No._____

# Supreme Court of the United States

ADAM PAJER, ET AL.,
*Petitioners*,
v.

DISNEY PARKS, EXPERIENCES AND PRODUCTS, INC., ET AL.,
*Respondents.*

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**On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit**

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## PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED

> Fear and the desire for safety are powerful forces. They can lead to a clamor for action—almost any action—as long as someone does something to address a perceived threat. A leader or an expert who claims he can fix everything, if only we do exactly as he says, can prove an irresistible force. We do not need to confront a bayonet, we need only a nudge, before we willingly abandon the nicety of requiring laws to be adopted by our legislative representatives and accept rule by decree. …. We may even cheer on those who ask us to disregard our normal lawmaking processes and forfeit our personal freedoms.

*Arizona v. Mayorkas*, 143 S. Ct. 1312, 1315, 598 U.S. ___ (2023) (Gorsuch, J., concurring).

The judiciary at times in this nation's history has itself succumbed to the powerful force of fear. Rather than remain in its proper Article III role, confronted with a global health threat, the Eleventh Circuit in this case marched without hesitation directly into Article I powers and impermissibly—and inexplicably—carved out an entirely new statutory bar to seeking judicial redress in express contravention of the clear language of Americans with Disabilities Act (ADA) and well-documented Congressional intent. The questions presented are:

(1) Whether a judicial conclusion that no set of facts can plausibly exist to plead under the ADA that an employer regards an employee as presently disabled—by being diseased in the absence of

immune system augmentation—misinterprets the plain language of the statutory amendments and express Congressional intent to construe disability as broadly as possible to prohibit discrimination.

(2) Whether barring employee claims under the ADA by narrowly redefining the statutory definition of disability to effectively remove "being regarded as having such an impairment" pertaining to immune system augmentation constitutes impermissible judicial usurpation of Congress' legislative function in violation of constitutional Separation of Powers.

## PARTIES

Petitioners are Adam Pajer, Steve Gibbons, Stephen Cribb and Seth Schmidt. Respondents are Disney Vacation Club Management, LLC, Disney Parks, Experiences and Products, Inc. and Walt Disney Parks & Resorts, U.S., Inc.

## DIRECTLY RELATED PROCEEDINGS

Adam Pajer v. Disney Parks, Experiences and Products, Inc., et al., Case No. 24-11146, (11th Cir. Jul. 2, 2025); Stephen Cribb v. Disney Parks, Experiences and Products, Inc., et al., Case No. 24-11147, (11th Cir. Jul. 2, 2025); Steven Gibbons v. Disney Parks, Experiences and Products, Inc., et al., Case No. 24-11148, (11th Cir. Jul. 2, 2025); Seth Schmidt v. Disney Parks, Experiences and Products, Inc., et al., Case No. 24-11160, (11th Cir. Jul. 2, 2025)—Order Affirming the District Court's dismissal of the Plaintiffs' Verified Complaints, reprinted in App. A, at 1a, *et seq.*[1]

Adam Pajer v. The Walt Disney Company, et al.., Case No. 6:23-cv-00254 (M.D. Fla. Feb 29, 2024); Stephen Cribb v. The Walt Disney Company, et al., Case No. 6:23-cv-00250, (M.D. Fla. Feb. 28, 2024); Steven Gibbons v. The Walt Disney Company, et al., Case No. 6:23-cv-00255, (M.D. Fla. Feb. 28, 2024); Seth Schmidt v. The Walt Disney Company, et al., Case No. 6:23-cv-00257, (M.D. Fla. Feb. 29, 2024)—Order Dismissing Plaintiff's Verified Amended Complaint as to

[1] The Eleventh Circuit granted consolidation of appeals.

Walt Disney Parks and Resorts, U.S., Inc., reprinted in App. C, at 42a, *et seq.*[2]

Adam Pajer v. The Walt Disney Company, et al.., Case No. 6:23-cv-00254 (M.D. Fla. Mar. 12, 2024); Stephen Cribb v. The Walt Disney Company, et al., Case No. 6:23-cv-00250, (M.D. Fla. Mar. 12, 2024); Steven Gibbons v. The Walt Disney Company, et al., Case No. 6:23-cv-00255, (M.D. Fla. Mar. 12, 2024); Seth Schmidt v. The Walt Disney Company, et al., Case No. 6:23-cv-00257, (M.D. Fla. Mar. 12, 2024)— Order Dismissing Plaintiff's Verified Amended Complaint as to Disney Parks, Experiences and Products, Inc., reprinted in App. B, at 22a, *et seq.*[3]

Barbara Andreas, et al. v. The Walt Disney Company, et al., Case No. 2022-CA-001697 (Fla. 9th Cir. Ct. Dec. 23, 2022).

