

JUDGMENT, U.S. COURT OF APPEALS FOR THE ELEVENTH CIRCUIT (JULY 10, 2026)

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ESTATE OF LANE CAVINESS,
Landon Caviness and Morgan Caviness,
PATRICK AKERLUND,
MICHAEL ALZATI, ERIC W. ANDERSON,
MICHAEL G. BALLARD, JR., ET AL.,

Plaintiffs-Appellants,

v.

ATLAS AIR, INC.,
FLIGHT SERVICES INTERNATIONAL, LLC,

Defendants-Appellees,

ENCOMPASS AIR, LLC, ET AL.,
an Alaska limited liability company,

Defendants.

No. 24-11033

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:22-cv-23519-KMM

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: July 10, 2026

For the Court: DAVID J. SMITH, Clerk of Court

ORDER DISMISSING THE THIRD AMENDED COMPLAINT WITH PREJUDICE, U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA (MARCH 19, 2024)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PATRICK AKERLUND, ET AL.,

Plaintiffs,

v.

ATLAS AIR, INC., ET AL.,

Defendants.

Case No. 1:22-cv-23519-KMM

Before: K. Michael MOORE,
United States District Judge.

ORDER

THIS CAUSE came before the Court upon Defendant Atlas Air, Inc.'s Motion to Dismiss the Third Amended Complaint. ("Mot." or "Motion") (ECF No. 81). Plaintiffs filed a Response in Opposition to the Motion to Dismiss ("Resp.") (ECF No. 83). Defendant then filed a Reply in Support of its Motion to Dismiss ("Reply") (ECF No. 85). Plaintiffs' Second Amended Complaint was previously dismissed without prejudice

due to lack of personal jurisdiction and failure to state a claim. *See generally* (ECF No. 73). As set forth below, the Court GRANTS the Motion and DISMISSES Plaintiffs' Third Amended Complaint WITH PREJUDICE. ("TAC") (ECF No. 74).

I. BACKGROUND

The Court presumes the Parties' familiarity with the factual background of the case. *See, e.g.*, (ECF Nos. 59, 73). Nevertheless, the Court briefly describes the relevant facts applicable to the instant Motion.

Plaintiffs are pilots, flight attendants, and ground staff who work at Atlas Air, Inc. ("Atlas Air") or Flight Services International, LLC ("FSI"), who either remained unvaccinated due to their religious beliefs or became vaccinated despite their religious beliefs. TAC ¶¶ 12–15. In the Third Amended Complaint, Plaintiffs assert eleven claims arising out of the companies' COVID-19 vaccination policies. *See generally id.* Upon filing the TAC, Plaintiffs notified the Court that "the only change from the Second Amended Complaint and the Third Amended Complaint . . . is the addition of Count XI." (ECF No. 75) at 1. Count XI claims that Defendants violated the Federal Food, Drug, and Cosmetic Act ("FDCA"), as codified at 21 U.S.C. § 360bbb-3(e)(1)(A)(ii)(III). TAC ¶ 249.

The FDCA establishes the statutory framework for emergency authorization of products (including drugs, devices, and biological products) by the Secretary of Health and Human Services. *See generally* 21 U.S.C. § 360bbb-3. As relevant here, the Secretary "may make a declaration that the circumstances exist justifying the authorization" for a product on the basis of "a determination by the Secretary that there is a

public health emergency . . . that affects, or has a significant potential to affect, national security or the health and security of United States citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents." § 360bbb-3(b)(1)(C). As to the conditions for authorization of a product for emergency use, the FDCA requires that, "to the extent practicable," steps be taken to ensure that individuals "on whom the product is administered" are informed "of the option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks." § 360bbb-3(e)(1)(A)(ii)(III).

In Count XI, Plaintiffs allege that when Defendants mandated that their employees "receive Emergency Use Authorized (EUA) experimental unapproved medical products, EUA PCR testing, and EUA mask wearing," Defendants violated the FDCA by not allowing Plaintiffs the option to accept or refuse administration of the products. TAC ¶¶ 249–254. Considering the similarities between the Second Amended Complaint and Third Amended Complaint, the Parties submitted a Joint Stipulation to the Court and agreed that "Defendant FSI has no obligation to respond [to] any part of the Third Amended Complaint" and that "Defendant Atlas shall have no obligation to respond to Counts I through X of the Third Amended Complaint." (ECF No. 79-1) at 2.

Now, Defendant Atlas Air moves to dismiss Count XI and seeks a dismissal with prejudice of the entire TAC. *See generally* Mot. Atlas Air argues that

the Court's previous ruling on personal jurisdiction stands, so Count XI should be dismissed due to lack of personal jurisdiction as to all non-Florida Plaintiffs. *Id.* at 4–5. Atlas Air further argues that Count XI fails on the merits because it is legally frivolous for private parties to assert this claim against a private employer. *Id.* at 5–10.

II. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(6) permits a court to dismiss a complaint for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation and internal quotation marks omitted). This requirement "give[s] the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citation and alterations omitted). The court takes the plaintiff's factual allegations as true and construes them in the light most favorable to the plaintiff. *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008).

A complaint must contain enough facts to plausibly allege the required elements. *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1295–96 (11th Cir. 2007). A pleading that offers "a formulaic recitation of the elements of a cause of action will not do." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). "[C]onclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent

dismissal." *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002).

III. DISCUSSION

Plaintiffs concede that the TAC is almost the same as the Second Amended Complaint that was previously dismissed by this Court. *See* (ECF No. 75) at 1. Thus, the Court will address any conclusions that remain unchanged from its previous dismissal of this case before turning to the new issue presented in the Motion to Dismiss.

A. All Claims Against FSI and Most Claims Against Atlas Air Are Again Dismissed for Lack of Personal Jurisdiction or Failure to State a Claim

In the Court's previous Order granting Defendants' Motion to Dismiss the Second Amended Complaint, Counts VI through X were dismissed due to lack of personal jurisdiction as to Defendant FSI. (ECF No. 73) at 5–9. In the TAC, Plaintiffs have alleged no new facts supporting personal jurisdiction as to either Defendant. As such, the Court again dismisses all claims as to Defendant FSI (Counts VI through XI) due to lack of personal jurisdiction.

The Court's analysis of personal jurisdiction as to Defendant Atlas Air also remains unchanged. *See id.* at 9–10. Accordingly, the Court again dismisses all claims against Atlas Air (Counts I, II, III, IV, V, and XI) with respect to Plaintiffs who do not live in Florida or have Florida as their base of operation.

Because the TAC contains no new allegations concerning Counts I through V, these claims against

Atlas Air are again dismissed for failure to state a claim. *See id.* at 10–15.

B. Count XI Is Dismissed for Failure to State a Claim

The only new issue presented in the Motion to Dismiss is whether Plaintiffs properly state a claim against Atlas Air with respect to the Florida-based Plaintiffs in Count XI, violation of the FDCA when Atlas Air mandated their employees to receive EUA "medical products, EUA PCR testing, and EUA mask wearing." TAC ¶ 249. Atlas Air argues that Count XI fails on the merits because every court to consider an EUA claim has recognized that such a claim is "legally frivolous as asserted by private parties against a private employer." Mot. at 2.

Defendant is correct that Plaintiffs cannot bring an FDCA-based claim against Atlas Air because the FDCA explicitly provides that there is no private right of action to enforce its provisions. Indeed, "the FDCA says that its requirements may only be enforced by the United States government." *Markland v. Insys Therapeutics, Inc.*, 758 F. App'x 777, 779 (11th Cir. 2018) (citing 21 U.S.C. § 337(a)). In response, Plaintiffs argue that they are entitled to a private right of action because *Doe v. Rumsfeld*, 2005 WL 1124589 (D.D.C. Apr. 6, 2005), supposedly allows "any individual United States citizen the preemptive inalienable right to not only refuse an investigational medical product, . . . but upon refusal, no punitive action." Resp. at 2.

Plaintiffs' interpretation of *Rumsfeld* is entirely incorrect: *Rumsfeld* simply modified an order to allow the military to administer an EUA anthrax vaccine on

a voluntary basis. 2005 WL 1124589 at *1. It did not explicitly authorize private rights of action to challenge the FDCA, nor is it applicable here because *Rumsfeld* involved the Department of Defense, not a private employer such as Atlas Air. *See* Mot. at 10. Because the availability of private relief under the FDCA is "foreclosed by express provision [] of the statute itself," the Court must dismiss Count XI against Atlas Air. *Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 108 (1989); *see also* Mot. at 6 (collecting cases).

Under Rule 15, leave to amend should be freely given "when justice so requires." Fed. R. Civ. P. 15(a)(2). Here, Plaintiffs have already amended their complaint three times. Now, having considered the Third Amended Complaint and having found Plaintiffs' contentions to be deficient for almost the same reasons, the Court finds that further amendment of the Third Amended Complaint would be futile. Therefore, dismissal of this case with prejudice is appropriate. *See Hall v. United Ins. Co. of Am.*, 367 F.3d 1255, 1263 (11th Cir. 2004) (citation omitted) ("[A] district court may properly deny leave to amend the complaint under Rule 15(a) when such amendment would be futile.").

CONCLUSION

UPON CONSIDERATION of the Third Amended Complaint (ECF No. 74), the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the Motion to Dismiss the Third Amended Complaint (ECF No. 81) is GRANTED. The Third Amended Complaint (ECF No. 74) is DISMISSED WITH PREJUDICE.

DONE AND ORDERED in Chambers at Miami, Florida, this 19th day of March, 2024.

/s/ K. Michael Moore
United States District Judge

c: All counsel of record

FINAL JUDGMENT, U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA (MARCH 19, 2024)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PATRICK AKERLUND, ET AL.,

Plaintiffs,

v.

ATLAS AIR, INC., ET AL.,

Defendants.

Case No. 1:22-cv-23519-KMM

Before: K. Michael MOORE,
United States District Judge.

FINAL JUDGMENT

THIS CAUSE came before the Court upon the Court's March 19, 2024 Order dismissing this case with prejudice. (ECF No. 88). Pursuant to Rule 58 of the Federal Rules of Civil Procedure, it is hereby ORDERED AND ADJUDGED that Final Judgment is entered in favor of Defendants Atlas Air, Inc. and Flight Services International, LLC and against Plaintiffs.

DONE AND ORDERED in Chambers at Miami, Florida, this 19th day of March, 2024.

/s/ K. Michael Moore
United States District Judge

c: All counsel of record

ORDER DISMISSING THE SECOND AMENDED COMPLAINT WITHOUT PREJUDICE, U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA (SEPTEMBER 20, 2023)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ESTATE OF LANE CAVINESS, ET AL.,

Plaintiffs,

v.

ATLAS AIR, INC., ET AL.,

Defendants.

Case No. 1:22-cv-23519-KMM

Before: K. Michael MOORE,
United States District Judge.

ORDER

THIS CAUSE came before the Court upon Defendants' Consolidated Motion to Dismiss the Second Amended Complaint. ("Mot." or "Motion") (ECF No. 66). Plaintiffs filed a Response in Opposition to the Motion to Dismiss ("Response") (ECF No. 69). Defendants then filed a Reply in Support of the Motion to Dismiss ("Reply") (ECF No. 70). Plaintiffs' First Amended Complaint was previously dismissed without

prejudice as a shotgun pleading. (ECF No. 59). As set forth below, the Court GRANTS Defendants' Motion and DISMISSES Plaintiffs' Second Amended Complaint WITHOUT PREJUDICE. ("SAC") (ECF No. 63).

I. FACTUAL BACKGROUND

Plaintiffs are pilots, flight attendants, and ground staff who work at Atlas Air, Inc. ("Atlas Air") or Flight Services International, LLC ("FSI"), who either remained unvaccinated due to their religious beliefs or became vaccinated despite their religious beliefs. SAC ¶¶ 12–15. Plaintiffs filed suit against Atlas Air and FSI asserting ten claims arising out of the companies' COVID-19 vaccination policies. *See generally id.* Against each Defendant, Plaintiffs allege the following five causes of action: invasion of privacy through public disclosure of private facts, creation of a hostile work environment, violation of § 1983, infliction of emotional distress, and negligence. *Id.* ¶¶ 93–246. Defendants contend that all claims against FSI and claims against Atlas Air from Plaintiffs without ties to Florida should be dismissed for lack of personal jurisdiction, all claims against FSI should be dismissed due to a mandatory arbitration clause, and the SAC fails to state any claim upon which relief can be granted. *See generally* Mot.

II. LEGAL STANDARD

A. Personal Jurisdiction

Federal Rule of Civil Procedure 12(b)(2) permits a defendant to move to dismiss a claim for lack of personal jurisdiction. Fed. R. Civ. P. 12(b)(2). When considering a motion to dismiss for lack of personal jurisdiction, a court must accept the facts alleged in

the plaintiff's complaint as true, to the extent that they are not contradicted by defendant's affidavits. *See Morris v. SSE, Inc.*, 843 F.2d 489, 492 (11th Cir. 1988); *Corneal v. CF Hosting, Inc.*, 187 F. Supp. 2d 1372, 1373 (S.D. Fla. 2001); *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 502 (Fla. 1989). Once the plaintiff pleads sufficient material facts to form a basis for personal jurisdiction, the burden shifts to the defendant to challenge the plaintiff's allegations by affidavits or other pleadings. *See Future Tech. Today, Inc. v. OSF Healthcare Sys.*, 218 F.3d 1247, 1249 (11th Cir. 2000); *Venetian Salami Co.*, 554 So. 2d at 502. When the nonresident defendant meets this burden, the plaintiff must substantiate the jurisdictional allegations in its complaint by affidavits or other competent proof and may not merely rely upon the factual allegations set forth in the complaint. *See Future Tech. Today, Inc.*, 218 F.3d at 1249; *Venetian Salami Co.*, 554 So. 2d at 502.

The court's determination of whether personal jurisdiction over a nonresident defendant exists requires a two-part analysis. *D.W. Mercer, Inc. v. Valley Fresh Produce, Inc.*, 146 F. Supp. 2d 1274, 1276 (M.D. Fla. 2001). First, the court must consider the jurisdictional question under Florida's long-arm statute. *See id.*; *see also* FLA. STAT. § 48.193. A defendant can be subjected to personal jurisdiction under Florida's long-arm statute in two ways: (1) FLA. STAT. § 48.193(1) enumerates various acts that subject a defendant to specific personal jurisdiction—that is, jurisdiction over suits that arise out of or relate to a defendant's contacts with Florida; or (2) FLA. STAT. § 48.193(2) provides that, regardless of whether the claim arises from a defendant's activities in Florida, a Florida

court may exercise general personal jurisdiction over a defendant "who is engaged in substantial and not isolated activity within this state." FLA. STAT. § 48.193(1)-(2). If there is a basis for the assertion of personal jurisdiction under the state statute, the court will next determine "whether sufficient minimum contacts exist to satisfy the Due Process Clause of the Fourteenth Amendment so that maintenance of the suit does not offend traditional notions of fair play and substantial justice." *D.W. Mercer, Inc.*, 146 F. Supp. 2d at 1276 (citing *Robinson v. Giarmarco & Bill, P.C.*, 74 F.3d 253, 256 (11th Cir. 1996)). Only if both prongs of the analysis are satisfied may a federal or state court exercise personal jurisdiction over a nonresident defendant. *See Robinson*, 74 F.3d at 256.

