

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

WOMEN OF COLOR FOR EQUAL JUSTICE, et al  
individually and on behalf of similarly situated  
individuals,

Plaintiffs,

v.

THE CITY OF NEW YORK, MAYOR ERIC L.  
ADAMS, COMMISSIONER ASHWIN VASAN, MD,  
PHD DEPARTMENT OF HEALTH AND MENTAL  
HYGIENE, DEPARTMENT OF EDUCATION, AND  
DOES 1-20

Defendants.

INDEX No.: 1:22 CV 02234-EK-LB

**STATEMENT OF MATERIAL FACTS**  
**AS TO WHICH THERE IS NO ISSUE TO BE TRIED**

Pursuant to Local Rule 56.1 of the United States District Court of the Eastern District of New York and Fed. R. Civ. P. 56 the Women of Color for Equal Justice, et. al. and for those similarly situated (collectively “Plaintiffs”) respectfully submits this Statement of Material Facts in support of Plaintiffs Motion for Summary Judgment, and alleges as follows:

1. On March 11, 2020, the World Health Organization declared the infectious airborne Covid-19 virus a Global Pandemic. (**Exhibit 1**)
2. According to the CDC, the principal mode by which people are infected with the virus is through exposure to respiratory fluids carrying infectious virus,

which exposure occurs in three principal ways: (1) inhalation of very fine airborne respiratory droplets and aerosol particles (e.g., quiet breathing, speaking, singing, exercise, coughing, sneezing) in the form of droplets across a spectrum of sizes that are in the atmosphere, (2) deposition of respiratory droplets and particles on exposed mucous membranes in the mouth, nose, or eye by direct splashes and sprays, and (3) touching mucous membranes with hands that have been soiled with virus on them. (**Exhibit 2**)

3. For decades since its enactment in 1970, the OSH Act has had mandatory minimum health and safety standards that cover all infectious and communicable diseases, specifically airborne infectious diseases, that public and private employers must comply with. The list of minimum approved safety methods for respiratory communicable diseases exclusively include the General Respiratory Standard at 29 CFR §1910.132, the Personal Protective Equipment standard at 29 CFR §1910.132, the Respiratory Protection standard at 29 CFR §1910.134 and the General duty Clause of the OSH Act 29 U.S.C. §654 (collectively hereinafter “Respiratory Standards”). (**Exhibit 3**)
4. Before 1905, Congress had not enacted any law that governed federal or state authority to management emerging communicable disease.
5. The historical archives of the Center for Disease Control report that as early as 1798 the Marine Hospital Services was the first public health entity in the U.S. to manage communicable diseases of seaman through the safety method

quarantine on ships. (**Exhibit 4**)

6. It was not until 1944 when Congress passed the Public Health and Welfare Act that specifically legislated the federal and state management of communicable disease through authorized “quarantine mandates” that allows the Surgeon General to fine and imprison citizens that violated quarantine regulations. (**Exhibit 5** see Page 3 Section 201 – General Powers & Duties, see Page 12 Section 361(a) Part G Quarantine Regulations, Page 13, Sect 364(a), Page 15, Section 368 - Penalties) compare current statute – **Exhibit 5(a) and Exhibit 5(b) – Communicable Diseases**
7. Nowhere in the Public Health & Welfare Act now the Health and Human Services agency under the enabling clauses in 42 U.S.C. Cht 6A Section 241-243 did Congress give the HHS Secretary or Surgeon General authority to mandate “compulsory vaccinations with criminal sanctions. (**Exhibit 5(c)**)
8. The Surgeon General is only authorized to criminally prosecute any person - subject to a communicable disease quarantine mandate - that violates the quarantine regulations under 42 U.S.C. §264-266 – subjecting an offender to up to 1 year in prison and a fine of up to \$1,000. **Exhibit 5(a) and 5(b).**
9. In 1902, however, Congress enacted legislation for the sale and licensing of virus, serums, and toxins called “The Act”, which gave the U.S. Surgeon General national authority to sell and license viruses, serums and toxins in interstate commerce. The Act did not regulate any specific methods to be used by federal or state agencies to manage communicable disease outbreaks.