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[2] The Orders for each Petitioner at the Middle District of Florida are essentially copied and pasted similitudes (including the *Cribb* Order dismissing claims against Disney Vacation Club Management, LLC), so Petitioner Pajer's Orders are included to represent all Petitioners' trial court orders.

[3] *Id.*

## TABLE OF CONTENTS

## TABLE OF APPENDICES

## TABLE OF AUTHORITIES

### Cases

**Statutes**



**Regulations & Rules**

**Other Authorities**

## OPINIONS AND ORDERS BELOW

The Eleventh Circuit's order affirming the dismissal of Petitioners' complaints is not published but available electronically at 2025 U.S. App. LEXIS 16312 (11th Cir. Jul. 2, 2025) and reprinted in the Appendix A at 1a, *et seq*. The district court's orders dismissing Petitioners' complaints are reported at Pajer v. Parks, 2024 U.S. Dist. LEXIS 70903 (M.D. Fla. Feb. 29, 2024) and Pajer v. Parks, 2024 U.S. Dist. LEXIS 70415 (M.D. Fla. Mar. 12, 2024) and reprinted in Appendices B and C at 22a, *et seq*., and 42a, *et seq*., respectively.

## JURISDICTION

The judgment of the Eleventh Circuit was entered on July 2, 2025, affirming the district court's final judgments issued between February 28 and March 12, 2024, dismissing Petitioners' claims, including their ADA claims on appeal before this Court. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Americans with Disabilities Act of 1990, as amended by the Americans with Disabilities Act Amendments Act of 2008 (collectively, "ADA" herein), 42 U.S.C. §§ 12112(a), 12102:

**§ 12112(a)**

> No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the

hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

**§ 12102**

As used in this chapter:

**(1) DISABILITY**

The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph (3)).

**(2) MAJOR LIFE ACTIVITIES**

**(A) In general**

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

**(B) Major bodily functions**

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell

growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

**(3) REGARDED AS HAVING SUCH AN IMPAIRMENT**

For purposes of paragraph (1)(C):

(A) An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

**(4) RULES OF CONSTRUCTION REGARDING THE DEFINITION OF DISABILITY**

The definition of "disability" in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.

(B) The term "substantially limits" shall be interpreted consistently with the findings and

purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability. …

## STATEMENT OF THE CASE

It is perhaps surprising, though not unprecedented in our nation's history, that a jurisprudential error was implemented in such national lockstep, that correction of the error failed across the federal judiciary because of an echoing feedback loop in which "everybody knows" something to be so—even though the thing purported to be known was simply not so. This is the case at hand.

Covid-19 vaccine mandates were implemented with religious fervor nationwide in the United States toward the end of 2021 by public and private employers alike. These mandates coercively pitted an employee's continued employment, regardless of his or her tenure, against the employee's consent to agree to medical intervention purporting to augment their immune system (injection or "Covid-19 vaccine"). The fact that employers declared employees unfit to continue employment that they had already held from prior to through the height of the Covid-19 pandemic —unless the employees agreed to augment their immune system—demonstrates a fundamental perception shift by employers regarding their employees' fitness.

Whether or not expressly stated, the prevailing social sentiment through the pandemic fueling the Covid-19 mandates was fear of a purportedly novel, highly infectious and deadly disease. Indeed, society was trained to run tests repeatedly, in the absence of identified symptoms of disease, to determine if one was, in fact, sick and/or contagious. Entire systems of contact tracing were developed and strictly monitored to segregate and identify those presumed to be diseased, and those who were in the momentary clear.

Additional precautions were enforced with varying levels of zeal and weight of consequence, including but not limited to, arbitrary and inconsistent limits on gathering size, personal isolation, and physical separation, regardless of actual disease, symptom, or contagion.