"The reach of the Florida long-arm statute is a question of Florida law." *Meier ex rel. Meier v. Sun Int'l Hotels, Ltd.*, 288 F.3d 1264, 1271 (11th Cir. 2002) (cleaned up) ("[F]ederal courts are required to construe [such law] as would the Florida Supreme Court." (alterations in original)). As used in § 48.193 (1)(a), "the term 'arising from' is somewhat broader than the concept of proximate cause," thus, "under Florida law there must nevertheless be some 'direct affiliation,' 'nexus,' or 'substantial connection' between the cause of action and the activities within the state." *St. Martinus Univ., NV v. Caribbean Health Holding, LLC*, No. 19-22278-CIV, 2020 WL 956301, at *10 (S.D. Fla. Feb. 27, 2020), *appeal dismissed sub nom. St. Martinus Univ. v. Caribbean Health Holding, LLC*, No. 20-11991-EE, 2020 WL 7018197 (11th Cir. Sept. 28, 2020). Courts strictly construe Florida's long-arm statute in favor of the nonresident defendant. *Stonepeak Partners, LP v. Tall Tower Cap., LLC*, 231

So. 3d 548, 552 (Fla. Dist. Ct. App. 2017). "[U]nder Florida law, a nonresident defendant commits 'a tortious act within [Florida]' when he commits an act outside the state that causes injury within Florida." *Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339, 1353 (11th Cir. 2013) (quoting *Licciardello v. Lovelady*, 544 F.3d 1280, 1283 (11th Cir. 2008)).

B. Failure to State a Claim

Federal Rule of Civil Procedure 12(b)(6) permits a court to dismiss a complaint for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation and internal quotation marks omitted). This requirement "give[s] the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citation and alterations omitted). The court takes the plaintiff's factual allegations as true and construes them in the light most favorable to the plaintiff. *Pielage v. McConnell*, 516 F.3d 1282, 1284 (11th Cir. 2008).

A complaint must contain enough facts to plausibly allege the required elements. *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1295–96 (11th Cir. 2007). A pleading that offers "a formulaic recitation of the elements of a cause of action will not do." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 555). "[C]onclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal." *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002).

III. DISCUSSION

A. All Claims Against FSI and Most Claims Against Atlas Air Are Dismissed for Lack of Personal Jurisdiction

The Court will first address both Defendants' claim that this Court lacks personal jurisdiction because "[a] court without personal jurisdiction is powerless to take further action." *Posner v. Essex Ins. Co., Ltd.*, 178 F.3d 1209, 1214 n.6 (11th Cir. 1999). As noted earlier, in assessing whether a nonresident defendant is subject to the exercise of personal jurisdiction, federal courts must determine "whether the exercise of jurisdiction (1) comports with the long-arm statute of the forum . . . ; and (2) does not violate the Due Process Clause." *Virgin Health Corp. v. Virgin Enterprises Ltd.*, 393 F. App'x 623, 626 (11th Cir. 2010).

1. General Personal Jurisdiction

Under Florida's long-arm statute, general jurisdiction "extends to the limits on personal jurisdiction imposed by the Due Process Clause of the Fourteenth Amendment." *Fraser v. Smith*, 594 F.3d 842, 846 (11th Cir. 2010) (discussing Florida law). Thus, determining whether general personal jurisdiction is proper is a one-step inquiry which requires courts to determine whether the exercise of jurisdiction over a defendant would exceed constitutional bounds. *Id.*

In *Daimler AG v. Bauman*, the U.S. Supreme Court concluded that the "paradigm all-purpose forums for general jurisdiction are a corporation's place of incorporation and principal place of business." 571 U.S. 117, 118 (2014). The Eleventh Circuit has

explained that, outside of these paradigmatic circumstances, a corporate defendant will be considered at home in the "exceptional case" where it has operations that are "so substantial and of such a nature as to render the corporation at home in that state." *Waite v. All Acquisition Corp.*, 901 F.3d 1307, 1317 (11th Cir. 2018) (discussing *BNSF Ry. Co. v. Tyrrell*, 581 U.S. 402, 412 (2017)).

Here, Plaintiffs concede that Atlas Air is incorporated in Delaware and its principal place of business is New York. SAC ¶ 16. However, Plaintiffs allege that Atlas Air does "a high percentage of their business and stage[s] a high percentage of their flights in and around southern Florida and the Miami International Airport" and trains many employees in Miami. *Id.* at ¶ 24. Because Florida is not one of Atlas Air's paradigm forums, the question becomes whether this is an "exceptional case." The Court finds that it is not. While Atlas Air may conduct business in Florida, *Daimler* expressly rejected the availability of general jurisdiction "in every State in which a corporation engages in a substantial, continuous, and systematic course of business." 571 U.S. at 119 (internal quotation marks omitted).

Plaintiffs also rely on *Mallory v. Norfolk Southern Railway Co.* to argue that the instant Action can be tried in Florida even though the events of this case did not take place in Florida. 143 S. Ct. 2028 (2023) (holding that a nonresident defendant's accession to Pennsylvania's business registration statute amounted to consent to personal jurisdiction). The Court is unconvinced. In *Waite*, the Eleventh Circuit explained that Florida law does not establish that a foreign corporation's registration to do business in Florida

amounts to consenting to general jurisdiction in Florida courts. *See* 901 F.3d at 1320. Thus, *Mallory* does not apply here.

It is also undisputed that FSI is a Texas limited liability company with its principal place of business in Texas. SAC ¶ 20. For the same reasons articulated above, the Court finds that it does not have general jurisdiction over FSI.

2. Specific Personal Jurisdiction

Atlas Air and FSI are subject to specific jurisdiction under Florida's long-arm statute if either company's activities meet any of the enumerated acts listed in FLA. STAT. § 48.193(1).[1] The SAC asserts that this Court has specific personal jurisdiction over Atlas Air

---

[1] Florida's long-arm statute states, in relevant part:

> (1)(a) A person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself . . . to the jurisdiction of the courts of this state for any cause of action arising from any of the following acts:. . . .
>
> 2 Committing a tortious act within this state. . . .
>
> 6. Causing injury to persons or property within this state arising out of an act or omission by the defendant outside this state, if, at or about the time of the injury, either:
>
> a. The defendant was engaged in solicitation or service activities within this state; or
>
> b. Products, materials, or things processed, serviced, or manufactured by the defendant anywhere were used or consumed within this state in the ordinary course of commerce, trade, or use.

FLA. STAT. § 48.193(1).

and FSI because "Defendants engaged in unlawful acts regarding the COVID-19 vaccine mandates through acts within the state of Florida . . . that caused harm to numerous plaintiffs in the state of Florida." SAC ¶ 23. Atlas Air argues that, with respect to those Plaintiffs who do not work in Florida, the Court lacks specific jurisdiction because Plaintiffs have not explained how their claims arise from Atlas Air's contacts in the forum state. Mot. at 9–11. Similarly, FSI asserts that the SAC contains zero allegations regarding FSI's Florida contacts related to this lawsuit. *Id.* at 13.

"A court may exercise specific jurisdiction over a nonresident defendant only when the plaintiff's cause of action arises from or is directly related to a defendant's contacts with the forum state." *Design-Build Concepts, Inc. v. Jenkins Brick Co.*, No. 06-CV-558, 2008 WL 686150, at *2 (N.D. Fla. March 10, 2008) (citing *Stubbs v. Wyndham Nassau Resort & Crystal Palace Casino*, 447 F.3d 1357, 1360 n.3 (11th Cir. 2006)). Thus, specific jurisdiction requires connectivity, or some "direct affiliation, nexus, or substantial connection between the cause of action and the [defendant's] activities within the state." *Sun Trust Bank v. Sun Int'l Hotels, Ltd.*, 184 F. Supp. 2d 1246, 1269 (S.D. Fla. 2001) (internal quotation marks omitted) (quoting *Citicorp Ins. Brokers (Marine) Ltd. v. J.R. Charman*, 635 So. 2d 78, 81 (Fla. Dist. Ct. App. 1994)).

The Court's exercise of personal jurisdiction over a nonresident defendant must also comport with the due process requirements of the United States Constitution. Federal courts in the Eleventh Circuit apply a three-prong due process test in specific personal jurisdiction cases, "which examines (1) whether the

plaintiff's claims 'arise out of or relate to' at least one of the defendant's contacts with the forum; (2) whether the nonresident defendant 'purposely availed' himself of the privilege of conducting activities within the forum state, thus invoking the benefit of the forum state's law; and (3) whether the exercise of personal jurisdiction comports with 'traditional notions of fair play and substantial justice.'" *Louis Vuitton*, 736 F.3d at 1355 (quoting *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474–75 (1985)). "The plaintiff bears the burden of establishing the first two prongs, and if the plaintiff does so, 'a defendant must make a "compelling case" that the exercise of jurisdiction would violate the traditional notions of fair play and substantial justice.'" *Id.* (quoting *Diamond Crystal Brands*, 593 F.3d at 1267).

First, FSI lacks minimum contacts with Florida under the traditional "minimum contacts" test. Under that test, courts "assess the nonresident defendant's contacts with the forum state and ask whether those contacts: (1) are related to the plaintiff's cause of action; (2) involve some act by which the defendant purposely availed himself of the privileges of doing business with the forum; and (3) are such that the defendant should reasonably anticipate being haled into court in the forum." *Louis Vuitton*, 736 F.3d at 1357 (citing *SEC v. Carrillo*, 115 F.3d 1540, 1542 (11th Cir. 1997)). Here, FSI has no direct or personal contacts with Florida. The SAC does not assert that FSI developed any of its COVID-19 policies in Florida or disseminated Plaintiffs' private information within Florida. *See generally* SAC. Nor are any FSI Plaintiffs based in Florida. Plaintiffs allege that FSI employees complete their training in Miami, but make no con-

nection between the training and the alleged harm suffered when the Plaintiffs became vaccinated or remained unvaccinated.

Nor does FSI satisfy the "effects" test. Under this test, the exercise of personal jurisdiction in the context of an intentional tort is proper where the tort: "(1) was intentional; (2) was aimed at the forum state; and (3) caused harm that the defendant should have anticipated would be suffered in the forum state." *Louis Vuitton*, 736 F.3d at 1356 (alterations incorporated). Here, there is no indication that the conduct underpinning Plaintiffs' invasion of privacy claims against FSI was aimed at Florida. FSI's only connection to Florida is sending its flight attendants to attend training at Atlas Air's Miami facility. None of the FSI Plaintiffs are based in Florida.

For these reasons, the Court finds that it lacks personal jurisdiction over FSI. Accordingly, the Court grants the Motion to Dismiss as to FSI, and all claims against FSI are dismissed without prejudice. Having found that the Court lacks personal jurisdiction over FSI, the Court need not address the arbitration clause and failure to state a claim arguments regarding Counts VI through X. *See Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 430–31 (2007).

With respect to claims from Plaintiffs that do live in Florida or have Florida as their work location, the Court finds that it has specific personal jurisdiction over Atlas Air. Atlas Air purposefully availed itself of the privileges of doing business with Florida by employing staff in Florida and by implementing COVID-19 policies that governed its Florida-based employees. *See Louis Vuitton*, 736 F.3d at 1357. The COVID-19 testing and vaccination requirements

implemented by Atlas Air necessarily affected employees at their workplace and their home. Given these contacts, Atlas Air should reasonably anticipate being haled into Florida court for claims arising out of its employment policies by Plaintiffs who live in Florida or have Florida as their work base.

On the other hand, Atlas Air lacks minimum contacts and fails the effects test with respect to the claims from Plaintiffs who do not work or live in Florida. Atlas Air contends that 47 of the

84 Plaintiffs suing it do not live in Florida or have Florida as their work base of operation. *See* Declaration of Carleen A. Ybarra at 4–6 ("Ybarra Decl.") (ECF No. 66-2). These Plaintiffs' sole connection to Florida seems to be that they completed their training in Miami. *See* SAC ¶ 20; Response at 10. But the SAC fails to explain what, if any, illegal conduct by Atlas Air occurred in Florida during any employee's training. Thus, these Plaintiffs' claims do not relate to the forum state.

Plaintiffs request for this Court to conduct an evidentiary hearing so that they may explain how personal jurisdiction is proper "due to issues with numerosity of Plaintiffs" and wanting to "avoid[] exceeding the page limits." Response at 10. There is a vehicle that could have solved Plaintiffs' numerosity issue: the class action. The Court cannot reward Plaintiffs for skirting personal jurisdiction requirements as to each Plaintiff when they could have filed a class action lawsuit. Accordingly, the claims against Atlas Air with respect to Plaintiffs who do not live in Florida or have Florida as their base of operation are dismissed.

B. The Remaining Counts Against Atlas Air Are Dismissed for Failure to State a Claim

Of the 84 Plaintiffs suing Atlas Air, 37 have some connection to Florida in that they live in Florida and/or have Florida as their work base location. Ybarra Decl. at 4–6. Nevertheless, the remaining claims against Atlas Air are dismissed for failure to state a claim.

1. Count I: Invasion of Privacy

In Count I, Plaintiffs assert a claim for invasion of privacy by public disclosure of private facts. Under Florida law, the elements of the tort of invasion of privacy are: (1) the publication, (2) of private facts, (3) that are offensive, and (4) are not of public concern. *Spilfogel v. Fox Broad. Co.*, 433 F. App'x 724, 725 (11th Cir. 2011) (citing *Cape Publ'ns, Inc. v. Hitchner*, 549 So.2d 1374, 1377 (Fla. 1989)). In this claim, Plaintiffs allege that Atlas Air gave publicity to Plaintiffs' protected private health information ("PHI") by publishing the information throughout the company and by forcing Plaintiffs to wear face masks, "effectively amplifying and broadcasting their PHI" to others. SAC ¶ 95. Defendants argue that Plaintiffs have failed to sufficiently allege each element of the invasion of privacy tort. Mot. at 20–22.

