



Dallas Division, alleging illegality of the vaccine mandate under GA-40 and employment discrimination under Title VII. (Doc 1).

2. On December 1, 2021, the district court held a hearing and orally denied Plaintiffs' request for injunctive relief.

3. On December 3, 2021, the United States District Court Northern District of Texas Dallas Division filed a Memorandum Opinion and Order providing an explanation as to why the Verified Application for Preliminary Injunctive Relief was denied. (Doc. 2).

4. Plaintiffs timely appealed. (Doc. 9).

5. On December 20, 2021, Plaintiffs filed their Appellants' Brief with the United States Court of Appeals for the Fifth Circuit.

6. On June 10, 2022, Plaintiffs filed a Motion for Stay pending the outcome of the appeal. (Doc. 23). The Court granted the motion on June 13, 2022. (Doc. 24).

7. On August 29, 2022, a hearing was held on Plaintiffs-Appellants and Defendants-Appellees' briefs.

8. On September 28, 2022, United States Court of Appeals for the Fifth Circuit handed down its decision vacating the district court's order denying injunctive relief as moot and remanding the matter for further proceedings.

9. The United States Court of Appeals for the Fifth Circuit vacated the District Court's Order denying injunctive relief. The Fifth Circuit held that because CARIS had fired Plaintiffs' the relief they sought on appeal—an order enjoining CARIS from firing them--was moot. The Fifth Circuit then remanded the cause to the District Court for further proceedings, namely, determining whether Plaintiffs were entitled to an injunction

reinstating them pending the outcome of their EEOC actions. A copy of the Opinion is attached to this Motion as Exhibit 1

10. The United States Court of Appeals specifically provided that the underlying action remains alive and that the District Court did not rule on Plaintiffs' alternative request for an "injunction requiring reinstatement." The Court of Appeals states that the resolution of that claim is left with the District Court.

11. During the appeal process, one of the Plaintiffs, Scott Babjak, on July 19, 2022, received his Right to Sue letter from the Equal Employment Opportunity Commission. The deadline for him to file his Title VII lawsuit is October 18, 2022. Plaintiffs therefore seek to file an Amended Complaint to show that Mr. Babjak has received his right to sue letter and seeks a judgment against CARIS for discrimination against him based on his religious beliefs, in violation of Title VII. A copy of Plaintiffs' Amended Complaint is attached hereto. (Exhibit 2)

12. Plaintiffs request that this Court grant Plaintiffs' Motion to Temporarily Lift Stay and for Leave to File Amended Complaint and permit Plaintiffs an opportunity to amend their pleadings.

#### **ARGUMENT AND AUTHORITY**

13. Under Federal Rule of Civil Procedure 15 (a)(2), a party "may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires."

14. Good cause exists for Plaintiffs' request to amend.

15. There is good cause for Plaintiffs to amend. During the time that Plaintiffs were appealing this Court's denial of Plaintiffs' injunctive relief, Plaintiff Scott Babjak received his Right to Sue letter. 29 C.F.R. § 1601.28(b). Receipt of a Right to Sue letter is a prerequisite to filing suit for discrimination under Title VII. 42 U.S.C. § 2000e-5(f)(1).

16. Plaintiff Babjak held off filing an amended complaint while Plaintiffs awaited the decision by the Fifth Circuit and while they waited for the other Plaintiffs to receive their right to sue letters. Furthermore, the Court of Appeals remanded the matter for further proceedings, to avoid piecemeal amendment of the Complaint. However, the other Plaintiffs have not received their Right to Sue letters and Plaintiff Babjak's limitations period is running out. Therefore, in the interest of justice, Plaintiffs should be entitled to amend their Complaint to reflect these circumstances, Mr. Babjak's receipt of his Right to Sue letter, and to seek a judgment against CARIS for discrimination against him based on his religious beliefs in violation of Title VII.

17. Plaintiff Babjak seeks to amend Plaintiffs' Complaint to reflect the circumstances which changed during the time Plaintiffs were appealing the denial of injunctive relief.

18. Defendants would not be unjustly prejudiced by providing Plaintiffs an opportunity to amend. If the Court denied this Motion for Leave it would simply force Plaintiff Babjak to file a separate suit for his Title VII discrimination cause of action based upon the same nucleus of facts involved here, which would in turn force Defendants to defend against two lawsuits based upon the same facts.

19. Plaintiff Babjak has attached a copy of the Amended Complaint to this Motion as Exhibit 2. Plaintiff further requests that if the Court grants his request to temporarily lift the stay to amend their Complaint and permits him to amend the complaint, that the effective date of the amendment be the same date as the filing of this Motion for Leave. This is permissible under the local rules and prevailing case law. LR 15.1(b); *Campbell v. Ahern Rentals, Inc.*, No. 3:20-cv-00477-E, 2020 WL 10816630, \* 2 (N.D. Tex. July 9, 2020) (citing *cf. Perez v. New Breed Logistics, Inc.*, No. 2:16-CV-127, 2017 WL 40289, at \*4 (S.D. Tex. Jan. 4, 2017) (where motion for leave and petition filed prior to limitation running but ruled on after limitation expired, petition deemed filed within the limitations period); *see also Mayes v. AT&T Information Systems*, 867 F.2d. 1172 (8<sup>th</sup> Cir. 1989) (Courts that have addressed the situation where the petition for leave to amend the complaint was filed prior to expiration of the statute of limitations, but the entry of the court order and the filing of the amended complaint occurred after the limitations period expired, have held the amended complaint is deemed filed within the limitations period) ((citing *Rademaker v. E.D. Flynn Export Co.*, 17 F.2d 15, 17 (5th Cir.1927))).