Into this new way of existence were introduced irreversible injections purporting to augment or modify an individual's immune system response and originally promising to be both safe and effective against the disease known as Covid-19. Where once *all* employees were subject to a set of protocols relating to public health, now the contrast between those employees who had undergone injections and those who had not was considered critical, and divisions in the workplace between those groups were searched out and highlighted.

Employees who did not accept immune system augmentation were subject to a different set of policies in the workplace from those who did take the medical intervention. If they refused to accept the unequally applied policies, they faced termination. The stated basis for the disparate treatment in the workplace was "public health safety." The distinctive, burdensome policies were often generally implemented on an indefinite basis, without reprieve or exception, upon any person who had not taken the irreversible injections, regardless of whether he or she had demonstrated actual infection. Employers treated them differently simply because they regarded the people in their workforce without immune system augmentation as diseased.

The ADA carves out no general exception for public health safety or for societal fear of disease. In fact,

the basis for the expansion of the statutory language in 2008 was the opposite: Congress redefined "disability" and expanded employee protections against discrimination, specifically where disability was in the eye of the employer, *i.e.*, "an actual or perceived physical … impairment," as defined in 42 U.S.C. §12102(3)(A).

Could these facts—employers discriminating between employees based on the employers' perception that certain employees were currently impaired simply because they were uninjected—describe a claim under the ADA? Clearly so. Is it therefore plausibly the case that a number of employees could state a claim under the ADA for discrimination against employers who regarded them as disabled by disease and contagion merely because they did not augment their immune system function with a vaccine, even without evidence of actual impairment? Absolutely.

However, court after court in the United States at the pleading stage and in conclusory fashion has axiomatically adopted positions like that of the defendant-employer's argument in *Gallo v. Wash. Nat'ls Baseball Club, LLC*: "[t]o suggest that the mere state of being unvaccinated is a 'physical or mental impairment' within the scope of 42 U.S.C. § 12102(1) is patently absurd,"—so as to bar the claims from any judicial review. *E.g.*, No. 22-cv-01092 (APM), 2023 U.S. Dist. LEXIS 40184, at *10 (D.D.C. Mar. 10, 2023); *contra Swierkiewicz v. Sorema N.A.*, 534 U.S 506, 508 n.1 (2002) (noting that courts "must accept as true all of the factual allegations contained in the complaint"). This is the type of *ultra vires* action the Eleventh Circuit affirmed below.

This is legal error because it effectively amends the ADA by judicial fiat to preclude an entire sector of the Act's expressly intended protections for employees as set forth in amendments made by Congress less than 20 years ago. In the aftermath of a global crisis, the issues presented by this case beg urgent constitutional rectification in advance of crises that will arise in the future. This honorable Court should take up this case upon writ of *certiorari* and reverse this pervasive error.

## I. FACTUAL BACKGROUND

Disney is a multifaceted company, headed by The Walt Disney Company in California and doing business in Florida and around the world through its "segments" or wholly-owned subsidiaries, including Respondents Disney Vacation Club Management, LLC ("DVCM") (Petitioner Cribb's direct employer), Walt Disney Parks & Resorts, U.S., Inc. ("WDPR") (Petitioners Pajer's, Gibbons' and Schmidt's direct employer), and Disney Parks, Experiences and Products, Inc. ("DPEP"). (Collectively, "Disney"). Petitioners' Compls. ¶ 2. Disney is not only a corporate leader, but a profound global influence in commerce and the arts and social norms. In 2020, Disney instituted detailed safety protocols for employees. Compl. ¶¶ 13–14, and Ex. A thereto. These protocols were applied to all employees, and there were no new protocols other than to rest and recover if one had a negative Covid-19 test result but had physical ailment/symptoms. Regardless whether one tested positive for Covid-19, was exposed to Covid-19, or was symptomatically sick, there was a specific period of time (five days quarantine with additional buffer five-day period) after which the employee could demonstrate completion of a specified

quarantine period and/or show a negative test for the disease to be presumed cleared. Employees were to report incidences of illness and contact with Covid-19 to Human Resources and a special email in DPEP for contact tracing. *Id.*

However, in Jul. of 2021, Disney instituted a nation-wide vaccinate-or-terminate Covid-19 policy, designed and enforced by DPEP, from which Petitioners all sought accommodation on the basis of their Christian religious beliefs, which precluded them from taking the Covid-19 vaccines. See *Cribb* Compl. ¶ 48, *Gibbons* Compl. ¶ 48, *Pajer* Compl. ¶ 47, *Schmidt* Compl. ¶ 48.