Plaintiffs do not respond to Atlas Air's argument that Atlas Air never published any PHI to the public at large. Nonetheless, the Court agrees with Atlas Air. To constitute publication, "the publicity given to private facts must be to the public at large or to so many persons that the matter must be regarded as substantially certain to become public knowledge." *Regions Bank v. Kaplan*, No. 17-15478, 2021 WL 4852268, at *13 (11th Cir. Oct. 19, 2021) (quoting

Williams v. City of Minneola, 575 So. 2d 683, 389 (Fla. Dist. Ct. App. 1991). It is unclear how many employees at Atlas Air were given PHI belonging to another employee. Mot. at 20–21. Even so, the Court finds that publication within Atlas Air is not a disclosure to the public at large or a disclosure that is substantially certain to become public knowledge. Nor does the Court find that wearing a face mask would broadcast PHI to others. *See, e.g., Leake v. Raytheon Techs. Corp.*, No. CV-22-00436-TUC-RM, 2023 WL 2242857, at *5 (D. Ariz. Feb. 27, 2023) (finding that "masking requirements for vaccination-exempt employees does not create a 'scarlet letter' effect because the employees could be vaccination-exempt for a multitude of reasons, or the masking employees could be vaccinated but simply want the added facial protection").

Accordingly, the invasion of privacy claim against Atlas Air is dismissed.

2. Count II: Hostile Work Environment

To state a Title VII hostile work environment claim, an employee must prove that "the workplace is permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 21 (1993). Atlas Air contends that this claim should fail because Plaintiffs have not alleged sufficiently severe harassment or that any harassment was based on religion. The Court agrees.

The only allegations regarding actions that Plaintiffs contend constituted harassment involved Atlas

Air's face mask and vaccination requirements. Plaintiffs allege that they faced "severe and persistent pressure" to become vaccinated, "disparaging and unfavorable treatment" by coworkers, and "unwelcomed comments about . . . Plaintiffs' religious beliefs." SAC ¶ 110. These allegations are entirely conclusory, do not demonstrate that Atlas Air's COVID-19 policies targeted anyone based on their religion, and cannot withstand a motion to dismiss. The only remotely non-conclusory allegations come from one Plaintiff's experiences described in the SAC and in an affidavit attached to Plaintiffs' Response. James Villella claims that he was subjected to an Article 19 disciplinary hearing after he failed to comply with Atlas Air's COVID-19 testing policy and was removed from flight status as retaliation for his religious beliefs. *Id.* ¶ 80. He also states that union representatives ridiculed and mocked him for his religious beliefs during a phone call. Declaration of James Villella at 2–3 ("Villella Decl.") (ECF No. 69-3). These allegations do not rise to the level of severity and abuse necessary to constitute a hostile work environment, nor is it clear how the behavior of union representatives can be attributed to Atlas Air. Thus, Plaintiffs have failed to state a hostile work environment claim.

3. Count III: Section 1983 and *Bivens*

In Count III, Plaintiffs assert constitutional claims against Atlas Air under 42 U.S.C. § 1983 or, in the alternative, under *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971). The claims lack merit under both theories.

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege deprivation of constitutional rights and must show that the deprivation was committed by

a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988). The Court finds that Plaintiffs have not sufficiently alleged that Atlas Air was acting under color of state law. As the Eleventh Circuit has explained, "[o]nly in rare circumstances can a private party be viewed as a 'state actor' for section 1983 purposes." *Harvey v. Harvey*, 949 F.2d 1127, 1130 (11th Cir.1992). Indeed, to hold that private parties like Atlas Air are state actors, this court must conclude that Atlas Air satisfies one of the three tests for establishing state action by what is otherwise a private person or entity: (1) the State has coerced or at least significantly encouraged the action alleged to violate the Constitution ("State compulsion test"); (2) the private parties performed a public function that was traditionally the exclusive prerogative of the State ("public function test"); or (3) "the State had so far insinuated itself into a position of interdependence with the [private parties] that it was a joint participant in the enterprise[]" ("nexus/joint action test"). *Rayburn ex rel. Rayburn v. Hogue*, 241 F.3d 1341, 1347 (11th Cir. 2001). Plaintiffs merely allege that "Atlas was a government actor" because "it has taken decisive employment actions that have caused Atlas Plaintiffs harm that is so impregnated with governmental character that it can be regarded as government action." SAC ¶ 132. This statement is a quintessential conclusory allegation and offers no information with which the Court could use in any of the state actor tests.

Bivens also does not apply in this case because the Supreme Court has held that *Bivens* may not be extended "to confer a right of action for damages against private entities acting under color of federal

law." *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 66 (2001). Plaintiffs claim that Atlas Air acted in concert with the federal government "to achieve the Biden Administration's goal of achieving universal vaccination and to acquire said Plaintiffs' personal, genetic information." SAC ¶¶ 132–134. Setting aside the argument that tampering with DNA constitutes an invasion of an individual's Fourth Amendment rights (for which Plaintiffs provide no legal support), Plaintiffs' claim necessarily requests the Court to find Defendants liable for acting under color of federal law, a finding the Supreme Court has clearly rebuked.

Accordingly, the § 1983 and *Bivens* claims against Atlas Air are dismissed.

4. Count IV: Infliction of Emotional Distress and Negligent Infliction of Emotional Distress

Atlas Air contends that Plaintiffs' claims of intentional infliction of emotional distress should be dismissed for multiple reasons: Atlas Air's alleged behavior does not rise to the requisite level of outrageous and extreme conduct required for an intentional infliction of emotional distress claim, and Plaintiffs have not plausibly alleged intent or severe suffering. *See* Mot. at 36–37. Atlas Air also moves to dismiss Plaintiffs' claims of negligent infliction of emotional distress because Plaintiffs did not suffer any physical impact nor did any family member witness death or serious injury. *See id.* at 37–38. Plaintiffs fail to respond to any of these points in their brief. Thus, these claims are forfeited. *See Resolution Trust Corp. v. Dunmar Corp.*, 43 F.3d 587, 599 (11th Cir. 1995) ([T]he onus is upon the parties to formulate arguments.").

Accordingly, the infliction of emotional distress claim against Atlas Air is dismissed.

5. Count V: Negligence

In Count V, Plaintiffs assert a negligence claim that is based on the same allegations as Count I. Specifically, Plaintiffs allege that Atlas Air breached its "standard duty of employer to employee of reasonable care" by publishing Plaintiffs' PHI throughout the company and by forcing Plaintiffs to wear face masks. SAC ¶¶ 166–168. The Court concludes that these allegations fail to state a claim for the same reasons as the invasion of privacy claim. Even if Plaintiffs could adequately allege publication, the Court finds that publication within Atlas Air is not a disclosure to the public at large or a disclosure that is substantially certain to become public knowledge. Nor does the Court find that wearing a face mask would broadcast PHI to others. Regardless, it is well settled under Florida law that "there is no such thing as the 'negligent commission of an 'intentional' tort." *City of Miami v. Sanders*, 672 So. 2d 46, 48 (Fla. 3d DCA 1996).

Accordingly, the negligence claim against Atlas Air is dismissed.

CONCLUSION

UPON CONSIDERATION of the Second Amended Complaint (ECF No. 63), the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the Motion to Dismiss (ECF No. 66) is GRANTED. The Second Amended Complaint (ECF No. 63) is DISMISSED WITHOUT PREJUDICE. Plaintiffs may

amend their Complaint to address the aforementioned deficiencies by October 11, 2023.

DONE AND ORDERED in Chambers at Miami, Florida, this 20th day of September, 2023.

/s/ K. Michael Moore
United States District Judge

c: All counsel of record

ORDER DISMISSING THE FIRST AMENDED COMPLAINT WITHOUT PREJUDICE, U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA (JULY 10, 2023)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ESTATE OF LANE CAVINESS, ET AL.,

Plaintiffs,

v.

ATLAS AIR, INC., ET AL.,

Defendants.

Case No. 1:22-cv-23519-KMM

Before: K. Michael MOORE,
United States District Judge.

ORDER

THIS CAUSE came before the Court upon Defendants' Consolidated Motion to Dismiss. ("Mot." or "Motion") (ECF No. 43). The Motion is now ripe for review. As discussed below, the Motion is granted.

Defendants aver that this cause must be dismissed because, among other things, the Amended Complaint fails to comply with Federal Rule of Civil Procedure 8(a)(2). Mot. at 16–17. Federal Rule of Civil Procedure

8(a)(2) requires that a pleading contain a "short and plain statement of the claim" showing that the pleader is entitled to relief. Fed. R. Civ. P. 8(a)(2). Thereunder, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The complaint must "give the defendant fair notice of what the claim is and the grounds upon which it rests[.]" *Twombly*, 550 U.S. at 555 (cleaned up).

"Complaints that violate either Rule 8(a)(2) or Rule 10(b), or both, are often disparagingly referred to as 'shotgun pleadings.'" *Weiland v. Palm Beach Cty. Sheriff's Off.*, 792 F.3d 1313, 1320 (11th Cir. 2015). "The typical shotgun complaint contains several counts, each one incorporating by reference the allegations of its predecessors, leading to a situation where most of the counts (*i.e.*, all but the first) contain irrelevant factual allegations and legal conclusions." *Strategic Income Fund, LLC v. Spear, Leeds & Kellogg Corp.*, 305 F.3d 1293, 1295 (11th Cir. 2002). Another type of shotgun pleading is one that asserts "multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions." *Weiland*, 792 F.3d at 1323. The unifying characteristic of all types of shotgun pleadings is that they fail to one degree or another, and in one way or another, to give the defendants adequate notice of the claims against them and the grounds upon which each claim rests. *Id.* Such a shotgun pleading makes it "virtually impossible to know which allegations of fact are intended to support which claim(s) for relief." *Anderson v. Dist. Bd. of Trs.*, 77 F.3d 364, 366 (11th

Cir. 1996). Therefore, "shotgun pleadings are routinely condemned by the Eleventh Circuit." *Real Est. Mortg. Network, Inc. v. Cadrecha*, No. 8:11-cv-474, 2011 WL 2881928, at *2 (M.D. Fla. July 19, 2011) (citing *Pelletier v. Zweifel*, 921 F.2d 1465, 1518 (11th Cir. 1991)).

The Amended Complaint here is a quintessential shotgun pleading in violation of Rule 8(a)(2). First, the Amended Complaint, which is 408 paragraphs, brings thirteen causes of action. *See generally* Am. Compl. In every single cause of action "Plaintiffs reallege and incorporates all paragraphs above as fully set forth herein." Am. Compl. ¶¶ 245, 249, 255, 269, 274, 291, 312, 338, 350, 361, 383, 399, 405. The Amended Complaint plainly commits the "mortal sin" of incorporating by reference the allegations of its predecessors, leading to a situation where most of the counts (*i.e.*, all but the first) contain irrelevant factual allegations and legal conclusions. *Weiland*, 792 F.3d at 1321.

Even more, for the claims asserted against more than one Defendant, Plaintiffs wholly fail to specify which of the Defendants are responsible for which acts or omissions. *Weiland*, 792 F.3d at 1323. And, the Amended Complaint is "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action." *Id*. at 1322.

This is precisely the kind of shotgun pleading that the Eleventh Circuit has repeatedly condemned, producing a situation in which all counts are "replete with factual allegations [and legal conclusions] that could not possibly be material to [them]." *Magluta v. Samples*, 256 F.3d 1282, 1284 (11th Cir. 2001) (alterations added). Accordingly, the Court is "unwilling

to address and decide serious [] issues on the basis of this [C]omplaint." *Id*. (alterations added).

UPON CONSIDERATION of the Amended Complaint (ECF No. 39), the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the Motion to Dismiss (ECF No. 43) is GRANTED IN PART. The Amended Complaint (ECF No. 39) is DISMISSED without prejudice. Plaintiff may submit a second amended complaint addressing the foregoing deficiencies on or before July 13, 2023 at 12:00 pm. The submission of another shotgun pleading will result in the entry of an order of dismissal with prejudice.

DONE AND ORDERED in Chambers at Miami, Florida, this 10th day of July, 2023.

/s/ K. Michael Moore
United States District Judge

c: All counsel of record

RELEVANT STATUTORY PROVISIONS

42 U.S.C. § 2000e(j)

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

42 U.S.C. § 2000e-2(a)(1)

(a) Employer practices

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

COMPLAINT, EXCERPTS (OCTOBER 27, 2022)

[. . .]

178. Another plaintiff, Jimmy Villella, was actually told by defendants that he *needed to change his religion* when he informed them that his religion forbade participation in weekly testing.

179. In at least one case, the defendants' intentional infliction of emotional distress led to violent death. Atlas pilot Lane Caviness was a leading plaintiff in the original complaint filed in this dispute and took a lead role in finding counsel and sharing his grievances with Atlas mandates and related imposition. When Caviness became known as an anti-mandate activist within the company, he became a target for discrimination and lost prospects. The distress stemming from Caviness' isolation within Atlas Air ultimately contributed to a violent confrontation with law enforcement in August 2022 in which Caviness was tragically killed.

180. During the years of 2020, 2021 and 2022 Atlas Air coerced, intimidated, harassed and harangued its employees into complying with various COVID-19 related rules, including mask and then vaccine requirements, at the same time violating both the religious and medical rights of those same employees. Atlas continually demanded they submit to an experimental medical procedure regardless of their medical conditions or religious beliefs.

181. During this time, Atlas Pilots, flight attendants, mechanics, load masters, general employees, and even some members of management endured an

extremely hostile and toxic work environment. One pilot particularly obsessed with the issue would compare unvaccinated employees to January 6th protestors (believing it was some kind of insult apparently). CEO Dietrich also felt compelled to weigh in on the events of January 6th with some "personal thoughts" on January 7th.

182. Often employees were interrogated before beginning their shifts or flight assignments with demands for answers to questions of personal and protected medical and religious information. Atlas employees were leaking passwords to databases containing this. . . .

[. . .]

DEFENDANTS' CONSOLIDATED MOTION TO DISMISS THE SECOND AMENDED COMPLAINT, EXCERPTS (AUGUST 2, 2023)

[. . .]

. . . While the Court need not accept this conclusory allegation, it lacks merit in any event. As Defendants previously briefed, (*see* ECF No. 43 at 24), Plaintiffs' prior objections to the speed or expected outcome of the EEOC's administrative process do not allow them to eschew the exhaustion regime established by Congress. *See Anderson v. United Airlines*, 577 F. Supp. 3d 1324, 1332 (M.D. Fla. 2021) (declining to excuse plaintiffs' failure to exhaust administrative remedies regarding COVID-19-related Title VII claims based on plaintiffs' contention that "the EEOC's investigative process would take too along and because [the EEOC] lacks the authority to resolve these issues"); *Ross v. Blake*, 578 U.S. 632, 639 (2016) (a federal statute's "mandatory language means a court may not excuse a failure to exhaust, even to take [special] circumstances into account").

The Title VII claims of all Plaintiffs who have not exhausted administrative remedies should be dismissed, without reaching their merits allegations.

D. Counts II and VII: Plaintiffs Fail to State a Title VII Claim for Hostile Work Environment (or Any Other Type of Title VII Claim).