**CONFERENCE WITH DEFENDANTS' COUNSEL**

20. As stated in the Certificate of Conference below, Plaintiffs' counsel conferred with Ms. Sherry Travers, lead counsel for the CARIS Defendants. Plaintiffs' counsel sent Ms. Travers a proposed copy of the Amended Complaint for review. Ms. Travers advised that they are not opposed to the amendment.

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**PRAYER**

For the foregoing reasons, Plaintiffs, Joseph Woodruff, Erica Jobe, Mande Katz, and Scott Babjak, request this Court to grant this Plaintiffs' Unopposed Motion for Leave, that the stay be temporarily lifted to allow the Amended Complaint to be filed, for an order granting that the attached Amended Complaint have an effective filing date of October 14, 2022, and for such other and further relief that may be awarded at law or in equity.

Respectfully submitted,

THE VETHAN LAW FIRM, PC

By: /s/ Joseph L. Lanza

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***Attorneys for Plaintiffs***

**CERTIFICATE OF CONFERENCE**

Plaintiffs' counsel conferred with Ms. Sherry Travers, lead counsel for the CARIS Defendants. Plaintiffs' counsel sent Ms. Travers a proposed copy of the Amended Complaint for review. Ms. Travers advised that Defendants are not opposed to the amendment.

By: /s/ Joseph L. Lanza  
Joseph L. Lanza

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct of copy of this instrument was served on all parties, represented through counsel or *pro se*, through ECF, email and/or Certified Mail, pursuant to the Federal Rules of Civil Procedure, on this 14th day of October 2022, as follows:

**Counsel for Defendants**  
CARIS MPI, INC., and CARIS LIFE  
SCIENCES, INC.

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By: /s/ Joseph L. Lanza  
Joseph L. Lanza

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

**JOSEPH WOODRUFF, ERICA JOBE,  
MANDEE KATZ, and SCOTT BABJAK**

*Plaintiffs,*

**V.**

**CARIS MPI, INC., and CARIS LIFE SCIENCES, INC.**

***Defendants.***

**Civil Action No. 3:21-cv-02993-B**

**ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION TO  
TEMPORARILY LIFT STAY AND FOR LEAVE TO FILE AMENDED  
COMPLAINT**

On the \_\_\_\_\_ day of October, 2022, it came on to be heard Plaintiffs' Unopposed Motion to Temporarily Lift Stay and for Leave To File Amended Complaint, and the Court having considered the Motion before it, the pleadings herein, and the arguments of all parties, if any, finds that Plaintiffs' Motion has merit and therefore GRANTS the Motion.

It is, therefore, ORDERED, ADJUDGED and DECREED that Plaintiffs' Motion is GRANTED, that the current stay is temporarily lifted, and ORDERS that the Amended Complaint attached to the motion be filed.



The Court further ORDERS, ADJUDGES, and DECREES that pursuant to LR 15(1)(b) the effective filing date of the Amended Complaint is October 14, 2022.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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UNITED STATES JUDGE

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

September 28, 2022

Lyle W. Cayce  
Clerk

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No. 21-11249

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JOSEPH WOODRUFF; ERICA JOBE;  
MANDEE KATZ; SCOTT BABJAK,

*Plaintiffs—Appellants,*

*versus*

CARIS MPI, INCORPORATED;  
CARIS LIFE SCIENCES, INCORPORATED,

*Defendants—Appellees.*

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Appeal from the United States District Court  
for the Northern District of Texas  
USDC No. 3:21-CV-2993

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Before JONES, HO, and WILSON, *Circuit Judges*.

PER CURIAM: \*

Defendants Caris MPI, Inc. and Caris Life Sciences, Inc. (collectively, “Caris”) required their then-employees, Plaintiffs Joseph Woodruff, Erika Jobe, Mandee Katz, and Scott Babjak, to receive the COVID-19 vaccine or

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\* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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face termination. Following the denials of their exemption requests, Plaintiffs sought a TRO, preliminary and permanent injunctions preventing their termination, or, alternatively, an injunction ordering their reinstatement pending resolution of their respective complaints with the Equal Opportunity Employment Commission (“EEOC”). Following a hearing, the district court denied the preliminary injunction request based on a lack of irreparable harm, but it did not reach the alternative request, which was not yet ripe. After Plaintiffs appealed, Caris fired them. Caris moves to dismiss the appeal. We VACATE as moot the district court’s order denying injunctive relief but REMAND for further proceedings.

Caris implemented a policy on September 17, 2021 that required its employees to receive a COVID-19 vaccine on or before December 1, 2021. Employees who worked exclusively from home were excluded from the mandate, and others could seek exemptions for medical or religious reasons. Non-compliant, non-exempt employees were subject to termination.

Woodruff, Jobe, Katz, and Babjak each requested religious exemptions, while Jobe and Katz also sought medical exemptions. Caris denied those requests.<sup>1</sup> It also declined to grant any appeals. Plaintiffs then filed discrimination complaints with the Equal Opportunity Employment Commission (“EEOC”). Babjak received a notice of Charge of Discrimination, but the record reflects no additional activity involving the EEOC.<sup>2</sup>

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<sup>1</sup> Caris did, however, apparently grant religious exemptions to four employees under Woodruff’s supervision.

<sup>2</sup> We were informed during oral argument that one plaintiff has received a right to sue letter.

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On November 30, Plaintiffs concurrently filed a complaint and an application seeking a TRO, preliminary and permanent injunctions. First, Plaintiffs sought to “enjoin CARIS from enforcing its vaccine mandate and firing [them] because the mandate is illegal because it violates Governor Abbot’s [Executive Order GA-40].” That first basis for injunctive relief relates to Plaintiffs’ claims under 28 U.S.C. § 2201(a) for a declaration that the vaccination mandate violates GA-40. Second, Plaintiffs sought “injunctive relief pending the outcome of their EEOC complaints.” This second basis for injunctive relief relates to Plaintiffs’ religious discrimination claims under Title VII and disability discrimination claims under the ADA, asserted by Katz and Jobe.