For Petitioners, instead of making reasonable accommodations or continuing the *status quo ante* of uniformly applied policies, Disney subjected them to inherently discriminatory Augmented Health & Safety Protocols ("Augmented Protocols"), which comprised the sections of Disney's prior pandemic policies that applied to the symptomatically sick, those exposed to Covid-19, and/or those who tested positive for Covid-19, irrespective of whether they were symptomatic, exposed, or had actually tested positive. Compl. ¶¶ 24, 29–30.

There was no testing option under the Augmented Protocols to prove Petitioners were not sick or contagious after any designated period, and the policies were applied indefinitely, thereby constructively treating the Petitioners as if they were sick or contagious regardless of evidence and without willingness to obtain any. Compl. ¶ 30. Although other employees were no longer required to wear face coverings at all times, Petitioners were required to do so. If Disney deemed the employee's job functions to be in a "high

contact" role (an arbitrary determination), they were required to wear more restrictive N95 personal protective equipment (PPE) and be subject to a "respiratory program." Petitioners were all subjected to the so-called high contact role restrictions. Compl. ¶¶ 32–34, Ex. D thereto.

Although Disney cited OSHA Rule 1910 in support of is respiratory program, Disney's policies violated the standards promulgated by OSHA regarding "respiratory programs" using N95 PPE. *See* 29 C.F.R. § 1910.1 *et seq.* Rule 1910 refers to environmentally toxic workplaces, *i.e.*, shipyards, marine terminals, and construction sites, and requires all employees to wear PPE in such an environment, while also mandating non-continuous wearing of the N95 and supplying employees with longer non-masked break periods. Compl. ¶¶ 35–36, Ex. E thereto. Petitioners rejected acquiescing to Disney's new discriminatory Augmented Protocols and expressed their objection to Disney. *Cribb* Compl. ¶¶ 53–56, *Gibbons* Compl. ¶¶ 51–52, 56, 59–60, *Pajer* Compl. ¶¶ 52–57, *Schmidt* Compl. ¶¶ 52–53. Disney fired Petitioners for their failure to accept treatment under the discriminatory Augmented Protocol. As such, they were singled out, regarded and treated as diseased individuals. *Cribb* Compl. ¶ 60, *Gibbons* Compl. ¶ 62, *Pajer* Compl. ¶ 64, *Schmidt* Compl. ¶ 56.

## II. PROCEDURAL HISTORY

Petitioners Cribb and Pajer initiated the lawsuit below on June 29, 2022, with the filing of a Verified Complaint in state court. On December 23, 2022, Petitioners amended their Complaint to include Petitioners Gibbons and Schmidt with claims under federal law, including their ADA claims of discrimination

and retaliation. Respondents removed the case to federal court, where the court inexplicably severed the case *sua sponte* and ordered Petitioners each to refile their own complaints. Under protest, Petitioners each refiled their cases on February 14, 2023. While jurisdictional discovery was pending in one case, Petitioners sought an extension by motion of the case management order deadlines by which to file amended pleadings. All motions were denied by the district court with leave to refile the motions to extend the case management order deadline and show good cause for seeking leave to amend the pleadings.

Respondents each brought motions to dismiss all of Petitioners' claims in May of 2023. The district court dismissed all of Petitioners' remaining claims.[4] Finding—contrary to Petitioners' pleading—that their ADA claims only implicated future possible infection, not the present perception by Disney of a diseased and contagious state as under 42 U.S.C. § 12102(3)(A), the district court dismissed the claims with prejudice. Petitioners sought reconsideration of the dismissals from the district court, including request to amend the pleadings, which the court denied. Petitioners timely appealed to the Eleventh Circuit, which consolidated the appeals and affirmed the lower court's decision on July 2, 2025.

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[4] Prior to the court's dismissal of Appellees DVCM, WDPR, and DPEP, the court dismissed Reedy Creek Improvement District from all claims, and Petitioners voluntarily withdrew their claims against The Walt Disney Company.