Plaintiffs modified their Title VII claims in the SAC. Where Plaintiffs previously asserted three separate types of Title VII claims—for failure to

accommodate, disparate treatment, and hostile work environment—the former two causes of action have been dropped from the SAC, leaving only the hostile work environment cause of action. *Compare* SAC ¶¶ 98–128, *with* FAC ¶¶ 274–337. That cause of action, like their others, is presented in two counts (Counts II and VII)— one against Atlas and another against FSI—on behalf of the 89 individual Plaintiffs. Plaintiffs thus appear to have accepted Defendants' arguments that they have no viable failure-to-accommodate or disparate-treatment claim (*see* ECF No. 43 at 39–44; ECF No. 57 at 22–26), and agreed to forego them. Given the history of this case and the face of the SAC, Defendants' motion to dismiss addresses Counts II and VII solely under a hostile-work-environment theory.[10]

A hostile-work-environment claim requires each of the 89 Plaintiffs individually to show: (1) he belonged to a protected group; (2) he suffered unwelcome harassment; (3) the harassment was based on a protected characteristic; (4) the harassment was sufficiently severe or pervasive to alter the terms and conditions of their employment and create an abusive working environment; and (5) that a basis exists for holding the employer liable. *Williams v. Motorola*, 303 F.3d 1284, 1292–93 (11th Cir. 2002). As with previous iterations of the Complaint, the SAC's hostile work

---

[10] As noted, this is one of the ways Plaintiffs' shotgun pleading deprives the Court and parties of clear notice of the claims. In the event the Court construes their claims as presenting Title VII disparate-treatment or failure-to-accommodate claims, Defendants hereby incorporate their prior motion to dismiss as to those claims and request the opportunity to submit supplemental briefing, if helpful to the Court.

environment claim is fatally flawed with respect to at least the third and fourth elements.

Starting with the fourth element, the SAC fails to "allege facts that suggest [any] Plaintiff was subjected to severe or pervasive harassment by the Defendant[s]." *Carter v. Cellco P'ship*, 2016 WL 8981056, at *5 (M.D. Fla. Mar. 23, 2016). For all the labels that the SAC uses regarding "harassment," "disparate treatment," and "discrimination," it offers next-to-no supporting detail. Indeed, when it comes to concrete factual allegations, the SAC mentions only one Plaintiff, James Villella, by name, alleging that he was "subjected to an Article 19 disciplinary hearing" and "put on a desk job" for three months after refusing to submit to COVID-19 testing as a condition of his religious accommodation from vaccination. SAC ¶ 80 & n.24. But Atlas's compliance with a hearing requirement of the collective bargaining agreement applicable to Villella is not harassment (severe or otherwise). As for being placed on a desk job, Villella admits that this resulted from Villella being the only Atlas employee that claimed that his religious beliefs prevented him from even being *tested* for COVID-19. *Id.* Atlas accommodated Villella with a non-flying position, which exempted him from both vaccination *and* testing. *Id.* While this apparently dissatisfied Villella, "[n]ot everything that makes an employee unhappy is . . . actionable . . . under Title VII." *Shannon v. Bellsouth Telecomms., Inc.*, 292 F.3d 712, 716 (11th Cir. 2002); *Leggo v. M.C. Dean, Inc.*, 2023 WL 1822383, *7 (E.D. Va. Feb. 7, 2023) (rejecting claim for hostile work environment under Title VII based on company's COVID-19 vaccine mandate, noting that "the allegations fall far short of the requirement that hostility in

a work environment be so severe or pervasive that it would dissuade a reasonable worker from making or supporting a charge of discrimination").

Further, even if the SAC's allegations regarding Villella were sufficient to establish severe and pervasive harassment (they are not), they do nothing to establish the other 88 Plaintiffs' hostile-work-environment claims. Merely pleading legal conclusions like "harassment," "disparate treatment," and "discrimination" is insufficient to state a hostile-work-environment claim as to even a single plaintiff, let alone all Plaintiffs. *See Loza v. Kimpton Hotel & Rest. Grp., LLC*, 2020 WL 13389302, at *6 (S.D. Fla. June 17, 2020) ("Plaintiffs' Complaint includes no additional factual allegations to establish that the harassment was sufficiently severe or pervasive to alter the terms and conditions of their employment."); *Shah v. Orange Park Med. Ctr., Inc.*, 2016 WL 4943925, at *8 (M.D. Fla. Sept. 16, 2016) ("[A]bsent any non-conclusory facts to support Shah's belief that he was treated unequally due to his race, the Court finds that these allegations are insufficient to state a claim for relief."). The Plaintiffs cannot plead their claims as if this were a class action: each needs—but lacks—"well-pled factual allegations of severe or pervasive harassment" to survive a 12(6)(6) motion. *Carter*, 2016 WL 8981056, at *5; *see also Leake*, 2023 WL 2242857, at *5 (dismissing a Title VII claim, in part, because "Plaintiffs' allegation that a hostile work environment was created through the requirement that vaccination-exempt employees wear facial protection and submit to weekly COVID-19 testing for a virus that has claimed the. . . .

[. . .]

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT, EXCERPTS (AUGUST 16, 2023)

[. . .]

. . . requirements to satisfy the plausibility standard at this stage in the proceedings. Plaintiffs can provide evidence if necessary to demonstrate how each individual Plaintiff was discriminated against, the wrongful acts committed by the Defendants against them, and the individualized harm and distress that resulted from Defendants' conduct. Furthermore, as an example, Plaintiffs' provided Jimmy Vilvella's individualized experience with discrimination, retaliation, and harassment by the Defendant against him. As such, Plaintiff Villella's supporting affidavit is attached as EXHIBIT 3, as further evidence to demonstrate proof that the Plaintiffs have plausibly alleged specific facts related to each Plaintiff, but they are limited by page limit requirements.

Support also exists around the nation for similar plaintiffs' favorable trial court rulings. *See* SAC footnote 12; *see also George Garvey, et.al. v. The City of New York, et.al.*, Supreme Court State of NY Index # 85163/2022, (reinstating employees fired for non-compliance with COVID mandates and reinstated with full back pay. For another plaintiff's claim based on the near identical facts in a ruling against the employer, see PLAINTIFFS EXHIBIT 2 hereto, the attached Opinion letter in *In Re: Kaycee McCoy v. Rector & Visitors UVA/UVA Health System*,—the Charlottesville Circuit Court, cause no.CL21-44, (which

stated that: "Because UVA acted in an arbitrary and capricious manner, this court reverses their decision to fire Plaintiff for failing to be vaccinated from Covid-19. They are hereby enjoined from preventing her employment on the basis of vaccination as long as she continues to qualify for a religious accommodation as properly applied. Plaintiff is awarded damages in the amount of her salary from the date of her wrongful firing to today, plus interest")

Lastly, despite the Defendants assertions this is not a complaint in which each plaintiff was discriminated against because of their religious beliefs in a distinctive way. Instead, the SAC involves a situation in which every Plaintiff was discriminated against because of their religious beliefs in the exact same manner, pursuant to company policy that was applicable to all employees regardless of vaccination status. Thus, the SAC provides enough factual assertions at this stage in individualizing the Plaintiffs claims because the company policies were effective against each Plaintiff individually. Similarly, in *Bostock v. Clayton County, Georgia*, 140 S.Ct. 1731 (2020), the Supreme Court found that it would be actionable under Title VII prohibition of sex discrimination if a male employee was treated in a discriminatory manner because he was attracted to men. *Bostock* at 1741; (the Supreme Court held that "an employer cannot escape liability under Title VII by simply pointing to another basis for discriminating against an employee if the discrimination on this other basis itself relates to the employee's sex.").

Here, while the Defendants are correct that the discrimination Plaintiffs complain about relates to their opposition to being vaccinated, they fail to realize

that their opposition in turn also relates to their religious beliefs. Consequently, Defendants should not be allowed to escape liability under Title VII by simply claiming that they discriminated against Plaintiffs on another ground (*i.e.* vaccination status), when this other ground was wholly dependent upon Plaintiffs religious beliefs. The flaws in Defendants' meritless argument can be further highlighted by way of an analogy. Such that, if employees cannot eat pork due to their religion, the Defendants are claiming that they only discriminated against those employees because they did not eat the bacon the company wanted them to eat, ignoring the fact that certain employees could not eat bacon without violating their religious beliefs and other employees who might not be as religious can eat bacon if they choose to do so. Accordingly, the arguments made by Defendants against a hostile work environment cause of action must fail, because the SAC contains sufficient and substantial allegations to pass legal muster under a Rule 12(b)(6) analysis.

[. . .]

FIRST AMENDED COMPLAINT, EXCERPT (MARCH 1, 2023)

[. . .]

183. Defendants required Plaintiffs to wear symbols that distinguishing them from their peer groups and amplified their individually identifiable health information to their peers and to the public.

184. Dietrich openly encouraged harassing behavior by making written and oral statements that employees were unsafe around Plaintiffs whose religious beliefs or medical circumstances barred inoculation. Theoretically, a "vaccinated" employee should have immunity to the disease and therefore bare no risk of the medical choices of another. Thus, this culture of finger pointing was perpetrated by Defendants for the sole purpose of harassing Plaintiffs and providing cover for Defendants rent-seeking activities.

185. For example, Plaintiff Richard Bullock, a pilot who often flew cargo to southeast Asia, found himself subjected to retaliatory discipline after he became known throughout the company for having religious beliefs that barred him from taking VBGT's.

186. Defendants were attempting to get Plaintiff Jimmy Villella to change, alter, or abandon his religious beliefs (evident from his Oct 12th, 2021 religious exemption letter), to submit to their COVID-19 testing policy. Villella was subjected to an "Article 19" disciplinary hearing in a blatant act of retaliation, harassment and discrimination.[35]

---

[35] A harassment and discrimination complaint filed Villella was handled with extreme prejudice against him. Atlas' claim they

[. . .]

could not accommodate Villella's accommodation request due to undue hardship was totally meritless. Contrary to Atlas' assertions, Villella operates on domestic flights, and thus no hotel restrictions or other restrictions that apply to international operations are applicable to him. Further, Villella was the only Atlas employee that notified Atlas that his religious beliefs prevented him from getting vaccinated or tested for COVID-19 or any other vaccine/illness. Villella's accommodation request was to continue operating and following the same process (screening for COVID-19, as the CDC stated was appropriate for people without symptoms for COVID-19) all Atlas Air employees had been following for the entire COVID-19 pandemic up to May 1st, 2022, when the new Atlas testing "policy" took place. Since Atlas only had to accommodate this single individual, no undue hardship existed as Atlas claims since only one employee requested this accommodation *seven months* prior to the testing policy being implemented, and *two months* prior to the first communication received by Atlas about a mandatory COVID-19 testing policy. Villella asked on several occasions to be returned to flying status despite his "accommodated non-flying position" when he was made aware of Atlas not following its own mandatory COVID-19 testing for pilots, as well as permitting unvaccinated flight attendants to operate as normal without any COVID-19 testing restrictions, unless the specific country they were flying to had COVID-19 testing requirements.

DEFENDANTS' MOTION TO DISMISS THE FIRST AMENDED COMPLAINT, EXCERPT (MARCH 15, 2023)

[. . .]

. . . dropped. *Compare* ECF No. 1 ¶¶ 290–299, *with* ECF No. 39. As for Villella, he says he "was subjected to an 'Article 19' disciplinary hearing in a blatant act of retaliation, harassment and discrimination" *Id.* ¶ 186. But Atlas's compliance with a hearing requirement of the collective bargaining agreement applicable to Villella is not an adverse employment action. He also concedes that as "the only Atlas employee that notified Atlas that his religious beliefs prevented him from [being] tested for COVID-19," Atlas provided him an "accommodated non-flying position" exempting him from both vaccination and testing. *Id.* n.35. This resolution apparently dissatisfied him but "[n]ot everything that makes an employee unhappy is an actionable adverse employment action under Title VII." *Shannon v. Bellsouth Telecomm., Inc.*, 292 F.3d 712, 716 (11th Cir. 2002).

Similarly, the FAC fails to allege any facts showing that Defendants took any employment action "because of [any] individual's . . . religion." 42 U.S.C. § 2000e-2. Rather, the FAC demonstrates that employees were treated differently *based on vaccination status*. Plaintiffs allege that they received "disparaging and unfavorable treatment . . . as compared to similarly situated employees who received [a COVID-19 vaccine]"; that they were subjected to "harassing statements, threats, humiliation, and constructive[] stripping" of "their important responsibilities . . . as

compared to similarly situated employees who received [a COVID-19 vaccine]"; that they "were arbitrarily forced to wear political symbols, differentiating them from other employees who received [a COVID-19 vaccine]"; and that they were "constructively discharged for not receiving [a COVID-19 vaccine]. FAC ¶ 285; *see also id.* ¶ 302 (offering identical allegations in support of Plaintiffs' disparate treatment claim). Each of these facts fail to allege action "because of [any] individual's . . . religion," 42 U.S.C. § 2000e-2, and thus fail to state a Title VII claim. *See Wagner v. Demo Sales, Inc.*, 2020 WL 2527230, at *3 (M.D. Fla. Apr. 28, 2020) (claimant must allege plausible facts showing that his membership of a protected class was a "determinative factor" in. . . .

[. . .]

THIRD AMENDED COMPLAINT, EXCERPTS (OCTOBER 11, 2023)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

PATRICK AKERLUND, MICHAEL ALZATI, ERIC W ANDERSON, MICHAEL G. BALLARD JR., LARRY JAMES BEARCE JR., ROBERT BELLMAN, BENJAMIN BENDIBURG, GREGORY BERRY, LYNETTE BOTHA, CALEB BUEHRER, RICHARD BULLOCK, JON CARROLL, VERGIL CASKEY, JAMES CASTOR, NATHAN CHARBONEAU, SHAWN CHURCHEL, JOEL COLON, MARK CONNOR, MATTHEW CRONAUER, FRED CUNNINGHAM, ROYAL DANZA, ELLIOT DE SOUSA, ERIC DESANDRO, STEVE DIXON, JAMES ERICKSON, LUIS ESQUIVIA, LEE ESTES, ROBERT FRATTI, JASON FRISBIE, TIMOTHY FRYE, TONY GAMBOA, DENNIS GEBHARD, REZA GHODS, MARK GILMAN, ROBERT GIUDICE, ERIC GORDON, REXFORD T. HEIVILIN, JASON HENNING, DAVID HEWSON III, TODD HONTZ, DANIEL HUDSON, ROGER JUSTICE, VENANCIUS KASSANDJI, JOHN KEARINS, RICKY KINDER, BETH KIRBY, ANDREAS N. KOUSTAS, CHAD KRAVETZ, CARL LINDBERG, JOSEPH LOSCHIAVO, ANDREW LUTZ, BLYTHE LUTZ, RAFAEL MACARIO, DOUGLAS P. MAYO JR., APRIL MCQUILLEN, CHRISTOPHER MCQUILLEN, JEFFREY MICHONSKI, ANDREW MICKLER, COREY

MORRIS, GREGORY MYERS, PETER NAPORA, JOEL PARDO, LANCE PHILLIPS, PATRICK PHILLIPS, GLEN PRONK, CHARLES RANDALL, PETER RAYMOND, JOSHUA ROBERTS, REBECCA ROBERTSON, JASON ROGERS, KIMBERLY SCHRECK, WILLIAM SERRITELLA, GENTRY SHELTON, TODD SNAZA, DONALD SORRENTINO, MARK SOUTH, MICHAEL STARK, ELIZABETH STONEKING, FORREST STOWELLS, BARBARA JANEICE SURBER, JOHN SWIFT, NICK TAYLOR, WILLIAM THOMPSON, BRANDON THOROUGHMAN, GERI TONDA, RICARDO TORRES ABARCA, GUSTAVO VERDES, JAMES VILLELLA, FARSHAD ZARRABIAN
individuals,

Plaintiffs,

v.