On December 1, the district court held a hearing and orally denied Plaintiffs’ request for injunctive relief, following up with a formal order two days later. The court ruled exclusively on the ground that Plaintiffs failed to establish a substantial threat of immediate and irreparable harm if their application was not granted. Plaintiffs timely appealed.

Caris terminated Woodruff, Jobe, and Katz soon after the court’s order, and it terminated Babjak almost three months later for his failure to comply with the vaccine policy. Plaintiffs seek in this appeal the relief not mentioned by the district court, “reinstatement of their positions while awaiting [] a decision from the EEOC.” Plaintiffs’ appeal is limited to their Title VII claims. Because they mention neither the request for declaratory relief based on GA-40 nor Katz’s and Jobe’s ADA claims, those issues are forfeited. Caris filed a merits brief in response and moved to dismiss the appeal as non-justiciable due to mootness or lack of standing. This court carried the motion to dismiss with the case.

We review questions of federal jurisdiction, including mootness and standing, *de novo*. *Env’tl. Conservation Org. v. City of Dallas*, 529 F.3d 519, 524

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(5th Cir. 2009) (citation omitted); *see also James v. City of Dallas*, 254 F.3d 551, 562 (5th Cir. 2001) (citations omitted). Whether mootness or standing analysis comes first is discretionary because a reviewing court can “choose among threshold grounds for denying audience to a case on the merits[.]” *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 585, 119 S. Ct. 1563, 1570 (1999). Because this appeal is moot, we need not address standing.

“A case becomes moot—and therefore no longer a Case or Controversy for purposes of Article III—when the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome.” *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91, 133 S. Ct. 721, 726 (2013) (internal quotation marks and citation omitted). The court must dismiss an action “[i]f an intervening circumstance deprives the plaintiff of a personal stake in the outcome of the lawsuit, at any point during litigation[.]” *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663, 669, 193 L. Ed. 2d 571 (2016) (internal quotation marks and citations omitted). But that situation occurs only “when it is impossible for a court to grant any effectual relief whatever to the prevailing party.” *Knox v. Serv. Emps. Int’l Union, Local 1000*, 567 U.S. 298, 307, 132 S. Ct. 2277, 2287 (2012) (internal quotation marks and citations omitted).

Further, we have “long been careful to note an exception to the general principle of mootness in instances where some issues of a case have become moot but the case as a whole remains alive because other issues have not become moot.” *La. Env’t Action Network v. EPA*, 382 F.3d 575, 581 (5th Cir. 2004) (internal quotation marks and citations omitted). In other words, “[w]here several forms of relief are requested and one of these requests subsequently becomes moot, [courts have] still considered the remaining requests.” *Powell v. McCormack*, 395 U.S. 486, 496 n.8, 89 S. Ct. 1944, 1951 (1969) (citing *Standard Fashion Co. v. Magrane-Houston Co.*, 258 U.S. 346,

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394, 42 S. Ct. 360, 361 (1922)); *see also University of Texas v. Camenisch*, 451 U.S. 390, 101 S. Ct. 1830, 1833 (1981) (acknowledging “another instance in which one issue in a case has become moot, but the case as a whole remains alive because other issues have not become moot[]”); *Hinkley v. Envoy Air, Inc.*, 968 F.3d 544, 548 (5th Cir. 2020) (citation omitted) (“[R]esolution of a particular issue may be moot even if other issues on appeal remain ripe.”).

This case is a paradigm of the *La. Env’t Action Network* “exception.” Plaintiffs’ appeal is moot, but a live controversy remains in the district court. As to the appeal, the district court only denied Plaintiffs’ request for an “order enjoining CARIS from enforcing its vaccine mandate and terminating their employment[.]” After Caris terminated Plaintiffs, no order of this court could affect the parties’ rights regarding whether Plaintiffs’ terminations should have been enjoined. *See Marilyn T., Inc. v. Evans*, 803 F.2d 1383, 1384 (5th Cir. 1986) (citations omitted). Lacking the ability to grant any effectual relief with respect to the completed terminations, we must dismiss this appeal as moot. *See id*; *see also Knox*, 567 U.S. at 307-08, 132 S. Ct. at 2287 (citations omitted).

As to the underlying action, it remains alive. The district court did not rule on Plaintiffs’ alternative request, still pending, for “an injunction requiring reinstatement” pending resolution of their EEOC complaints. Their request is based on Fifth Circuit precedent holding that federal courts can in some circumstances order employers to reinstate former employees “pending final disposition of [their] charge[s] before the [EEOC].”<sup>3</sup> *See*

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<sup>3</sup> Other circuits appear to be in accord, though their decisions are of similar older vintage. *See Wagner v. Taylor*, 836 F.2d 566, 574 (D.C. Cir. 1987); *Aronberg v. Walters*, 755 F.2d 1114, 1116 (4th Cir. 1985); *Sheehan v. Purolator Courier Corp.*, 676 F.2d 877, 887-903 (2d Cir. 1981); *McNail v. Amalgamated Meat Cutters & Butcher Workmen of North America*, 549 F.2d 538, 542 n. 10 (8th Cir. 1977); *Berg v. Richmond Unified School Dist.*,

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*E.E.O.C. v. Liberty Mutual Ins. Co.*, 475 F.2d 579, 579-80 (5th Cir. 1973) (*per curiam*), *cert. denied*, 414 U.S. 854, 94 S. Ct. 152 (1973). In addition, “[w]hen an appeal from an interlocutory order concerning injunctive relief becomes moot, appellate courts routinely decline to address the other issues remaining before the district court.” *Marilyn T., Inc.*, 803 F.2d at 1385 n.5 (collecting cases); *see also id.* (citing *Crowell v. Mader*, 444 U.S. 505, 506, 100 S. Ct. 992 (1980)(*per curiam*). That precedent is applicable here and counsels us to decline to consider the reinstatement remedy in the first instance. We leave the resolution of that claim to the district court.