## REASONS FOR GRANTING THE PETITION

### I. THE ELEVENTH CIRCUIT'S MISINTERPRETATION OF THE PLAIN LANGUAGE DEFINITION OF "DISABILITY" ARBITRARILY BARS PETITIONERS' ADA CLAIMS UNDER RULE 12(B)(6).

The Eleventh Circuit paid mere lip service to the ADA express rules of construction, *viz.*, "The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter." 42 U.S.C. § 12102(4)(A). Instead, the Eleventh Circuit determined—despite its clear understanding of the pleaded facts to the contrary—that Petitioners' "unvaccinated status firmly suggests a potential future impairment" and thus concluded that "precedent forecloses the employees' argument that they were unlawfully regarded as having a disability," likening the Petitioners' claims to the facts under *EEOC v. STME, LLC*, 938 F.3d 1305 (11th Cir. 2019). In that case, the employer warned the healthy employee not to travel to Ghana during the Ebola concerns, as the employer believed such a trip would bring the employee into contact with an infected person and bring the virus back to the workplace. *Id.* at 1311.

Both Petitioners' case and *STME* discuss workplace permissible and prohibited conduct under the ADA at a time when global viruses were of societal concern, but that is where the similarities end. There was no dispute in *STME* that the employer presently

viewed the employee as healthy, but the opposite is true of Respondents Disney in Petitioners' case.

The Eleventh Circuit rightly summarized Petitioners' factual allegations that "Because the Augmented Protocols allegedly employed portions of the 2020–2021 COVID-19 policies applied 'solely to the symptomatically sick and testing-identified as infectious for Covid-19 or known to be exposed to the infection,' the employees argue that Disney exhibited a perception that the employees were 'currently diseased and dangerous on a permanent basis.'" Pajer 11th Cir. Order, App. A, at 13a.

However, by affirming the district court's dismissals, the Eleventh Circuit, in concert with the courts across the country, got it fundamentally wrong and perpetuated the arrest of civil liberties in a time of societal fear.

To state a claim of disability discrimination, an employee must allege that 1) he or she is disabled—by demonstrating (A) "a physical or mental impairment," (B) "a record of such an impairment," or (C) "being regarded as having such an impairment," 42 U.S.C. § 12102(1); that 2) he or she is a qualified individual, *id.* § 12112(a); and that 3) he or she was discriminated against because of the disability, *id.* § 12112(a)–(b).[5] *EEOC v. Am. Tool & Mold, Inc.*, 21 F. Supp. 3d 1268, 1274 (M.D. Fla. 2014).

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[5] Petitioners also asserted state law claims under the Florida Civil Rights Act, which is treated the same as the ADA. *See Greenberg v. BellSouth Telecom Mr., Inc.*, 498 F.3d 1258, 1263–64 (11th Cir. 2007). The district court dismissed Appellants' claims of disability discrimination and retaliation under FCRA

The ADA (and its counterpart under the Rehabilitation Act) was amended in response to judicial narrowing of legislative protections, to the most expansive interpretation possible. This Court in *School Board of Nassau County v. Arline* previously clarified Congressional intent with regard to a *perception* of employee disability—an erroneous perception, in fact—pertaining to *infectious disease*:[6]

> Few aspects of a handicap give rise to the same level of public fear and misapprehension as contagiousness. Even those who suffer or have recovered from such noninfectious diseases as epilepsy or cancer have faced discrimination based on the irrational fear that they might be contagious. The [Rehabilitation] Act is carefully structured to replace such reflexive reactions to actual or perceived handicaps with actions based on reasoned and medically sound judgments: … The fact that *some* persons who have contagious diseases may pose a serious health threat to others under certain circumstances does not justify excluding from the coverage of the Act *all* persons with actual or perceived contagious diseases. **Such exclusion would mean that those accused of being contagious would never have the opportunity to have their**

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using the same analysis. Pajer Order-WDPR MTD, App. C, at 72a, n. 16.

[6] In the decision below, the Eleventh Circuit did not even mention *Arline*, not even to distinguish it or find it inapplicable, despite Appellants' arguments citing the case, which is astonishing given that this Court affirmed the Eleventh Circuit when it rendered its decision in *Arline*.

> **condition evaluated in light of medical evidence and a determination made as to whether they were "otherwise qualified."** Rather, they would be vulnerable to discrimination on the basis of mythology—precisely the type of injury Congress sought to prevent.