ATLAS AIR INC., a Delaware corporation,

And

FLIGHT SERVICES INTERNATIONAL, LLC,
a Texas limited liability company, individuals,

Defendants.

Cause No. 1:22-cv-23519-KMM

JURY TRIAL DEMANDED

Assigned to Judge K. Michael MOORE,
Magistrate Judge Lauren F. LOUIS.

THIRD AMENDED COMPLAINT

NATURE OF THE CASE

1. Plaintiffs are pilots, flight attendants and ground staff of Atlas Air, Inc. ("Atlas") and its affiliated company Flight Services International, LLC ("FSI"), whose rights were brazenly violated in connection with Defendants' implementation of mandates, policies and procedures relating to COVID-19 vaccinations.

2. This is an action for relief to redress Defendants' invasions of privacy, negligence, failure to accommodate, disparate treatment, creation of a hostile work environment, violations of the Genetic Information NonDisclosure Act ("GINA") and intentional and negligent infliction of emotional distress. Such wrongful conduct was predicated on Defendants' unlawful discrimination, harassment, and retaliation against Plaintiffs.

3. This action also seeks relief to redress Defendants' conduct, as federal government-type actors, redressing violations of Plaintiffs' civil rights that are established through the Bivens case and elsewhere, on the basis that Defendants' conduct was indistinguishable from that of the U.S. Government and that Defendants' vaccine and mask mandates, as applied, violates privacy, equal protection and due process protections secured by both the Constitution of Florida and the Constitution of the United States.

4. Defendants used deception, discrimination, psychological and economic coercion, psychological manipulation, and physical isolation to force Plaintiffs,

under threat of job termination, to participate in a dangerous social and medical experiment.

5. Defendants have made Plaintiffs "second-class citizens"—often on the basis of their religious beliefs—within their respective companies and targeted them in a campaign of harassment designed to force Plaintiffs to submit to an injection of an unknown, experimental substance of questionable efficacy and to submit to mask wearing which was then known to be useless in inhibiting the spread of COVID-19.

6. Defendants' vaccine mandate was illegally constituted, lacked a learned intermediary, and it engendered a hostile working environment for Plaintiffs. Defendants' actions and workplace toxicity forced Plaintiffs into an impossible decision they never wanted to make: take an experimental gene-based therapy at the expense of their religious beliefs and/or health or lose their livelihoods and the means by which they provide for their families.

7. Defendants purported to grant for a time Plaintiffs' religious 'accommodation' but continuously changed their standards and treatment, with an ever-present possibility of termination and immediately proceeded to deny them benefits and equal opportunities and created a hostile work environment by forcing Plaintiffs to wear individually identifiable symbols (facial masks) distinguishing them from their peers and gave public disclosure of their private and protected health information.

8. Defendants also violated the rule of informed consent, by coercing Plaintiffs to submit to the vaccine without any information on the potential risks or benefits. Several Plaintiffs (and other Atlas employees)

have suffered adverse side-effects and harm as a result of submitting to the vaccine. In addition to actual physical harm, Plaintiffs now face emotional distress as they worry about possible long-term side effects.

9. This suit is further brought to redress the harms Defendants have dispassionately brought upon their own employees after years of loyal service, to make them whole, and to help ensure the principles of medical freedom through informed consent are preserved.

PARTIES

10. Plaintiffs are divided in the following 4 categories:

11. Atlas plaintiff are divided into the following 3 categories:

12. Plaintiffs Category 1 – 65 Unvaccinated Atlas Pilot Plaintiffs. These unvaccinated plaintiffs which are or were employed by Atlas were damaged by Atlas in, including but not limited to, the following manner: These Plaintiffs suffered hostile workplace harassment, invasion of privacy, discrimination and threats, including but not limited to continued threatened denial of religious and/or medical exemption from Atlas' vaccination and mask mandates, who nevertheless were determined to hold out and did ultimately refuse to take the vaccination and thus suffered retaliation from Atlas for being bona-fide whistleblowers entitled to protection under law, and suffered extreme harassment and humiliation are as follows:

> Patrick Akerlund, Michael Alzati, Eric W Anderson, Larry James Bearce Jr., Robert Bellman,

Benjamin Bendiburg, Gregory Berry, Lynette Botha, Caleb Buehrer, Richard Bullock, Jon Carroll, Vergil Caskey, James Castor, Nathan Charboneau, Shawn Churchel, Joel Colon, Mark Connor, Matthew Cronauer, Fred Cunningham, Royal Danza, Elliot De Sousa, Eric Desandro, Steve Dixon, James Erickson, Luis Esquivia, Lee Estes, Robert Fratti, Dennis Gebhard, Mark Gilman, Robert Giudice, Eric Gordon, Rexford T. Heivilin, Jason Henning, David Hewson III, Todd Hontz, Daniel Hudson, Roger Justice, Venancius Kassandji, John Kearins, Beth Kirby, Joseph Loschiavo, Andrew Lutz, Blythe Lutz, Rafael Macario, Jeffrey Michonski, Andrew Mickler, Corey Morris, Gregory Myers, Peter Napora, Patrick Phillips, Glen Pronk, Charles Randall, Jason Rogers, William Serritella, Gentry Shelton, Todd Snaza, Donald Sorrentino, Mark South, Michael Stark, Forrest Stowells, John Swift, Nick Taylor, William Thompson, James Villella, Farshad Zarrabian.

13. Plaintiffs Category 2 – 13 Vaccinated Atlas Pilot Plaintiffs. These vaccinated plaintiffs are still employed and who were damaged by Atlas in, including but not limited to, the following manner: they suffered hostile workplace harassment, invasion of privacy, religious discrimination and threats, including but not limited to threatened denial of religious exemption from Atlas' vaccination and mask mandates, and who suffered retaliation from Atlas for being bona-fide whistleblowers entitled to protection under law, who succumbed to Atlas' forcing them to take the vaccination, and also suffered and/or continue to suffer

Vaccine Adverse Effects some reported to the VAERS system and some not reported, are as follows:

> Michael G. Ballard Jr., Jason Frisbie, Tony Gamboa, Reza Ghods, Ricky Kinder, Andreas N. Koustas, Chad Kravetz, Carl Lindberg, April McQuillen, Christopher McQuillen, Peter Raymond, Joshua Roberts, Gustavo Verdes.

14. Plaintiffs Category 3 – 6 Atlas ground employees, all 6 ground employee plaintiffs are unvaccinated and are or were employed by Atlas who were damaged by Atlas in, including but not limited to, the following manner: they suffered hostile workplace harassment, invasion of privacy, religious discrimination and threats, including but not limited to threatened denial of religious and/or medical exemption from Atlas' vaccination and mask mandates, and who suffered retaliation from Atlas for being bona-fide whistleblowers entitled to protection under law, are as follows:

> Timothy Frye, Douglas P. Mayo Jr., Joel Pardo, Lance Phillips, Kimberly Schreck, Brandon Thoroughman.

15. Plaintiffs Category 4 – All 5 FSI plaintiffs. All 5 FSI plaintiffs are unvaccinated plaintiffs which are or were employed by FSI who were damaged by defendants in, including but not limited to, the following manner: They suffered hostile workplace harassment, invasion of privacy, discrimination and threats, including but not limited to continued threatened denial of religious exemption from defendants' vaccination and mask mandates, who nevertheless were determined to hold out and did ultimately refuse to take the vaccination and thus suffered retal-

iation from defendants for being bona-fide whistle-blowers entitled to protection under law, and suffered extreme harassment and humiliation are as follows:

Rebecca Robertson, Elizabeth Stoneking, Barbara Janeice Surber, Geri Tonda, Ricardo Torres Abarca

16. Defendant Atlas Air, Inc. ("Atlas") is a Delaware corporation with its principal place of business in Purchase, New York. It is a wholly owned subsidiary of Atlas Air Worldwide Holdings, is a cargo airline, passenger charter airline, and aircraft lessor.[1]

17. Atlas is a common carrier as defined under federal law. Atlas has a massive presence in Florida, and specifically in this judicial district, with a hub, its training center and other operations. Its training center is located at 5600 NW 36th St., Miami, FL 33166. It consists. . . .

[. . .]

. . . impose a vaccine mandate on citizens without express authorization by the legislature directly related to healthcare. The existence of such particular legal authority is why the Medicaid and Medicare mandate was allowed to stand while other mandates without such express authority were overturned.

41. While portions of this case do not rely on the nonexistence of any constitutional authority for Defendants' actions, they are supported by fact that there was a similar lack of authority for Defendants'

---

[1] A previous EEOC investigation into Polar Air, a subsidiary of Atlas, found that it had discriminated against female pilots by not allowing them to fly into the Middle East. Polar Air was ordered to pay the individual $50,000 and to modify their discrimination/harassment policy.

actions within Atlas' and FSI's Collective Bargaining Agreements with their employees, including the Plaintiffs. Just as a constitution sets forth the rights and responsibilities of citizens of a jurisdiction, a Collective Bargaining Agreement sets forth the rights and responsibilities of employees subject to that Collective Bargaining Agreement.

C. Interpretation of Religion under Title VII

42. One of the purposes of this complaint is to seek applicable redress afforded to Plaintiffs pursuant to Title VII, which prohibits the unlawful employment practices undertaken by Defendants.[15] While this suit also seeks to challenge the constitutionality of the Defendants' vaccine mandate, as applied, differentiation between these claims is necessary when conducting Title VII analysis.

43. In addressing this Title VII issue, Plaintiffs contend that their "sincerely held religious beliefs" must be accorded protection under Title VII . Under Title VII, religion is defined broadly to include all aspects of an individual's belief, observance, and practice.[16] Furthermore, this broad definition has been incorporated by the U.S. Equal Employment Opportunity Commission ("EEOC") in promulgation of regulations pertaining to religious discrimination.

44. Plaintiffs' sincerely held religious beliefs are congruent with Title VII's depiction of religion, U.S. Supreme Court precedent, applicable regulations pertaining to religion, and with EOCC guidance.

---

[15] *See*, 42 U.S.C. § 2000e et seq.

[16] *See*, 42 U.S.C. § 2000(j).

45. Indeed, Plaintiffs contend that the term "religion", as it appears in Title VII, must be interpreted with equal breadth as the term "sex" has been interpreted. Federal court precedents have interpreted the term "sex" to apply broadly to any discrimination that involves gender, including protections for pregnancy status, sexual orientation, and for transgender individuals. As such, the term "religion" must be interpreted equally broadly.

D. Plaintiffs Possess Sincerely Held Religious Beliefs Recognized by Law

46. Plaintiffs possess sincerely held religious beliefs that their Creator planned their existence upon their creation, which included the creation and design of their unique genetic code, both DNA and RNA. Plaintiffs' conscience prohibits them from being inoculated with any experimental foreign substance or biological/medical material that violates their religious convictions and will alter the biological aspects of their human body.

47. The "vaccines" in question are mRNA vaccines, which hijack a person's cells in the vicinity of an injection site in order to cause these cells to start making the same protein that is found in the COVID-19 virus.

48. This type of "vaccine" differs significantly from standard vaccines, which do not hijack the human bodies own cells, but instead contain live or dead viruses.

49. Plaintiffs' sincerely held religious beliefs are commonly shared by millions of people around the world.

50. Plaintiffs' religious beliefs are not based upon social, political, economic, or personal philosophies.

51. Plaintiffs' religious beliefs based on the teachings of globally accepted religions that espouses moral or theistic beliefs as to what is right and wrong and concerns ultimate ideas about an individual's life, purpose, and death.

52. Plaintiffs have conducted themselves with grace in the face of Defendants' oppressive and discriminatory conduct and are entitled to the relief sought.

GENERAL ALLEGATIONS

A. The COVID-19 Pandemic and Response

53. By mid-March 2020, even though the untreated mortality rate was below one half of one percent, COVID-19 had been declared a pandemic. The subsequent lockdowns and measures taken by governments and large corporations wreaked havoc on the global economy and tore at the societal fabric.

54. The three "vaccines" developed as a response to the COVID-19 virus did not go through any standard form of clinical trials or normal FDA approval. Rather, they were rushed through pursuant to Emergency Use Authorizations (EUA)'s.

55. Nowhere in American law is there any authority to mandate EUA medicines without informed consent. "Informed" establishes that a person must be informed of known and potential benefits, known and potential risks of such use, available curative and prophylactic alternatives, and of the extent to which

such benefits and risks are unknown.[17] "Consent" establishes that all persons must have the option to refuse administration of the product. Punishments or consequences for refusing medical products are strictly prohibited based on the express wording and intent of the law.[18]

56. As such the FDA's grant of an EUA is still subject to informed consent requirements in order to "ensure that individuals to whom the product is administered are informed" that they have "the option to accept or refuse administration of the product."[19]

57. Plaintiffs are not unique or abhorrent; millions of Americans have also refused to take these experimental medical products for numerous reasons, including for religious reasons.

58. COVID-19 vaccines are Virus-Based Gene Therapies ("VBGT") according to the FDA's own definition.[20] Thus, these medical products are unequivocally based upon injecting genetic information into a person to change or manipulate the person's own genetic information.

59. These genetic alterations are prohibited by Plaintiffs sincerely held religious beliefs and objections to these alterations. Further, these VBGT's were developed using stem cells harvested from human embryos. Plaintiffs have a conscientious duty to refuse

---

17 *See*, 21 U.S. Code Sec.360bbb-3(e)(1)(A)(ii)(II).

18 *See*, 21 U.S. Code Sec.360bbb-3(e)(1)(A)(ii)(III).

19 *Id.*

20 *See*, https://www.fda.gov/vaccines-blood-biologics/cellular-gene-therapy-products/what-gene-therapy

participation in activities repugnant to human life and dignity.

60. The FDA approved the Pfizer Comirnaty vaccine on August 23, 2021, and on September 9, 2021, Biden signed EO 14042. Thus, Defendant Atlas sent an electronic communication to all Atlas employees and announced all Plaintiffs would be required to be "fully vaccinated" with a COVID-19 VBGT pursuant to EO 14042 by December 8, 2021.