**(Exhibit 6)**

10. In 1970 Congress enacted the Occupation Safety and Health Act (OSH Act) that created the Occupation Safety & Health Administration (OSHA) and designated the Secretary of OSHA to set minimum safety standards regarding, among other things, methods on how to manage infectious communicable diseases **(Exhibit 7)**

11. In 1979 OSHA adopted In- door Ventilation and In-door Air Quality regulations under 29 C.F.R. Section 1926.57 which outlines authorized methods for removal of airborne hazards from the workplace atmosphere. **(Exhibits 8 & Exhibit 9)**

12. In 1972, Congress enacted the Communicable Disease Control Programs, a “spending law,” that only allows the Secretary of HHS to make vaccines freely available to the general public through federal grants to states. The legislative history of the Communicable Disease Program reveals that it has never authorized the U.S. Department of Health & Human Services nor any other federal agency to mandate compulsory human vaccination under threat of criminal penalty. **(Exhibit 10)**

13. In 2009, the World Health Organization declared H1N1 a “global pandemic” and OSHA did not add vaccines to the list of approved safety methods. **(Exhibit 11)**

14. In 2015, OSHA, along with the CDC, published Hospital Respiratory Protection Program Toolkit (which applies to any employer), which outlines

the effectiveness of various “respirators” that are required under the OSHA Respiratory regulations. The publication notes that Powered Air Purifying Respirators (PAPR) and/or N95 Respirator are the best of all respirators for shielding Employees from hazardous airborne viruses because they are 99.97% effective at shielding employees from exposure to any airborne hazards. (**Exhibit 12**, and **Exhibit 13**, Affidavit of OSHA Expert Hygienist)

15. OSHA Respiratory regulations also mandate employers to provide “remote work from home” as a safety method when an employer cannot remove an airborne hazard from the workplace atmosphere through approved ventilation and air purification methods. (**Exhibit 13** – See Page 7 & 16 Affidavit of Hygienist Expert)

16. OSHA Expert Hygienist Bruce Miller explains that “remote work” is an authorized safety method under OSHA. (**Exhibit 13**, Page 7, 16)

17. Expert cardiologist responsible for OSHA compliance, Dr. Baxter Montgomery, states that “vaccines are a medical treatment” and are not a safety method that shields workers from any airborne hazard and the vaccine cannot remove viral airborne hazardous from the (**Exhibit 14**, Page 5, ¶18a & b)), which all OSHA respiratory safety methods must accomplish to become an authorized safety method pursuant to the regulations in 29 CFR §1910.134. (**Exhibit 3**)

18. During the 2020 Covid Pandemic, OSHA published guidelines specific to K-12 schools that mandate schools to follow the OSHA Respiratory Standards, including the use of remote work as an authorized safety method. (**Exhibit 15**)
19. The New York State Department of Labor through its New York Public Employee Safety and Health (PESH) Bureau has an OSHA approved State Plan that expressly states that all New York employers including municipal employers are required to comply with the OSHA Respiratory Standards. (**Exhibit 16**)
20. One month after the Covid-19 Pandemic was declared in March 2020, the Ford Motor Company announced that it was increasing the manufacture of Powered Air Purifying Respirators (PAPRs) and N95 Respirators compliant with the OSH Respiratory Standards. (**Exhibit 17**)
21. On March 27, 2020, the Federal Government passed the CARES Act and issued over \$1.4 Billion to the City of New York for Covid-19 expenses, and the CDC provided an additional \$25.1 million to the City specifically to assist the City with compliance with OSHA Respiratory Standards. (**Exhibit 18**)
22. On May 29, 2020, the Office of the Solicitor for OSHA issued a Response to an Emergency Petition declaring, in summary, that it was not “necessary” for OSHA to issue any Covid-19 related Emergency Temporary Standards (ETS 1920.502), specifically because the existing Respiratory Standards were sufficient for employers to comply with in order to manage the Covid-19

pandemic. **(Exhibit 19)**

23. Neither the OSHA Emergency Temporary Standards (ETS) issued in June 2021 nor the ETS issued in November 2021 mandated employees to take the Covid-19 or lose their jobs; and neither did the ETS authorize employers to terminate employees or place them on leave without pay for refusing to submit to the Covid-19 vaccine. **(Exhibits 20)**

24. The City's own marketing materials regarding Covid-19 vaccines reveal that the City knew that the vaccines did not "prevent" the spread of Covid-19 and that OSHA authorized safety methods were mandated to control the outbreak. **(Exhibit 21)**.