For the foregoing reasons, we VACATE as moot the district court’s order denying injunctive relief and REMAND for further proceedings consistent herewith.

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528 F.2d 1208, 1211 (9th Cir. 1975), *vacated on other grounds*, 434 U.S. 158, 98 S. Ct. 623 (1977).





December 1, 2021. Each Plaintiff submitted an exemption form based on religious grounds, and two submitted requests for exemption based on medical grounds. Each Plaintiff was denied both at the human resources level and then again on an appeal. No reason for rejection was given, other than that vague and unspecified federal regulations prohibited it (the regulation in question has never been identified and when presented with specific regulations, denied). CARIS also stated the vaccination mandate is its own policy, not a federal or state mandate.

2. No federal order, regulation, or statute mandates the vaccination of CARIS's employees. In fact, quite to the contrary, the only applicable specific order is Texas Governor Greg Abbott's GA-40, which expressly prohibits CARIS, a company incorporated in and headquartered in Texas, from mandating that its employees get vaccinated, regardless of where those employees are located. CARIS has also discriminated against Plaintiffs based on their religious beliefs and, in two cases, due to their disability, in violation of Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act. All Plaintiffs have filed complaints with the EEOC, but the EEOC did not act prior to the December 1, 2021, termination date. Because CARIS refused to follow Texas law, despite availing itself of the privilege of doing business in Texas and the protection of Texas law, and because CARIS is discriminating against them, Plaintiffs sought intervention from the Court to prevent their termination. Alternatively, Plaintiffs sought reinstatement pending the outcome of their claims.

3. Plaintiffs seek relief to the extent possible for discrimination based on their religious belief and, for Jobe and Katz, medical conditions. Plaintiffs also respectfully ask the Court to declare that CARIS' vaccine mandate is illegal because it violates Governor Abbot's executive order, violates Title VII and the ADA, and give them injunctive relief in the form of an

order reinstating their employment, with back pay to the extent permissible, pending the outcome of their EEOC remaining complaints and this lawsuit.

## **II. JURISDICTION AND VENUE**

4. This Court has original federal question jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331 because Plaintiffs have asserted a cause of action arising under the laws of the United States, specifically Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act. Finally, this Court also has supplemental jurisdiction under 28 U.S.C. § 1367 to hear Plaintiffs' other causes of action, all of which are so related that they form part of the same case or controversy under Article III of the United States Constitution. Finally, and in the alternative, this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 (a) because the amount in controversy exceeds \$75,000 and there is complete diversity as no Plaintiff shares a state of citizenship with any Defendant.

5. This Court has personal jurisdiction over Defendants because Defendants are residents of Texas.

6. Venue in this Judicial District is proper under 28 U.S.C. § 1391(b)(1) as it is the judicial district in which Defendant resides and has its principal place of business.

## **III. PARTIES**

7. Plaintiff, Joseph Woodruff, is an individual who is a citizen of Arizona.

8. Plaintiff, Erica Jobe, is an individual who is a citizen of Louisiana.

9. Plaintiff, Mandee Katz, is an individual who is a citizen of Florida.

10. Plaintiff, Scott Babjak, is an individual who is a citizen of Indiana.

11. Defendant CARIS MPI, Inc., is a Texas corporation with its principal place of business at 780 W John Carpenter Fwy, Ste 800, Irving, Texas 75039 and may be served with process through its registered agent CT Corporation System at 1999 Bryan St., Ste. 900, Dallas, Texas 75201.

12. Defendant CARIS LIFE SCIENCES, Inc., is a Texas corporation with its principal place of business at 780 W John Carpenter Fwy, Ste 800, Irving, Texas 75039 and may be served with process through its registered agent CT Corporation System at 1999 Bryan St., Ste. 900, Dallas, Texas 75201.

#### **IV. RIGHT TO SUE**

13. Pursuant to 29 C.F.R. § 1601.28(b) Plaintiff Scott Babjak has received his right to sue letter from the E.E.O.C. Plaintiff Scott Babjak wishes to proceed with his discrimination lawsuit under this cause of action.

14. Plaintiffs Erica Jobe, Mandee Katz, and Joseph Woodruff have not received their right to sue letters per 29 C.F.R. § 1601.28(b). However, pursuant to the Court's decision *Woodruff v. Caris MPI, Incorporated*, No. 21-11249, 2022 WL 4534987, \*3(5<sup>th</sup> Cir. 2022), these Plaintiffs may maintain this action for purposes of obtaining injunctive relief. Upon receipt of their right to sue letters, these Plaintiffs will seek to amend this Complaint to reflect that and proceed on their discrimination claims.

#### **V. FACTUAL BACKGROUND**

##### **A. The Relationship Among the Parties**

15. Pursuant to Fed. R. Civ. P. 10(c), Plaintiffs adopt and incorporate by reference the Appendix of Exhibits attached to their Application for a Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction ("Application").

16. Plaintiffs are all former employees of CARIS, a company that performs molecular testing on DNA, RNA, and proteins to identify cancer and methods to optimize treatment of that cancer. Plaintiffs are essential employees in the health care industry, interfacing with physicians, nurses, and clinical and hospital staff to provide services related to the treatment of cancer.