B. Atlas' Vaccine Mandate Due to Government Orders

61. In October 2021, Atlas originally stated:

> As a Company, we support the views of health experts that [the VBGT] reduce the impact and spread of COVID-19. That said, we have been consistent in our position that [a VBGT] is a personal choice and we were not planning to mandate [VBGT's] for our employees. However, we are now required to comply with [EO 14042].[21]

62. Yet, Defendant's' palpably disingenuous concerns about safety overwhelmingly support Plaintiffs' decisions to *not* be injected with a COVID-19 VBGT.

63. Plaintiffs' reluctance to take the VBGT was supported by Defendants' own actions, since Defendants: (i) did not mandate any passenger flying on its aircraft or interacting with its staff to be vaccinated;

---

[21] After the Biden Administration's mandate was enjoined by various federal courts, Atlas immediately reverted to a company-directed mandate.

(ii) did not mandate VBGT's for employees from other countries, (even though many Plaintiffs worked on the same aircraft and had contact with them); and (iii) did not mandate VBGT's for pilots from other airlines allowed to ride in the "jump seat" of any Atlas aircraft.

64. On October 5, 2021, Atlas and FSI sent electronic communication to all plaintiffs informing that they would have to comply with the government mandates and all employees would have to be vaccinated. Only a week later, on October 11, Atlas and FSI emailed all plaintiffs with instructions on how to apply for a medical and/or religious exemptions.

65. On the same electronic communication above, Atlas and FSI informed all plaintiffs that they must digitally report their vaccination status and that they must file for religious and/or medical exemptions to avoid VBGT inoculation. Pilots and flight attendants were falsely told that the information would be protected. Atlas pilots' and FSI flight attendants' private vaccination status was disseminated to other employees under the supposed need to circulate the information about which crewmembers (vaccinated or unvaccinated) would qualify for certain flights involving company imposed COVID-19 restrictions. For no valid medical reason, Category 1 unvaccinated Atlas pilots and Category 4 FSI flight attendants received less flight opportunities than vaccinated ones from Atlas and FSI, respectively.

66. Defendants set October 22, 2021, as the deadline "for [Plaintiffs] to request an exemption due to medical or religious reasons." No due date for a response was given by Defendants.

67. Then, Defendants directed that November 25, 2021 was the deadline for Plaintiffs who did not apply for a religious or medical exemption to "report [their VBGT] status to the Company."

C. FSI's Vaccine Mandate

68. FSI, whose sole business and source of revenue is through Atlas contracts, quickly followed suit and in early September 2021, FSI President Joni French sent an e-mail to Plaintiffs that made brazenly explicit the disparate treatment and hostility toward Plaintiffs. She wrote:

> The health and safety of all our Cabin Crewmembers remains a top priority for FSI. To support your well-being, as well as that of your work colleagues, we encourage everyone to pursue the [VBGT]. Cabin Crewmembers who have proof of [VBGT] will increasingly be able to operate with more flexibility under less restrictive quarantine rules.
>
> We are pleased to let you know that we will now provide 5 hours of additional compensation to every FSI Flight Attendant who receives [a VBGT] and submits a copy of their vaccination card.[22]

---

[22] It is important to note that the term "vaccination" does not refer to a single event or transaction in this paragraph. Every new requirement by Atlas to take a booster to maintain "vaccination" status constitutes a new occurrence or transaction for the purposes of accommodation analysis under Title VII. Each transaction or occurrence rests upon a different set of operative facts.

69. Plaintiffs' lives were effectively placed on hold after October 2021 due to Defendants' continuous threats of unpaid leave and termination.

D. Atlas' Government-Directed Mandate Turns Into A Company-Directed Mandate

70. Plaintiffs applied for religious accommodation from the vaccine mandate prior to October 22, 2021.

71. On January 13, 2022, The Supreme Court of the United States blocked the OSHA mandate requiring businesses with over 100 employees to impose vaccine and testing requirements.

72. On or about January 25, 2022, in light of the Supreme Court's ruling, OSHA announced it was withdrawing its vaccine and testing requirements that were at issue. However, Biden called upon businesses to voluntarily impose the mandates themselves.[23]

73. Despite their previous statements that they believed in personal choice when it came to the VBGT mandate issues and were only reluctantly abiding by federal law, the Defendants nevertheless immediately complied with the new direction issued by the Biden Administration and announced, through electronic communications to Plaintiffs, that they would do as the President "suggested" that business that rely on federal contracts for business do.

74. On January 25, 2022, Atlas sent out a communication stating:

---

23 *See* https://khn.org/morning-breakout/biden-disappointed-by-courts-decision-urgesemployers-to-require-covid-shot/

> Earlier today, you received notice that all U.S. employees who must travel as an essential function of their position must be fully vaccinated by May 1, 2022. *This policy applies to you*. We recognize that you previously sought an accommodation from the COVID-19 [VBGT] mandates the company previously implemented to comply with [EO 14042] (applicable to federal contractors) and OSHA's Emergency Temporary Standard (applicable to employers with more than 100 employees). (Emphasis added).

75. In that same communication, Atlas indicated that Plaintiffs would not be allowed to submit new medical or religious accommodation requests, but that the current exemptions would be reprocessed.

> Given your requests for accommodation from the Company's previous COVID-19 vaccination mandates, the Company is assuming you are seeking a request for accommodation from the vaccine policy that will take effect May 1, unless you respond to this email and indicate otherwise by Friday, January 28, 2022. If you do not respond by January 28, the Company will process your new request for accommodation based on the information already in its possession and follow-up with you thereafter to identify any reasonable accommodations the Company can offer without undue hardship.

76. On March 8, 2022, Atlas Plaintiffs pilots Categories 1 & 2 who worked for Atlas, received a communication from upper management stating that if they were not vaccinated by May 1, 2022, they would be

placed on an unpaid leave of absence or reassignment regardless of the fact they had previously requested an accommodation. On March 25, 2022, Atlas walked back their statement and decided to allow unvaccinated pilots to continue working past May 1st as long as they submitted to monthly testing and masking. Atlas Plaintiffs who were unvaccinated were left in a continued state of legal, emotional and career limbo.

77. Atlas Plaintiffs were left with the impossible choice of taking COVID-19 VBGT at the expense of their deeply held religious beliefs or be terminated. Plaintiff Category 2 succumbed to the pressure and took the VBGT. After the implementation of the VBGT mandate, all unvaccinated Plaintiffs were subjected to repeated harassment and disparate treatment within the company for their deeply held religious beliefs.

78. Defendants required unvaccinated Plaintiffs to wear the proven useless COVID-19 face masks which unlawfully required them to advertise their medical status and their objection to the VBGT, and unlawfully required them to distinguished themselves from their peer groups by and amplifying their personal protected health information to their peers and to the public.

79. Theoretically, a "vaccinated" employee should have immunity to the disease and therefore bare no risk from the medical choices of another. However, Atlas CEO John Dietrich continued to discriminate against Plaintiffs by disseminating recorded video and oral statements that employees were unsafe around Plaintiffs whose religious or medical circumstances barred inoculation.

80. Plaintiff James Villella was damaged in the following manner: Plaintiff is a Boeing 737 Atlas pilot Captain that only flies domestic routes and requested a religious exemption to both vaccinating and testing but was issued the same blanket exemption that required him to be tested. After trying for 7 months to clarity his situation, Atlas attempted to get Plaintiff to change, alter, or abandon his religious beliefs and to submit to their COVID-19 testing policy. Villella was unjustly subjected to an "Article 19" disciplinary hearing in a blatant act of retaliation, harassment and discrimination. After having to defend himself of accusations of blatantly disregard for the company vaccination policy, and other libelous accusations, Plaintiff was removed from flight status and put on a desk job for approximately 3 months under threat of being terminated for refusing to test due to his sincerely held religious beliefs. [24]

81. For Plaintiffs whose religious exemptions were granted, Defendants continuously harassed Plaintiffs

---

[24] Atlas' claim that they could not accommodate Villella's accommodation request due to undue hardship was totally meritless. Contrary to Atlas' assertions, Villella operates on domestic flights, and thus no hotel restrictions or other restrictions that apply to international operations are applicable to him. Villella's accommodation request was to continue operating and following the same process (screening for COVID-19, as the CDC stated was appropriate for people without symptoms for COVID-19) all Atlas Air employees had been following for the entire COVID-19 pandemic up to May 1st, 2022, when the new Atlas testing "policy" took place. Since Atlas only had to accommodate this single individual, no undue hardship existed as Atlas claims since only one employee requested this accommodation *seven months* prior to the testing policy being implemented, and *two months* prior to the first communication received by Atlas about a mandatory COVID-19 testing policy.

to disregard their conscience and/or health and submit to vaccination. This includes but is not limited to those plaintiffs listed above in Plaintiffs Categories 1, 3 & 4. Atlas and FSI disseminated the VBGT status of every Plaintiff in emails that were published showing the last name, employee number, and VBGT status of Plaintiffs, and gave public disclosure of protected health information. In addition to that, Atlas discriminated against unvaccinated Plaintiffs in Plaintiffs Category 1 listed above and denied them bids for higher paying flights to certain destinations despite such destinations having no laws or restrictions against unvaccinated Plaintiffs.

E. FSI Changes Religious Accommodations For All Flight Attendants

82. On March 8, 2022, Plaintiffs who worked for FSI, received a communication from FSI President Joni French stating that if they were not vaccinated by May 1, 2022, they would be placed on an unpaid leave of absence regardless of the fact they had previously requested an accommodation. Twenty-three days later, on March 31, 2022, FSI informs Atlas it would no longer require Flight Attendants to be vaccinated or virus tested and that they can continue working after May 1st. Atlas' testing requirement would become effective May 1, while FSI's ended on that date.

F. Atlas Changes Religious Accommodations For All Pilots And Ground Employees

83. On March 25, 2022, Atlas attempted to mollify Plaintiffs by purporting to assure them that – despite maintaining a private company-wide VBGT mandate – those who had previously obtained a religious

exemption pursuant to EO 14042 would be allowed to return to their regular work duties after the May 1, 2022 company vaccine mandate deadline "so long as they undergo requisite COVID-19 testing at their expense." Atlas' testing requirement would become effective May 1, 2022 while FSI's ended on that date.

84. Atlas ordered its unvaccinated employees, even after they had established natural immunity from the disease, to test weekly (ground employees) or monthly (pilots and flight attendants) for COVID-19 unlike employees without religious beliefs who were deemed "vaccinated" by the Defendants.

85. On April 21, 2022 Atlas sent Plaintiffs an updated Atlas COVID-19 Vaccination & Testing Policy now mandating that all COVID-19 testing be videotaped and retained by plaintiffs so that the videos could be sent to the company if requested.

G. Defendants' Failure to Accommodate, Disparate Treatment and Creation of a Hostile Work Environment In Violation Of Title VII

86. Defendants' actions against Plaintiffs have violated Title VII's prohibition against the denial of equal opportunity and discrimination and perpetuated a hostile work environment.

87. Title VII of the Civil Rights Act of 1964 prohibits Defendants from engaging in numerous forms of discrimination in virtually every employment circumstance. Specifically, Title VII provides, in relevant part:

> It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or

> to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, *religion*, sex, or national origin . . . [25] *(Emphasis added).*

88. Regardless of whether the VBGT mandate was held Constitutional (for healthcare workers regulated by a specific statutory scheme), employers are still bound to fulfill their obligations to employees pursuant to Title VII. These obligations prescribe that the employer, *inter alia*, not engage in discriminatory, harassing or retaliatory conduct.

89. As such, not only does Title VII of the Civil Rights Act of 1964 prohibit Defendants from engaging in numerous forms of discrimination, but the statute also protects employees from being subject to other unlawful employment practices, such as the creation of a hostile work environment or harassment.

90. Given the foregoing disparate treatment set forth in the facts herein, Defendants' conduct had a disparaging impact on Plaintiffs.

91. Defendants' conduct satisfies the elements for claims of religious discrimination due to disparate treatment, failure to provide accommodations, harassment, and the creation of a hostile work environment.

---

[25] *See,* 42 U.S.C. § 2000e-2.

H. U.S. Equal Employment Opportunity Commission's ("EEOC") Failure To Mitigate Injury And Plaintiffs Ongoing Irreparable Harm

92. All Plaintiffs have satisfied the requirement for exhaustion of administrative remedies.

CAUSES OF ACTION 1-5 AGAINST ATLAS

— COUNT I —
Invasion of Privacy -
Public Disclosure of Private Facts

93. Count I pertains to Atlas Plaintiffs in Categories 1, 2, and 3 listed in paragraphs 12, 13, 14 above.

94. Atlas Plaintiffs specifically reallege and incorporate paragraphs 1-41, 53-60, 61-67, and 70-81 from above as though fully set forth herein.

95. Atlas gave publicity to Atlas Plaintiffs protected private health information ("PHI") by publishing the PHI throughout the company and by forcing Atlas Plaintiffs to wear political symbols, including functionally useless face masks, effectively amplifying and broadcasting their PHI to other employees and consumers.

96. The publication of Atlas Plaintiffs' PHI would be highly offensive to a reasonable person and is of no legitimate public concern.

97. As a proximate result of Atlas' public disclosure of Atlas Plaintiffs' PHI, said Plaintiffs have suffered injury. Atlas is liable to said Plaintiffs for punitive damages because the acts herein described constitute actual malice and oppression. Because Atlas deliberately proceeded to act in conscious or

intentional disregard of the high probability of injury to the Atlas Plaintiffs or, conversely, deliberately proceed to act with indifference to the high probability of injury to said Plaintiffs.

— COUNT II —
Violation of Title VII, 42 U.S.C. § 2000e, *et seq.*
Defendants' Creation of a Hostile Work Environment

98. Count II pertains to Atlas Plaintiffs in Categories 1, 2, and 3 listed in paragraphs 12, 13, 14.

99. Atlas Plaintiffs specifically reallege and incorporate paragraphs 1-67, 70-81, 83-85, and 86-91 from above as though fully set forth herein.

100. Atlas engaged in unlawful business practices in violation of Title VII § 42 U.S.C. § 2000e, et seq.

101. Atlas Plaintiffs suffered discrimination and disparate treatment at the hands of Atlas based on said Plaintiffs' protected religious and other protected characteristics and classifications.

102. Atlas' conduct was so severe or pervasive that it altered the terms, conditions, or privileges of employment.

103. Atlas' conduct was not authorized and was, in fact, prohibited by the terms of Collective Bargaining Agreement that governed the employee-employer relationship of Atlas and Atlas Plaintiffs.

104. Plaintiffs were qualified to perform their duties as demanded by their employment.

105. In good-faith, Atlas Plaintiffs undertook all requisite and applicable procedures to inform Atlas of

the harassment and toxicity that was pervasive around the workplace.

106. Atlas' actions perpetuated a work environment that an average person of ordinary sensibilities would find discriminatory through its egregious harassing conduct.