480 U.S. 273, 284–85 (1987) (emphasis added), *superseded by statutory amendment on other grounds*;[7] *see Harris v. Thigpen*, 941 F.2d 1495, 1523 (11th Cir. 1991) (stating "contagious diseases 'fall neatly' within the statutory and regulatory framework of the Rehabilitation Act" with regard to defining disability (quoting *Arline v. School Board of Nassau County*, 772 F.2d 759, 764 (11th Cir. 1985), *aff'd* 480 U.S. 273 (1987)).

Furthermore, since *Arline*, Congress has increased ease and availability for employees to bring claims of disability discrimination including for being "perceived as disabled." "When it enacted the [2008] ADAAA, Congress indicated that one of its purposes was to 'convey that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis.'" *Mazzeo v. Color Resolutions Int'l, LLC*, 746 F.3d 1264, 1268–69 (11th Cir. 2014) (citing the note at 42 U.S.C. § 12101 in which Congress specifically stated that the

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[7] Although *Arline* arose under the Rehabilitation Act rather than the Americans with Disabilities Act, the discrimination analysis is the same. *Hooven-Lewis v. Caldera*, 249 F.3d 259, 268 (4th Cir. 2001), *superseded by statute on other grounds*; *Works v. Colvin*, 93 F. Supp. 3d 405, 414 (D. Md. 2015) (citing *id.*) ("A claim of disability discrimination under the Rehabilitation Act must undergo the same analysis as a similar claim under the Americans with Disabilities Act.").

"substantially limits" gloss applied by this Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) and its progeny had "created an inappropriately high level of limitation necessary to obtain coverage under the ADA");[8] *see also Lewis v. City of Union City*, 934 F.3d 1169, 1180–82, 1191 (11th Cir. 2019) (reversing district court restriction on the regarded-as definition of disability, referencing a rule of construction Congress added to the statute ensure the expansion of the definition together with regulatory guidance) (citing 42 U.S.C. § 12102(4)(D); 29 C.F.R. § pt. 1630, App.); *Babb v. Maryville Anesthesiologists P.C.*, 942 F.3d 308, 319 (6th Cir. 2019) (whether a regarded-as-disabled impairment as perceived is "transitory and minor" is an *affirmative defense*, not a pleading element); *Rodriguez v. Village Green Realty, Inc.*, 788 F.3d 31, 50–51 (2d Cir. 2015) (applying *Arline* regarded-as-disabled expanded interpretation to Fair Housing Act); *Am. Tool & Mold*, 21 F. Supp. 3d at 1275 (noting that the 2008 amendments to the ADA "made it significantly easier for plaintiffs to bring 'regarded as' disabled claims.… The relevant inquiry in such cases is not the plaintiff's actual condition, but how the Defendant 'perceived [his] condition, including the reactions and perceptions of the persons interacting with or working with him.'").

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[8] *See* 42 U.S.C. § 12102(2) including as "major life activities" which may be impaired "major bodily functions" like "functions of the immune system"; 29 C.F.R. § 1630.2(h)–(j), including that whether an impairment substantially limits a major life activity is not a relevant inquiry for ADA coverage where an employer regards an employee as disabled.

*Lewis* was decided nearly simultaneously to *STME* and demonstrates the express, intentionally broad reading of ADA disability under 42 U.S.C. § 12102(1)(C), effectively creating the lowest bar possible to make an ADA claim of discrimination: a plaintiff need not show actual impairment nor that the employer's perception of impairment actually would limit major life activity, nor even that the employer believes the impairment would limit a major life activity. Rather, the focus and inquiry under a regarded-as-disabled claim is the employer's beliefs and conduct as a result of those beliefs.