25. The City also entered into illegal agreements with employee labor unions that consented to the City placing employees who refused to take the Covid-19 vaccine on leave without pay, which also deprived all City employees the right to refuse the Covid-19 vaccine and receive automatic exemptions required under the OSH Act. **(Exhibit 22)**

26. The National Labor Relations Board laws expressly prohibit bargaining between unions and employers over the civil liberties of employees.

**(Exhibit 23)**

27. Between July 21, 2021, and December 13, 2021, the City issued the Vaccine Orders that applied to City controlled "workplaces", public accommodations and private workplaces mandating that all City employees, and persons in public businesses and private sector employees to provide proof of Covid-19

vaccination or private employers would be fined for non-compliance.

**(Exhibit 24 – Nine Vaccine Orders)**

28. Any City employee who desired to be exempted from the Vaccine Orders was required to first submit to the City through an electronic portal a religious exemption request that required them to disclose their religious affiliation or church membership, provide a detailed explanation of their religious practices and/or beliefs, and the City required a letter from a clergy before their request would be considered by the City for an exemption.

**(Exhibits 25- 36 Affidavits of Plaintiffs)**

29. All Plaintiffs who requested exemptions from the Vaccine Orders on religious grounds and/or medical grounds were denied. **(Exhibits 25-36)**

30. One Applicant – Amoura Bryan an employee of the New York City Department of Education – specifically exercised her right to refuse the Covid-19 vaccine so that she could practice her religious Biblical medical practice of Plant-Based Lifestyle Medicine, which includes consuming a 100% plant-based diet according to the Bible instruction in Genesis 1:29 along with practicing the nine (9) lifestyle interventions also prescribed by the Bible, namely exercise, water, outdoor fresh air, cleanliness or hygiene to name a few. **(Exhibit 27, Page 1)**

31. With her affidavit to the City/Department of Education to request an exemption, Ms. Bryan provided evidence from three (3) medical journals published before the City enacted their Vaccine Orders that established that



her religious practice of Biblical Plant-Based Lifestyle Medicine is effective at reducing Covid-19 deaths and serious injury from a Covid-19 infection. Ms. Bryan's affidavit cited June 7, 2021 study of hundreds of healthcare workers published in the BMJ Nutrition Prevention & Health, which reported, in summary, that those who ate a 100% plant-based diet had a 73% reduction in Covid severity. (**Exhibit 27**, page 18-19)

32. The study also showed that those who were on a predominantly animal flesh diet had an approx. 45% increase in Covid-19 severity. See <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8219480/> Id.

33. Mr. Bryan's affidavit also pointed to another study performed by Massachusetts General Hospital published September 8, 2021, which stated, in summary, that a healthy plant-based diet was also linked to a lower risk of "getting" Covid-19 and a lower risk of severe symptoms. Lastly, a third study of approximately 600,000 individuals was published in June 24, 2021 also concluded that a plant-based diet was associated with lower risk and severity of Covid-19. See -

<https://www.sciencedaily.com/releases/2021/09/210908180530.htm>

(**Exhibit 27** Page 19)

34. On June 17, 2021, the CDC reported that persons with chronic disease like diabetes, heart disease and obesity, have an increase rate Covid-19 related deaths and severity, and the CDC reported that "preventative" measures to reduce and prevent chronic disease is key to reducing severe Covid and death,

which includes increasing community interventions that includes healthy nutrition, like the Biblical practice of Plant-Base Lifestyle Medicine.