107. Atlas Plaintiffs are entitled to exercise their fundamental right to practice their religion, secured to them under the First Amendment of the Constitution of the United States.

108. Atlas Plaintiffs are members of several protected classifications.

109. Unvaccinated Category 1 & 3 Atlas Plaintiffs possess sincerely held religious beliefs that preclude them from receiving any of the experimental COVID-19 vaccines. Atlas' repeated attempts to coerce said Plaintiffs to go against their religious beliefs was unwelcomed harassment.

110. Additionally, after refusal to submit to unwelcomed and offensive actions against the Atlas Plaintiffs religious beliefs, Atlas subjected unvaccinated Atlas Plaintiffs Categories 1 & 3 to consistent psychological pressure that included discriminatory, harassing, coercing, and intimidating conduct based, at least in part, on such Plaintiffs' sincerely held religious beliefs as a protected class under Title VII, 42 U.S.C. 2000e, et seq. which conduct included but was not limited to:

(i) Atlas' creation of inflexible policies that directly target Atlas Plaintiffs on the basis of their religion, and on the basis of their status as bonafide whistleblowers under applicable

law including Florida Private Whistleblower Act, Section 448.102(3) et.seq., and on the basis of their status as protected persons-claimants under Title 42 U.S.C. 12101, et seq. and 29 U.S.C. 794 American With Disabilities and Rehabilitation Act;

(ii) Severe and persistent pressure to take VBGT's;

(iii) Disparaging and unfavorable treatment by employees, supervisors, managers, and agents of Atlas against unvaccinated Atlas Categories 1 & 3 Plaintiffs, as compared to similarly situated Atlas Category 2 employees who folded and allowed themselves to be inoculated with one or more of the three VBGT's

(iv) Unwelcomed comments about Categories 1 & 3 Plaintiffs' religious beliefs;

(v) By committing the actions complained here, Atlas did openly violate the Collective Bargaining Agreement (CBA) between Teamsters and Atlas, which actions intentionally contributed to the toxic hostile workplace environment. The CBA at Article 1.a.4 (prior clause in effect at all times pertinent herein) and current version Article 26 R.1 both of which reiterate the Title VII prohibitions against discrimination based upon sex, religion, age. Atlas also violated Article 26 R.1 which assures that employee-crew members will not be required to take any action which may result in any risk of harm, whereas said crew members assert

that the required vaccination and masks posed such risk of harm.

(vi) Atlas' intentional dissemination of Atlas Plaintiffs' PHI and vaccination status to customers, to Atlas employees, agents, and supervisors by forcing said Plaintiffs to wear facial masks which don't work and thus serve no other purpose than identifying "dissident" employees with the masks as political symbols, thus differentiating the masked dissidents from other subdued Category 2 employees who received VBGT's;

(vii) Abuse of power by Atlas, who compelled managers and supervisors to make unreasonable demands of Atlas Plaintiffs during the course of their job responsibilities;

(viii) Psychological harassment by blatant rejection of Atlas Plaintiffs' input on matters, and consistent letters and memoranda threatening to terminate Atlas Categories 1 & 3 Plaintiffs.

(ix) Retaliatory conduct in response to Categories 1 & 3 Plaintiffs' filing declination of vaccination forms and filing religious and/or medical accommodation forms;

(x) Seeking to replace Atlas Category 1 & 3 Plaintiffs' employment positions with individuals who did not seek religious and/ or medical accommodation(s).

(xi) Atlas Defendants disproportionately higher compensated employees who did not seek religious accommodation, especially rewarding

those vaccinated Category 2 Atlas employees with less restrictions, more flexibility in scheduling and greater opportunities all around.

(xii) Atlas' intentional unwillingness and/or inability to train its agents, employees, managers, or supervisors concerning Plaintiffs' rights under Title VII of the Civil Rights Act of 1964;

(xiii) Failing to participate in a meaningful manner or otherwise engage with Atlas Plaintiffs regarding their religious and/or medical accommodation.

111. Atlas Plaintiffs' subjugation to such conduct was motivated on religious grounds and was unlawfully authorized, ratified, encouraged, and condoned by Defendants.

112. Plaintiffs' sincerely held religious beliefs, synonymous with Title VII's meaning of the word "religion," was a major motivating factor by which Atlas engaged in such discriminatory conduct against Atlas Categories 1 & 3 Plaintiffs.

113. Atlas' egregious above-described conduct toward Atlas Plaintiffs was so consistent, severe, and pervasive that it altered the terms and conditions of employment and created a discriminatory and abusive working environment. Atlas Category 2 Plaintiffs buckled to the pressure and were released from under the discriminatory practices; Categories 1 & 3 Plaintiffs resisted and stood firm enduring the hardships deftly manufactured by Atlas.

114. Atlas is responsible for the creation of a toxic hostile work environment under a theory of vicarious liability or direct liability.

115. Atlas is directly engaged in the consistent harassment and directly contributed to the creation of a hostile work environment.

116. Accordingly, Atlas had actual knowledge of the above-described actions of its individual managers and supervisors based on its involvement or, conversely, had constructive knowledge of such conduct based on the internal organizational policies advanced by the corporate Atlas entity itself.

117. Over the course of their employment, Atlas Plaintiffs made numerous good-faith oral and written statements and/or complaints to their supervisors regarding Atlas' conduct toward the (unfavored) unvaccinated Categories 1 & 3 Plaintiffs and their disparate treatment singling them out from the (favored) vaccinated Category 2 Plaintiffs.

118. Atlas, its supervisors, managers, and/or human resources department did not take any steps to assist in the alleviation of this harassing behavior and were in fact the primary sources of the harassment.

119. Defendants, through its agents and employees, developed and encouraged animus against Plaintiffs because of their conscientious objections.

120. The systematic discrimination, as previously set forth, further adversely affected the Atlas Plaintiffs through Atlas' promotion and reinforcement of religious stereotypes in the workplace by equating one's religious beliefs to that of the hated class of "Anti-Vaxxers."

121. Atlas failed to take any prompt and effective action reasonably calculated to result in the prevention and remedy of this religious harassment, religious discrimination, and/or creation of a hostile work environment.

122. This pattern of discrimination has a direct and disproportionate effect upon those individuals seeking religious protections based upon their sincerely held religious beliefs.

123. Atlas' policies are only targeted at Atlas Plaintiffs Categories 1 & 3 and like-situated persons with conscientious objections to VBGT's.

124. Atlas' egregious discriminatory conduct, given the totality of circumstances, raises to a level at which an objectively reasonable person could find constitutes a hostile work environment.

125. The actions of Atlas, as set out herein, violate Title VII.

126. As a result of Atlas's conduct, the Atlas Categories 1 & 3 Plaintiffs have been and continue to be injured, suffering distress, humiliation, loss of prestige, mental anguish, emotional pain and suffering, and monetary and economic loss. The Category 2 vaccinated Atlas Plaintiffs suffer as well with physical disabilities due to adverse vaccine events, grounding at least one pilot from all flying.

127. Atlas is liable to Atlas Plaintiffs for punitive damages because the acts herein described constitute actual malice and oppression. Because Atlas deliberately proceeded to act in conscious or intentional disregard of the high probability of injury to the Atlas Plaintiffs or, conversely, deliberately proceeded to act

with indifference to the high probability of injury to the said Plaintiffs.

128. Filing complaints or charges with the EEOC was futile for Plaintiffs, however, all of them have satisfied the requirement for exhaustion of administrative remedies.

— COUNT III —
Violation of Title 42 U.S.C. § 1983, *et seq*. or in the alternative violation of rights set forth in the Bivens case and its progeny; Defendants' Invasion of Privacy, Denial of Equal Protection and Due Process of Law

129. Count III pertains to Atlas Plaintiffs in Categories 1, 2, and 3 listed in paragraphs 12, 13, 14.

130. Atlas Plaintiffs specifically reallege and incorporate paragraphs 1-60, 61-67, 70-81, and 83-85 from above as though fully set forth herein.

131. Atlas Plaintiffs are citizens of the United States.

132. At all times relevant hereto, Atlas was a government actor and a person acting under the color of law. That is, Atlas has taken decisive employment actions that have caused Atlas Plaintiffs harm that is so impregnated with governmental character that it can be regarded as government action. The government is compelling Atlas' actions whether through incentive or threat.

133. Atlas is also acting under color of law as it has conspired with Government officials to leverage Atlas Plaintiffs' Constitutional rights against them in an effort to achieve the Biden Administration's goal of

achieving universal vaccination and to acquire said Plaintiffs' personal, genetic information.

134. Atlas and the U.S. Government have acted in lockstep and set in motion a series of acts inflicting violations of Atlas Plaintiffs' Constitutional rights. Through private and public . . .

[. . .]

> . . . privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

140. After the announcement of EO 14042, vaccinated employees received preferential treatment compared to Atlas Plaintiffs who had not been vaccinated, which included increase in pay, preferential scheduling, additional benefits and privileges.

141. Atlas knowingly and willfully discriminated against Atlas Plaintiffs who expressed religious concerns and treated persons who were vaccinated differently without lawful justification.

142. Atlas, by allowing similarly situated Atlas Plaintiffs (those who are vaccinated) to retain their jobs, be paid more, have greater privileges/schedules, and not be required to wear political symbols, engaged in a facial deprivation of equal protection.

143. While the vaccine mandate appeared neutral on its face, in practice it denies Atlas Plaintiffs equal protection under the law.

144. Mandated VBGT's, compelled wearing of political symbols and repeated PCR testing are substantial burdens and are employment practices that fail to offer any significant health or safety benefit; thus there is no legitimate public interest promoted by Atlas' conduct.

145. Finally, substantive due process. The Fourteenth Amendment provides heightened protection against interference with certain fundamental rights and liberty interests. The liberty interests protected by the Due Process Clause of the Fifth Amendment includes not only the privileges and rights expressly enumerated by the Constitution and Bill of Rights, but also includes those fundamental human rights implicit in structured liberty.

[. . .]

(v) And such other and further relief as the court deems just and proper.

AND WHEREFORE, The FSI Plaintiffs pray for judgment against Defendant FSI as follows:

(i) An award of compensatory damages in appropriate amounts to be established at trial;

(ii) Punitive damages in a maximum amount as permitted by law and as determined by the jury;

(iii) An award of attorneys' fees and costs associated with this action;

(iv) And such other and further relief as the court deems just and proper.

Dated: October 11, 2023.

Respectfully submitted,

JOHN PIERCE LAW P.C.

By: /s/ John Pierce
John M. Pierce, Esq.
21550 Oxnard St., 3rd Fl PMB 172
Woodland Hills, CA 91367
jpierce@johnpiercelaw.com

STATEMENT OF JAMES VILLELLA (CAPTIONED 'SWORN DECLARATION'), EXHIBIT 3 TO PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT (AUGUST 16, 2023)

PLAINTIFF JIMMY VILLELLA'S SWORN DECLARATION
EXHIBIT 3

I, Jimmy Villella, hear by declare I am over the age of 18 and I am fully competent to make this declaration. The facts set forth within this declaration are true and correct to the best of my knowledge. I am a born-again Christian and follower of Jesus Christ. I believe the Bible is the inerrant Word of God, read the Bible literally, unless otherwise indicated, and believe faith in Jesus Christ as our Lord and Savior is the only way to heaven. A small part of my personal experience dealing with infringements of my religious freedoms and first amendment protections by Atlas Air is accounted for below.

The harassment, discrimination, retaliation, and intimidation by various representatives with Atlas Air began after I submitted my religious exemption request and 2021. My original religious exemption request was not accepted due to the fact that Atlas had a specific form for us to fill out. After this form was available, I filled it out and had it notarized as requested by Atlas. I made changes to this original letter, and these changes were never questioned by anyone at Atlas Air. One of the changes that I made had to deal with screening for COVID-19 in lieu of

testing for COVID-19. I was never contacted about this form being unacceptable.

As opposed to simply stating what my religious objections were to the COVID-19 vaccine and testing procedures I and others were required to fill out a specific form from Atlas Air asking several questions about my religious beliefs. And after time spent in prayer, I was lead through the Holy Spirit to object to any COVID-19 vaccines, in fact, all vaccines and testing procedures past, present, and future due to adherence to my religious beliefs. Some of these objections were included in my original religious exemption letter.

Shortly after my religious exemption letter was submitted, I received in a reply, stating that the exemption has been excepted however, in order for the exemption to be accepted I had to submit to regular testing for Cova 19, despite my objection to testing in my original exemption letter.

Over the course of several months, I sent several emails to the vaccine portal email address, human resources, Patricia Goodwin, Peter's, vice president of human resources, a chief Kyle Fletcher, and finally to John Dietrich CEO. All of these emails, approximately seven in total, went unanswered, including the email sent to John Dietrich. The purpose of these emails were to get in writing that my religious exemption letter was approved for both testing and the vaccination and raised concerns for me due to the testing "mandate" for my religious exemption approval. At no time was I contacted by atlas and advised that my original religious exemption letter was not acceptable, including being restricted from testing for COVID-19.

I and all other employees received countless emails from human resources and atlas management with ever-changing requirements for our religious exemption approval. Some months there were no issues however, other months we were told that these original religious exemption letters would no longer be applicable. Atlas went as far as to threaten our jobs security by promising possible, disciplinary action, including termination for failing to follow their COVID-19 policy.

Once we were advised that there was a new testing policy going into affect May 1 of 2022. I started getting more concerned about whether I was going to be permitted to continue flying as a pilot for an Atlas Air. Once we were advised that there was a new testing policy going into affect May 1 of 2022, I started getting more concerned about whether I was going to be permitted to continue flying as a pilot for a Atlas Air. Approximately April of the same year I attempted to get from human resources in writing an email stating that my religious exemption letter for testing was also approved. I received several emails stating that there had never been an exemption for testing in my original religious exemption letter, despite the fact that the testing restriction was originally included and excepted by Atlas Air.

Shortly before May 1 of 2022, I received an email from human resources, stating that if I did not test for COVID-19 that I would be removed from filing status and put on leave and the hearing would be conducted. Shortly after I was informed of this, I advised human resources that I was not going to change abandon or alter, my religious beliefs and comply with their COVID-19 testing mandate. I also advised human

resources that their demand for me to change abandon or alter, my religious beliefs, constituted, harassment, and discrimination, due to my adherence to my religious beliefs, I also inform human resources that this very policy for the COVID-19 testing mandate, violated the companies own employee handbook and code of conduct regarding protected classes of people as established by title VII of the civil rights act of 1964 and that my religious liberties were being violated. I advised that I was going to file a harassment and discrimination complaint which I did follow through with. The harassment and discrimination investigation was conducted with Atlas's HR and included virtual meetings. At one point the HR representative involved conducted this investigation in her car, while driving, in her military/guard uniform. This goes to show the lack of sincerity and integrity of the harassment and discrimination investigation. Despite me presenting all of the evidence that I had showing that atlas, his own policy was discriminatory in nature, and providing all of the evidence of Atlas's, asking me or demanding me to change abandon or alter my religious beliefs, in order to comply with their testing human resources concluded that no harassment or discrimination took place against me.