17. Plaintiff Scott Babjak was offered employment as a Regional Business Director on January 27, 2021, with a start date of February 15, 2021. His position was based in the field and he works primarily in Indiana. Exhibit 24. His employment was terminated in March 2022.

18. Plaintiff Erica Mercer Jobe was a Molecular Oncology Specialist (“MOS”) based out of Louisiana. Exhibit 25.

19. Ms. Jobe started as an account manager in 2019 and was promoted to MOS during the fall of 2021. Ms. Jobe was responsible for visiting clinics and doctors in her area to educate providers and sell CARIS’ products and services. *Id.* Her employment was terminated effective December 1, 2021.

20. Plaintiff Mande Katz was offered employment on January 14, 2019, as an Account Manager with a start date of February 4, 2019. She has twice been promoted, first to sales trainer and then to Senior Account Manager in southeast Florida. Ms. Katz is also a Master’s Prepared Registered Nurse. Exhibit 26. Her employment was terminated effective December 1, 2021.

21. Plaintiff Joseph Woodruff has been employed by CARIS for several years and is currently a Manager in Phoenix, Arizona. Exhibit 27. His employment was terminated effective December 1, 2021.

**B. Governor Greg Abbott’s Executive Order GA-40.**

22. On October 11, 2021, Texas Governor Greg Abbot issued Executive Order GA-40 (the “Order”). Exhibit 1. Order GA-40 states that “No entity in Texas can compel receipt of a

COVID-19 vaccine by any individual, including an employee or consumer, who objects to such vaccination for any reason of personal conscience, based on a religious belief, or for medical reasons, including prior recovery from COVID-19.” Furthermore, Governor Abbott cited specific reasons why the Order was necessary. Among the stated reasons, “bullying” of private entities by the Biden administration was “causing workforce disruptions that threaten Texas’ continued recovery from the Covid-19 disaster” and that “countless Texans fear losing their livelihoods because they object to receiving a COVID-19 vaccination for reasons of personal conscience, based on a religious belief, or for medical reasons, including prior recovery from COVID-19.” *Id.* Implementation of GA-40 has not been enjoined or stayed by any state or federal court. Plaintiffs contend that CARIS’s COVID-19 vaccine mandate violates GA-40 and pits their opportunity for continued employment against their particular medical best interests and/or religious beliefs.

### **C. Federal Policies**

23. On November 5, 2021, the Occupational Safety and Health Administration (“OSHA”) issued an Emergency Temporary Standard (ETS) requiring private employers with 100 or more workers to require employees to get vaccinated or to get tested weekly. The ETS has been stayed by the United States Supreme Court. *National Federation of Independent Business v. Dept. of Labor, Occupational Safety and Health Administration*, --- U.S. ---, 142 S.Ct. 661, 666, 211 L.Ed.2d 448 (2022). Because implementation of the ETS has been stayed, it is not in force or effect. Additionally, OSHA has temporarily withdrew the ETS on January 25, 2022.<sup>1</sup>

24. Also on November 5, 2021, the Centers for Medicare and Medicaid Services (“CMS”) issued an interim final rule (“IFC”) which requires certain service providers’ employees working in the following settings be vaccinated: Ambulatory Surgical Centers, Hospices, Psychiatric

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<sup>1</sup> <https://www.osha.gov/coronavirus/ets2>

residential treatment facilities, Programs of All-Inclusive Care for the Elderly, Hospitals (acute care hospitals, psychiatric hospitals, hospital swing beds, long term care hospitals, children's hospitals, transplant centers, cancer hospitals, and rehabilitation hospitals/inpatient rehabilitation facilities), Long Term Care Facilities, including Skilled Nursing Facilities and Nursing Facilities, generally referred to as nursing homes, Intermediate Care Facilities for Individuals with Intellectual Disabilities, Home Health Agencies, Comprehensive Outpatient Rehabilitation Facilities, Critical Access Hospitals, Clinics, rehabilitation agencies, and public health agencies as providers of outpatient physical therapy and speech-language pathology services, Community Mental Health Centers, Home Infusion Therapy suppliers, Rural Health Clinics/Federally Qualified Health Centers, End-Stage Renal Disease Facilities. Exhibit 2. The IFC directly applies only to the Medicare and Medicaid certified provider and supplier categories identified above. CARIS does not fall within any of those categories. Additionally, CMS was enjoined from enforcing the IFC effective November 29, 2021, by a federal district court in Missouri.

**D. CARIS's Covid-19 vaccination policy.**

25. During July and August 2021, CARIS had a COVID-19 protocol policy that specified the procedures and principles to be followed by employees (August 25 Protocol). Exhibits 4, 22. The August 25 Protocol stated that all unvaccinated employees must wear a face mask covering while in the workplace or at a company facility and take a rapid test for Covid-19 weekly. *Id.* CARIS's protocol also stated that employees who are not fully vaccinated but exposed to someone who tested positive for COVID-19 should stay home for at least five days until they tested negative.

26. On September 17, 2021, CARIS provided advance notice to Plaintiff Scott Babjak that it would be updating its policy to require all employees to be vaccinated against Covid-19. Exhibit 5. That same day, CARIS emailed the new policy to its employees ("September 17

Vaccination Policy). Exhibits 6, 11, 23. The new policy stated, “In alignment with direction from the government, as a federal contractor who is reimbursed from Medicare and to best protect our patients, their caregivers, physicians and our peers, all employees (currently employed and all new hires in advance of their first day of employment) will be required to be vaccinated to remain employed.”

In alignment with direction from the government, as a federal contractor who is reimbursed from Medicare and to best protect our patients, their caregivers, physicians and our peers, all employees (currently employed, and all new hires in advance of their first day of employment) will be required to be vaccinated to remain employed.