**(Exhibit 37)**

35. Ms. Bryan's request to refuse the vaccine and practice her religious medical practice was denied. **(Exhibit 27, Page 7, ¶22)**

36. On December 20, 2021, the New York City Law Department Office of the Corporate Counsel issued a legal memorandum titled "Guidance on Accommodations for Workers" instructing private employers that they could deny requests for religious exemptions from the Vaccine Orders based on the EEOC "undue burden" standard. **(Exhibit 38)**

37. The City also refused to allow "remote work" for Plaintiffs who were already working "remote" and denied "remote work" to those who requested it with their request for exemption. **(Exhibits 27 & 31)**

38. After City employees were denied vaccine exemptions, they were locked out their jobs instructed not to return to any City building and they were placed on indefinite involuntary leave without pay (ILWOP) and denied health insurance, retirement and unemployment benefits. **(Exhibits 25-36)**

39. Many Employees received letters stating that they were "terminated" when not one City employee who refused the vaccine received a formal "misconduct charge" for termination required by the City's Civil Servant progressive discipline laws.<sup>1</sup> **(Exhibit 39)**

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<sup>1</sup> See City Disciplinary codes that mandate "progressive discipline" and requires the City to file a formal charge to terminate employees - New York City Education Law §3020, which applies to all

40. Plaintiffs and those similarly situated have experienced serious emotional distress which for many has cause headaches, stomach pain, depression and the like because not one City employee has ever been required to take a vaccine to keep their jobs even during the 2009 H1N1 Pandemic. (**Exhibits 25-36**)

41. According to the City's former Mayor DeBlasio in a New York Times report, approximately 12,000, or less than 5% of all City employees requested exemptions from the Covid-19 Vaccine Orders based on religious grounds. For the last year, Plaintiffs have been subjected to harassing and coercive tactics by the City to coerce them to go against their religious beliefs by promising their jobs and benefits in exchange for taking the vaccine. (**Exhibit 40**)

42. This "starve them out" tactic caused many who once stood for their faith and refused the Covid-19 vaccine to go against their God or their religious practice and take the illegal vaccine when they ran out of money. (**Exhibit 36 – Affidavit of employee, Mr. Coombs who went against his faith and took the Covid-19 vaccine because he is the sole income for this family**)

43. On February 6 and 8, 2023, the City issued amendments to the Vaccine Orders making the Covid-19 vaccine optional effective February 10, 2023. (**Exhibit 41**)

44. Also, on February 6 the City issued a memorandum stating that those who were denied a vaccine exemption and placed on LWOP could reapply for their

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tenured teachers, or violation of the New York City Administrative Code §16-101 for Sanitation employees; of the New York City Civil Service Law §75, which applies to all City employees.

jobs but had to waive their right to backpay in order to return to their jobs.

**(Exhibit 42)**

45. During a City press conference, the City's Mayor Adams stated that he would re-implement the Covid-19 vaccine mandate in the future and continued to stress that the City has the right to mandate vaccines for the safety of the City. **(Exhibit 43)**

46. Two years after the Pandemic started and has been declared over, the February 6, 2023 memo states that employees are now required to wear a N95 respirator or a KN95 if the employee has been exposed to Covid-19 or had an infection, but the City is not offering Powered Air Purifying Respirators which are OSHA authorized, 99.7% effective and easier to wear and provide purified air to the employee. **(Exhibit 42 Page 5)**

47. The City's continued enforcement of the Vaccine Orders in September 2022 and threats to Plaintiffs and similarly situated that they would never get their jobs back caused over 450 Department of Education teachers who previously refused to take the vaccine based on religious grounds to go against their belief and take the Covid-19 vaccine shots just so that they could earn living and regain their retirement benefits. **(Exhibit 44 – NY Post Article)**

48. Despite the OSH Act mandates applicable to the City's Vaccine Orders, the City represented to the courts that it has the "discretion" to decide how best to maintain a safe workplace without direction from OSHA. **(Exhibit 45 –**

City's Cross Motion to Dismiss in the *Garvey v. City of New York*, NY Slip Op 22335 (NY Supreme Court, Richmond 2022) case.

49. The New York Court of Appeals held in *Chauca v. Abraham*, 20 N.Y.3d 325, (N.Y. 2017) that punitive damages under the NYCHRL can be award on a finding of discriminatory conduct that reflects a “recklessness, or where there is a conscious disregard of the rights of others.”

50. The Second Circuit held in *Sooroojballie v. Port Auth. of N.Y. & N.J.*, 18-3148-cv Page 14-21 (2<sup>nd</sup> Ci. 2020) that compensatory damages in the amount of \$500,000 for egregious emotional distress claims is reasonable. (**Exhibit 47**)

Dated: March 31, 2023

Respectfully submitted,

/s/ Jo Saint-George

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