I was removed from flying status May 1 of 2022 and put on paid leave while waiting for an update on what was going to take place with me. Sometime later, I received a phone call from a union representative asking me when a good time to discuss the Article 19 hearing that have been scheduled by Atlas Air management against me. I advised the union representative that I had no knowledge of an article 19 hearing that had been scheduled. During the phone conversa-

tion I confirmed that I received an email stating that an article 19 hearing had been started against me. This article 19 hearing stated three different charges against me that were libelous and fictitious and nature. These charges were made maliciously and with the intent to cause permanent harm to myself as an individual and as a professional airline captain. What was especially malicious is the fact that Atlas had in their possession, for approximately seven months, my religious exemption letter that outlined the reasons I could not comply with Atlas is COVID-19 vaccination and testing policy. Atlas air management had full knowledge of my religious restrictions to testing for the COVID-19 virus, yet made up charges against me with the intent to harm me as an airline pilot, as many, if not all major airlines would never hire a pilot, with these types of charges, if I lost this article 19 hearing, and was terminated.

Eventually, my phone conversation with the union representatives, which was conducted on speakerphone with my wife present lead to the union representatives laughing, ridiculing, and mocking me for my religious beliefs and refusing to test. I was advised by my union representatives that if I did not test for COVID-19, Atlas was going to terminate me.

As a result of this article 19 hearing, I spent weeks preparing myself for the article 19 hearing. I collected dozens if not, hundreds of pictures, dozens of pages of notes, and thoroughly investigated the last 7 to 8 months in preparing my defense. Ultimately, I was successful in defending myself during the article 19 hearing and only after two weeks did a decision come back in my favor. Shortly after the outcome of the article 19 hearing, I was advised that accommodation

would be made due to my Covid-19 testing restriction. I was advised that I would still not be permitted to fly, and that I would be doing desk work of some nature. I consulted with the union and advised them what the accommodation was going to be it was told by the union it was my decision.

Eventually, I was told that I was going to be doing COVID-19 entry restrictions for the pilots in the flight attendance at Atlas Air for countries around the world. When I accepted the accommodation what I did not know is that there were dozens if not, hundreds of pilots that were not complying with the COVID-19 testing policy. Flight attendants were also not required to test for COVID-19 before their flights unless the country where they were flying had a COVID-19 testing policy to enter the country. Once I found this out, I started inquiring about why I was not being permitted to fly while pilots were continuing to fly without testing for COVID-19 and the flight attendant has a hole we're not required to test for COVID-19 at all. I never received a satisfactory answer from human resources about why the flight attendants were being permitted to fly without testing for COVID-19 but I was not allowed to fly.

Throughout my accommodation, which lasted for about three months, I have emailed human resources on several occasions, asking to be returned to flying status in light of new evidence that continued to be released about the inefficiency and the end accuracy of the COVID-19 tests and continue to inquire about why flight attendants and pilots were not complying with the COVID-19 testing policy. These emails were always answered by human resources and never addressed any of the points that I presented. I was

told continuously that there was no point in getting involved in a discussion and that I was not going to be allowed to return to flying if I continue to hold my religious beliefs against testing. I continue to maintain that I was not going to change alter or abandon, my religious beliefs and comply with the COVID-19 testing policy in order to go back to flying.

Approximately three months after my accommodation for the COVID-19 testing policy went into affect, the COVID-19 testing policy ended and I was emailed and advised that I needed to go back to flying but first I had to go to Miami to get current. I then had to do a week of supervised flying with a check airman, which I was advised was excessive by other check airman. After this week of supervised flying, I passed my line check and was permitted to return to flying as normal as captain.

During this entire period of time, I dealt with continued harassment and discrimination due to my religious beliefs, and for a brief period of time I kept a journal about the sleepless nights that I endured, the upset, stomach, difficulty eating, and periods of distress between my wife and I due to the fears of possibly losing my job. I also outlined how I felt things have been changing with the attitudes of different managers that I had interactions with during flying the line, which was abnormal compared to my previous interactions with these managers. These specific instances were documented in the journal that I was keeping.

Well, this affidavit is just the tip of the iceberg with harassment and discrimination that I experienced I would like to point out that almost all the evidence that I have collected is in writing from the various

contacts that I've had with different employees at Atlas Air. There was never any period of time where any employee expressed genuine concern for my situation, or attempted to allude any understanding of why my religious beliefs are so important to me.

Much of the specifics of what occurred to me have been left out due to brevity, but are documented in writing on almost all counts.

Respectfully submitted,

James Villella
Captain 737
8/16/23

/s/ James Villella

PARTIES' JOINT STIPULATION REGARDING THE THIRD AMENDED COMPLAINT (OCTOBER 27, 2023)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

PATRICK AKERLUND, ET AL.,

Plaintiffs,

v.

ATLAS AIR, INC., ET AL.,

Defendants.

Case No. 1:22-cv-23519-KMM-LFL

PARTIES' JOINT STIPULATION REGARDING THE THIRD AMENDED COMPLAINT

On September 20, 2023, the Court granted Defendants Atlas Air, Inc. ("Atlas") and Flight Services International, Inc.'s ("FSI") Motion to Dismiss Plaintiffs' Second Amended Complaint. The Court determined that it lacked personal jurisdiction over Atlas concerning the claims of the 47 Atlas Plaintiffs who neither live nor work in Florida (the "Non-Florida Plaintiffs") and determined that it lacked personal jurisdiction over FSI as to all claims asserted against FSI. *See* MTD Order [ECF No. 73].

The Court further determined that the Second Amended Complaint failed to state any claim upon which relief could be granted. *Id.* at 10–15. The Court therefore dismissed the Second Amended Complaint without prejudice and authorized the plaintiffs to amend their complaint to address the deficiencies identified in the Court's MTD Order by October 11, 2023.

Plaintiffs filed their Third Amended Complaint ("TAC") [ECF No. 74] against Defendants on October 11, 2023 and an accompanying Notice Regarding Third Amended Complaint ("Notice") [ECF No. 75]. In their Notice, the Plaintiffs advised "the Court that the only change from the Second Amended Complaint and the Third Amended Complaint . . . is the addition of Count XI at paragraphs 247-256." [ECF No. 75.]

The only substantive change in the TAC was the addition of Count XI alleging a violation of 21 U.S.C. § 360bbb-3 against Defendants.

In light of the foregoing facts, and consistent with the Court's MTD Order, the Parties hereby jointly stipulate as follows:

1. The Parties agree that Defendant FSI has no obligation to respond any part of the Third Amended Complaint—through an answer, a Rule 12 motion, or otherwise.

2. In reliance on this joint stipulation, the Parties agree that Defendant Atlas shall have no obligation to respond to Counts I through X of the Third Amended Complaint—through an answer, a Rule 12 motion, or otherwise.

Dated: October 27, 2023

Respectfully submitted,
/s/ Michelle Hogan

Eliot Pedrosa
Florida Bar No. 182443
epedrosa@jonesday.com
Michelle Hogan
Florida Bar No. 1010992
mhogan@jonesday.com
JONES DAY
600 Brickell Avenue, Suite 3300
Miami, FL 33131
Telephone: (305) 714-9700
Facsimile: (305) 714-9799

Jonathan M. Linas (pro hac vice)
jlinas@jonesday.com
JONES DAY
110 N. Wacker Drive, Suite 4800
Chicago, IL 60606
Telephone: (312) 782-3939
Facsimile: (312) 782-8585

Alexander V. Maugeri (pro hac vice)
amaugeri@jonesday.com
JONES DAY
250 Vesey Street
New York, NY 10281
Telephone: (212) 326-3939
Facsimile: (212) 755-7306

Attorneys for Defendant Atlas Air, Inc.

/s/ Matthew A. Green
Matthew A. Green
Florida Bar No. 1019717
matthew.green@csklegal.com
S. Jonathan Vine
Florida Bar No. 10966
jonathan.vine@csklegal.com
COLE SCOTT KISSANE, PA
222 Lakeview Avenue, Suite 120
West Palm Beach, Florida 33401
Telephone: (561) 383-9200
Facsimile: (561) 683-8977

Attorneys for Flight Services International LLC

/s/ John M. Pierce
Anthony Frank Sabatini
Florida Bar No. 1018163
Sabatini Law Firm P.A.
726 Calabria Way
Howey in the Hills, FL 34737
Telephone: (352)455-2928
Email: anthony@sabatinilegal.com

John M. Pierce (admitted *pro hac vice*)
John Pierce Law PC
21550 Oxnard Street
3rd Floor, PMB #172
Woodland Hills, CA 91637
Telephone: (213) 279-7846
Email: jpierce@johnpiercelaw.com

Attorneys for Plaintiffs

PAPERLESS ORDER APPROVING JOINT STIPULATION (OCTOBER 30, 2023)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

ESTATE OF LANE CAVINESS, ET AL.

v.

ATLAS AIR, INC., ET AL.

Case No. 1:22-cv-23519-KMM

Docket Entry No. 80 (entered Oct. 30, 2023)

PAPERLESS ORDER. THIS CAUSE came before the Court upon the Parties' Expedited Motion to Enter a Joint Stipulation. [79]. Therein, the Parties request for the Court to allow them to enter a Joint Stipulation stating that (1) Defendant Atlas Air only has to respond to the new Count in the Third Amended Complaint, and (2) Defendant FSI has no obligation to respond to the Third Amended Complaint at all. *See generally id.* UPON CONSIDERATION of the Motion, the pertinent portions of the record, and being otherwise fully advised in the premises, it is hereby ORDERED AND ADJUDGED that the Motion [79] is GRANTED. The Parties' Joint Stipulation regarding the Third Amended Complaint is ENTERED. Since the Parties agree that the Court lacks personal jurisdiction over Defendant FSI per the Order Granting

the Motion to Dismiss (ECF No. 73), it is FURTHER ORDERED that Plaintiffs shall file a stipulation of dismissal of all claims against Defendant FSI within thirty (30) days from the date of this Order. Signed by Judge K. Michael Moore on 10/30/2023. (sdu)

PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS THIRD AMENDED COMPLAINT (NOVEMBER 15, 2023)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PATRICK AKERLUND, ET AL., individuals,

Plaintiffs,

v.

ATLAS AIR, INC., ET AL.,

Defendants.

Case No. 22-cv-23519-KMM-LFL

PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS THIRD AMENDED COMPLAINT

INTRODUCTION

Because Plaintiffs' Third Amended Complaint ("TAC") only adds a Count XI and includes no other revisions from the Second Amended Complaint, they herein only address Count XI. With respect to all the personal jurisdiction arguments that have been made in this action and the rulings made regarding personal jurisdiction by the Court in connection with all Plaintiffs and Defendants for which there has been a finding of no personal jurisdiction, Plaintiffs respectfully disagree with those arguments and rulings and intend to

pursue those issues on appeal and/or file a new action or actions in other jurisdictions. With respect to the merits-based arguments and rulings that have been made with respect to Counts I-X, Plaintiffs respectfully disagree with those arguments and rulings and intend to pursue those issues on appeal. Thus, for purposes of judicial economy of the Court and the parties, Plaintiffs herein only address Count XI.

ARGUMENT

A. Regardless Of Emergency Use Authorization (EUA) Status, Plaintiffs Are Entitled To A Private Right Of Action And Have An Option To Refuse Administration Of A Medical Product

1. Plaintiffs Are Entitled To A Private Right Of Action.

These so-called vaccines are investigational medical products, and as such, employees reserve the right to refuse such experimental drugs. No company or government may mandate an investigational medical product upon its employees. The law is that Plaintiffs are endowed by their Creator with inalienable rights to life, liberty and the pursuit of happiness. This does not exclude Plaintiffs' bodily autonomy. Further, federal law protects individuals against this exact situation.

The vaccines were *not* FDA approved. If the vaccines were FDA-approved, then there was no need for an EUA, because they would have been "approved" drugs. Therefore, 21 USC 360 applies. *Doe v. Rumsfeld* No. CIV.A.03-707(EGS) 341 F. Supp.2d 1 (2004) created a permanent injunction for the Anthrax EUA product to "all persons" after having issued a preliminary

injunction of the Department of Defense's "involuntary anthrax inoculation program." This order, enumerated from 10 USC 1107a, created Section 21 USC 360 bbb3 in the FDCA which not only applies to the armed forces of the United States, but any individual United States citizen thereof. This *Doe v. Rumsfeld* order's permanent injunction allowed any individual United States citizen the preemptive inalienable right to not only refuse an investigational medical product, *i.e.*, EUA COVID shots, but upon refusal, no punitive action, "no penalty" would be taken (reference also the precedent-setting 2005 Federal register or 21 CFR 50.25 pertaining to informed consent and consequences medical in nature only (not job loss)).

The Jackson v. Methodist Health Servs. Corp., No. 22-CV-1307, 2023 WL 2486599, at *5 (C.D. Ill. Feb. 10, 2023) argument that there is no private right of action fails because the order doesn't address the context of consequences section of 21 USC 360 bbb3, 2005 Federal register, or 21 CFR 50.25. Consequences are not defined in 21 USC 360bbb3. Whereas, 21 CFR provides the context for consequences and clearly shows it has nothing to do with job loss. Most importantly, that code, 21 CFR 50.25, is actually about informed consent in human protection. If the consequences section were taken into account, no punitive action would have been considered per the law, yet they were overlooked. The "no private right of action" argument fails due to the aforementioned arguments. Plaintiffs request the court completely implement all of these preemptive statutes.

2. Plaintiffs Have The Option To Accept Or Refuse Administration Of A Medical Product.

Additionally, the Defendants' willful, wanton, and blatant disregard for a core legal requirement—that every individual must be informed of the "option to accept or refuse administration of the product, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks." This mandate was unambiguously issued while these drugs were unmistakably categorized as experimental (EUA). The TAC details the negative employment actions that Plaintiffs faced for refusing the experimental vaccine. No COVID 19 vaccines have received FDA approval. The vaccines that Defendants mandated their employees receive were not "FDA approved" by the FDA but merely authorized under the EUA, necessitating that Defendants comply with the provisions of 21 U.S.C. 360bbb-3(e)(1)(A)(ii)(III), which they did not do. *See Apter v. Dept of Health & Human Svc*, No. 22-40802 (5th Cir. 2023)

CONCLUSION

The Court should deny Defendants' motion to dismiss.

Dated: November 15, 2023

Respectfully submitted,

JOHN PIERCE LAW P.C.

By: /s/ John Pierce
John M. Pierce, Esq.
21550 Oxnard St.,
3rd Fl PMB 172
Woodland Hills, CA 91367
jpierce@johnpiercelaw.com