Excerpt, Exhibit 11.

27. On October 11, 2021, CARIS emailed employees a reminder to get vaccinated. Exhibit 12.

28. Plaintiff Scott Babjak questioned the policy. On November 18, 2021, he emailed CARIS HR Helpline inquiring about whether the United States Court of Appeals for the Fifth Circuit’s recent staying of the OSHA ETS would affect religious exemptions under CARIS’s September 17 Vaccination Policy. Exhibit 8, pg. 2. CARIS responded, stating “CARIS announced our vaccine policy in September, prior to any government action. Our mandate remains in place with the same deadline of December 1, 2021.” *Id.*

Caris announced our vaccine mandate in September, prior to any government action. Our mandate remains in place, with the same deadline of December 1, 2021.

29. On November 18, 2021, Plaintiff Babjak specifically asked CARIS whether its policy was based on a government mandate or was strictly a company policy. *Id.*, pg. 1. He made the same inquiry again on November 22, 2021. CARIS responded on November 23, stating: “CARIS instituted its vaccine mandate separate from any executive orders or the OSHA emergency temporary standard (“ETS”). We are aware of the federal requirements and understand they may have implications on

CARIS going forward. However, Caris's requirement, as it currently stands, is a company policy, implemented before OSHA issued its ETS." CARIS further stated, "In addition, CARIS gave all appropriate consideration to religious accommodation requests and analyzed each request independently, based on the facts of that specific employee's circumstances." *Id.*, pg. 1.

Caris instituted its vaccine mandate separate from any executive orders or the OSHA emergency temporary standard ("ETS"). We are aware of the federal requirements and understand they may have implications on Caris going forward. However, Caris's requirement, as it currently stands, is a company policy, implemented before OSHA issued its ETS.

In addition, Caris gave all appropriate consideration to religious accommodation requests and analyzed each request independently, based on the facts of that specific employee's circumstance.

30. Strangely, each Plaintiffs' religious or medical exemption was denied without reason.

**E. Plaintiffs' requests for religious and medical exemptions were denied.**

*a) Plaintiff Babjak's exemption request and denial*

31. Plaintiff Scott Babjak filed a request for a religious exemption. Exhibits 6, 7. In his request, Mr. Babjak cited his objection to being forced to take a vaccine made from aborted fetal cells: "The development of these vaccines, using aborted human fetal cells, is a direct violation of the sanctity of life. Accepting these vaccines into my body would make me complicit with the ending of human life which I believe to be a sin and thus, I will be held morally accountable by God." Exhibit 7.

32. Mr. Babjak's request for a religious exemption was denied on October 12, 2021. Exhibit 6, pp. 2-3. He was given no explanation for the denial.

33. He responded on October 13, 2021, stating his disappointment and asking about the process for appealing the decision. Exhibit 6, pg. 2. CARIS responded on the same day, stating they understood his disappointment but that the decision was final. *Id.*, pg. 2. Babjak responded, asking CARIS to explain why the exemption had been denied. *Id.*, pg. 1. On October 13, 2021, CARIS responded, stating "Our obligations under Federal regulations leave us no room to accommodate



your request.”. *Id.*, pg. 1. This caused further confusion as they had previously stated that their change in protocol was a company policy, made independent of any federal regulation.

34. Mr. Babjak has filed a complaint of religious discrimination with the Equal Opportunity Employment Commission (“EEOC”). His initial interview occurred in early November 2021. He has received a notice of Charge of Discrimination. Exhibit 9.

35. CARIS terminated Mr. Babjak’s employment in March 2022.

36. Mr. Babjak received his right to sue letter on July 19, 2022.

b) Erica Jobe’s exemption request and denial

37. Plaintiff Erica Jobe requested both a medical and religious exemption. Exhibit 13. Ms. Jobe’s medical exemption was certified by Stephanie Cave, MD, FAAFP. Dr. Cave stated the Ms. Jobe suffered from a genetic mutation that prevented her body from detoxing vaccine ingredients. She also certified that Ms. Jobe had a medical history documented by John Hopkins of severe vaccine injury. *Id.*

38. In her request for a religious exemption, Ms. Jobe cited her belief that God created her immune system, that the vaccines altered her immune system, and that altering her immune system was an “abomination in the eyes of God.” *Id.*

39. Ms. Jobe’s exemption requests were denied. Exhibit 14. CARIS stated that her accommodation request was not reasonable because it would impose more than a minimal burden on the company. Specifically, CARIS cited the fact that as a field representative, her essential job functions included visits to hospitals, clinics, doctors’ offices, and other facilities that require visitors to be fully vaccinated against COVID-19 as a condition of entry, and that it would be too expensive to hire replacement sales personnel to perform her job duties. *Id.*

40. Ms. Jobe appealed. Exhibit 15. In her appeal, Ms. Jobe further explained her objection to the vaccines because of her belief that aborted fetal cells were used in the creation of the vaccine. *Id.*, pg. 7. That appeal was likewise denied.

41. Ms. Jobe has filed a discrimination complaint with the EEOC, and it remains pending. On information and belief, she will not have her initial interview until early 2022. She has been monitoring the EEOC's interview calendar daily but due to a backlog has been unable to schedule an interview. Exhibit 25.

42. CARIS terminated Ms. Jobe's employment effective December 1, 2021.

c) Mandee Katz's exemption request and denial

43. Plaintiff Mandee Katz also requested medical and religious exemptions. Exhibits 16, 17. Regarding her medical exemption, Ms. Katz stated that she was allergic to pharmaceuticals that contain polyethylene glycol. Both the Pfizer and Moderna vaccines contain polyethylene glycol. Ms. Katz also stated that she was vulnerable to blood clots, which are a documented potential side effect of the Johnson & Johnson vaccine. *Id.*

44. CARIS denied Ms. Katz's requests. CARIS denied her appeal on November 11, 2021, stating that their denial was based on their "assessment of the essential functions of your job, and the degree of hardship on the company if we allowed you to remain unvaccinated." Exhibit 18, pg. 1.

45. Ms. Katz has filed a discrimination complaint with the EEOC, and it remains pending. On information and belief, she will not have her initial interview until early 2022.

46. CARIS terminated Ms. Katz's employment effective December 1, 2021.

d) Joseph Woodruff's exemption request and denial

47. Plaintiff Joseph Woodruff requested a religious exemption. Exhibit 19. In his request, Mr. Woodruff stated that “Partaking in a vaccine made from aborted fetuses makes me complicit in any action that offends my religious faith.” *Id.*, pg. 3.

48. CARIS denied his request on October 13, 2021. Exhibit 20. CARIS denied the request despite granting religious exemptions for four employees under his supervision. Exhibit 27, ¶ 7. The stated reason was “due to our obligations under Federal regulations our vaccine mandate will remain in place and this is also the basis on which you request was denied.” Exhibit 19, pg. 1. However, this repetitive excuse has no merit if their protocol was created independent of any federal regulations.

49. Mr. Woodruff responded on October 13, 2021, stating his disappointment, and informed CARIS that he would like to appeal the decision. On or about November 2, 2021, CARIS responded, stating they understood his disappointment, but explained that they considered “whether your request would impose more than a minimal burden on operation of the business.” On November 4, 2021, Mr. Woodruff asked CARIS to clarify what more than “minimal burden” he would pose on the organization. Additionally, he requested clarification as to the basis for the denial of his exemption based on “federal regulations” and asked for specification as to what regulation was being followed. He added that if the OSHA guidelines were the ones being followed that they allow for accommodations under federal civil rights law for any disability or sincerely held religious beliefs, practices, or observances that conflict with the vaccination requirement. Lastly, Mr. Woodruff informed them that CARIS does not fall under the regulations set out by CMS as it is not considered a Medicare- and Medicaid-certified provider. He did not receive a response. Exhibit 20.

50. Mr. Woodruff again asked for an appeal. On or about November 11, 2021, CARIS informed him that the decision was final but acknowledged that they do not fall into the current CMS categories. Exhibit 20.

51. Mr. Woodruff has filed a discrimination complaint with the EEOC. Exhibit 21. It remains pending. His initial interview has not taken place and, on information and belief, is not likely to occur until early 2022.

52. CARIS terminated Mr. Woodruff's employment effective December 1, 2021.

**VI. CARIS DISCRIMINATED AGAINST PLAINTIFFS ON RELIGIOUS AND MEDICAL GROUNDS, VIOLATING TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 AND THE AMERICANS WITH DISABILITIES ACT**

**A. CARIS is discriminating against Plaintiffs based upon their religious beliefs in violation of Title VII, Civil Rights Act of 1964**

53. Plaintiffs incorporate herein the foregoing allegations in this Complaint.

54. CARIS terminated Plaintiffs due to their refusal to get a COVID-19 vaccine. Plaintiffs have refused the vaccine on religious grounds. Furthermore, Plaintiffs applied for an exemption from CARIS's September 17 Vaccination Policy based on religious reasons; their requests were denied.

55. CARIS's conduct violates Title VII. CARIS's vaccination policy discriminates against Plaintiffs based on their religious beliefs. CARIS's denials of Plaintiffs' reasonable requests for accommodation due to their religious beliefs discriminates against Plaintiffs under Title VII, Civil Rights Act of 1964.

56. Plaintiffs have filed a timely charge of discrimination with the EEOC. However, due to circumstances beyond Plaintiffs control, EEOC has either not completed its investigation or was unable to conduct their initial interview of Plaintiffs until 2022, but which time CARIS had terminated Plaintiffs' employment.

57. The Fifth Circuit recognizes an exception to the exhaustion of legal remedies doctrine where injunctive relief is requested. *Drew v. Liberty Mut. Ins. Co.*, 480 F.2d 69 (5<sup>th</sup> Cir. 1973), *cert. denied* 417 U.S. 935, 94 S.Ct. 2650, 41 L.Ed.2d 239 (1974). This exception is now well established

in federal law. *Holt v. Cont'l Grp., Inc.*, 708 F.2d 87 (2d Cir. 1983), *cert. denied* 465 U.S. 1030, 104 S.Ct. 1294, 79 L.Ed.2d 695 (1984); *Sheehan v. Purolator Courier Corp.*, 676 F.2d 877 (2d Cir. 1982); *McNail v. Amalgamated Meat Cutters*, 549 F.2d 538 (8<sup>th</sup> Cir. 1977); *Equal Emp't Opportunity Comm'n v. Pac. Press Publ'g Ass'n*, 535 F.2d 1182 (9<sup>th</sup> Cir. 1976).

58. Plaintiffs filed a Verified Application for a Preliminary Injunction, Preliminary Injunction, and Permanent Injunction (Document 2) contemporaneously with their Complaint (Document 1).

59. Plaintiffs file this Amended Complaint seeking a preliminary injunction and permanent injunction against CARIS from enforcing its COVID-19 policy. Plaintiffs specifically seek reinstatement of their employment until the EEOC either acts on their behalf or issues their “Right to Sue” letters, and during the pendency of this lawsuit after they receive their Right to Sue letters. As they receive their Right to Sue letters, they will seek leave to amend this Complaint to reflect receipt of their letters. Plaintiff Scott Babjak has already received his Right to Sue letter.

60. CARIS’s actions have caused all Plaintiffs to suffer mental and emotional distress, entitling them to damages pursuant to 42 U.S.C. § 1981a.

**B. CARIS has violated the ADA**

61. Plaintiff incorporates herein the foregoing allegations in this Complaint.

62. The American with Disabilities Act prohibits discrimination against persons with disabilities. Plaintiffs Jobe and Katz also requested exemptions from CARIS’ September 17 Vaccination Policy based on medical reasons, namely, potential allergic reactions to ingredients contained in the vaccines. CARIS refused to accommodate them and fired them because they did not get vaccinated.

63. CARIS's conduct violated the ADA. CARIS's vaccination policy discriminates against Plaintiffs based on preexisting medical conditions. CARIS's denials of Plaintiffs' reasonable requests for accommodation due to their medical condition discriminates against Plaintiffs under the ADA.

64. Plaintiffs Jobe and Katz filed a timely charge of discrimination with the EEOC. However, due to circumstances beyond Plaintiffs Jobe's and Katz's control, EEOC will not complete its investigation or will not be able to conduct their initial interview of Plaintiffs until early 2022 but CARIS has terminated Plaintiffs' employment.

65. As stated above, the Fifth Circuit has recognized an exception to the exhaustion of administrative remedies doctrine where injunctive relief under Title VII and similar statutes are concerned. Plaintiffs filed a Verified Application for a Preliminary Injunction, Preliminary Injunction, and Permanent Injunction (Document 2) contemporaneously with its Complaint (Document 1).

66. Plaintiffs file this Amended Complaint seeking a preliminary injunction and permanent injunction against CARIS from enforcing its COVID-19 policy. Plaintiffs specifically seek reinstatement of their employment until the EEOC either acts on their behalf or issues their "Right to Sue" letters, and during the pendency of this lawsuit after they receive their Right to Sue letters. As they receive their Right to Sue letters, they will seek leave to amend this Complaint to reflect receipt of their letters.

67. CARIS's actions have caused Plaintiffs Jobe and Katz to suffer mental and emotional distress, entitling them to damages pursuant to 42 U.S.C. § 1981a.

## **VII. REQUEST FOR DECLARATORY RELIEF**

68. Plaintiffs hereby adopt and re-allege each and every allegation previously set forth in as if fully set forth herein.

69. Plaintiffs seek declaratory relief under 28 U.S.C.A. § 2201(a).

70. The purpose of a declaratory action is to establish existing rights, status, or other legal relationships. A person whose rights, status, or other legal relations are affected by a statute or municipal ordinance may have determined any question of construction or validity arising under the statute or ordinance and obtain a declaration of rights, status, or other legal relations thereunder. 28 U.S.C.A. § 2201(a).

71. The controversy must be real and substantial, involving a genuine conflict of tangible interests and not merely a theoretical dispute. The controversy does not need to be fully ripe, but it must indicate that immediate litigation is unavoidable. It is preventive in nature and is intended as a means for determining the rights of parties when a controversy has arisen, even before any wrong has actually been committed.

72. A genuine conflict of tangible interests exists between Plaintiffs and Defendant CARIS. CARIS has implemented conflicting policies that now require Plaintiffs to obtain a COVID-19 vaccination, despite their objections on grounds of religious beliefs and medical necessity, and in derogation of Executive Order GA-40. Despite living in other states, Plaintiffs are a protected class under GA-40 because they are employees of a Texas employer. GA-40 prohibits a Texas employer from compelling its employees to be vaccinated, regardless of where they are located. Rather, it is CARIS's location in Texas that determines whether GA-40 applies to Plaintiffs.

73. Therefore, Plaintiffs respectfully request the Court to declare CARIS' Covid-19 vaccine mandate is illegal and violates Governor Abbot's Executive Order.

74. Plaintiffs also request the entry of a permanent injunction barring CARIS from enforcing its vaccine mandate. Plaintiffs filed a separate Application for Temporary Restraining Order, Preliminary Injunction, and Permanent Injunction (Document 2 ) contemporaneous with the filing of their Complaint (Document 2) seeking a temporary injunction and permanent injunction, and incorporate all facts, legal argument, and exhibits by reference as if full set forth herein, as permitted per Fed. R. Civ. P. 10(c).

### **VIII. COSTS AND ATTORNEY'S FEES**

75. Plaintiffs plead for recovery of their costs and reasonable and necessary attorney's fees as are reasonable and just, pursuant to the Civil Rights Act, ADA, and TEX. CIV. PRAC. & REM. CODE ANN. § 37.009.

### **IX. PRAYER**

**WHEREFORE**, Plaintiff prays that the court:

- a Award Plaintiffs all remedies and damages allowed by law, including reinstatement, back pay, front pay, actual damages, and mental anguish damages;
- b Enter a Declaratory Judgment in favor of Plaintiffs declaring that CARIS Life Sciences' COVID-19 vaccination policy violates Executive Order GA-40, is illegal, and may not be enforced against Plaintiffs in any manner;
- c Issue an injunction against CARIS enjoining CARIS from enforcing its vaccination policy against Plaintiffs;
- d Enter a permanent injunction requiring reinstatement.
- e Award Plaintiffs their costs and reasonable and necessary attorney's fees as is equitable and just; and,
- f Grant such other relief as may be just and proper.



Respectfully submitted,

**THE VETHAN LAW FIRM, PC**

By: /s/ Charles M.R. Vethan

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct of copy of this instrument was served on all parties, represented through counsel or *pro se*, through ECF, email and/or Certified Mail, pursuant to the Federal Rules of Civil Procedure, on this 14th day of October 2022, as follows:

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