This critical legal principle was never abrogated under the Covid-19 pandemic. *Meza v. Union Pac. R.R. Co.*, 144 F.4th 1115, 1117 (8th Cir. 2025) ("Union Pacific's stated reason for sidelining him—the possibility that he would suffer seizures following a traumatic brain injury—was all but an admission by the company that it kept him out of work because it regarded him as disabled. Under a regarded-as theory, a belief is enough."); *Morgan v. Allison Crane & Rigging LLC*, 114 F.4th 214, 224 (3d Cir. 2024) (reversing dismissal of regarded-as-disabled claim due to transitory back pain, "the requirements for a prima facie regarded as claim are less demanding than those for an actual disability claim" (citation modified)); *see Sharikov v. Philips Med. Sys. MR, Inc.*, 659 F. Supp. 3d 264, 278 (N.D.N.Y. 2023) ("When a plaintiff brings a claim [under the 'regarded as' prong] … 'the decisive issue is the employer's perception of his or her employee's alleged impairment.'" (quoting *Sacks v. Gandhi Eng'g, Inc.*, 999 F. Supp. 2d 629, 633 (S.D.N.Y. 2014) (quoting *Giordano v. City of N.Y.*, 274 F.3d 740, 748 (2d Cir. 2001)))); *Lowe v. Pettway*, 665 F. Supp. 3d 1313, 1328 (N.D. Ala. 2023); *see also Sacks*, 999 F.

Supp. 2d at 633 ("When Congress passed the ADA Amendment Act ("ADAAA") of 2008, it created a more lenient definition of 'regarded as' disabled or perceived disability.").

"Accordingly, courts have noted that the bar to be considered 'disabled' under the ADA is not a high one." *Brown v. Roanoke Rehab. & Healthcare Ctr.*, 586 F. Supp. 3d 1171, 1175–76 (M.D. Ala. 2022) (finding allegations of employer's knowledge of employee's positive test for Covid-19 with symptoms of disease sufficient to plead a claim under the ADA as "regarded as disabled")[9] The Eleventh Circuit's misinterpretation of the ADA definition of disability in this case has abandoned decades of dialogue among the Congress, executive agencies, and this Court (including this Court's affirmance of the Eleventh Circuit's own jurisprudence in *Arline*)—dialogue which has provided inexorably and increasingly permissive definitions of disability and resulting coverage of ADA protections for employees like Petitioners.

Because the Eleventh Circuit is not alone in its sudden, erroneous interpretive U-turn of regarded-as-

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[9] *Brown* further discussed DHS and EEOC agency guidance instructing that Covid-19 disease could be a disability within the meaning of the broad terms of the ADA. 586 F. Supp. 3d at 1176 (citing *Guidance on "Long COVID" as a Disability under the ADA, Section 504, and Section 1557*, Dep't Of Health & Hum. Servs. & Dep't Of Justice (Jul. 26, 2021); https://archive.ada.gov/long_covid_joint_guidance.pdf and *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws*, U.S. EEOC (Dec. 14, 2021), https://www.eeoc.gov/wysk/what-you-should-know-about-covid-19-and-ada-rehabilitation-act-and-other-eeo-laws). By implication, therefore, the perception that one is diseased with Covid-19 could state a regarded-as-disabled claim.

disability when facing Covid-19 related employee claims, this Court's correction is a matter of great national import, and the issue is ripe for review.

## II. BARRING PETITIONERS' DISABILITY CLAIMS IS TANTAMOUNT TO UNCONSTITUTIONAL JUDICIAL MODIFICATION OF STATUTORY TERMS.

The outcome of the Eleventh Circuit's error is the undoing of a statutory right of action by judicial fiat, impermissibly amending a statute. Numerous courts, especially this Court, have emphasized the critical importance of adhering to constitutional separation of powers, noting that creation and amendment of statutory law is the province of the legislature, not Article III courts. *See AF of L v. Am. Sash Co.*, 335 U.S. 538, 553 (1949) (Frankfurter, J., concurring) ("[I]nvalidation of the law by a court debilitates popular democratic government. Most laws dealing with economic and social problems are matters of trial and error. … But even if a law is found wanting on trial, it is better that its defects should be demonstrated and removed than that the law should be aborted by judicial fiat. Such an assertion of judicial power deflects responsibility from those on whom in a democratic society it ultimately rests — the people."); *cf. Muldrow v. City of St. Louis*, 601 U.S. 346, 358 (2024) ("But even supposing the City's worst predictions come true, that would be the result of the statute Congress drafted. As we noted in another Title VII decision, we will not 'add words to the law' to achieve what some employers might think a 'desirable result.'" (quoting *EEOC v. Abercrombie & Fitch Store, Inc.*, 575 U.S. 768, 774 (2015))); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 587–89 (1952) (discussing separation of powers between Congress and the Executive,

addressing definitively the power of Congress to make law); *id.* at 588 ("[Congress] can make laws regulating the relationships between employers and employees."); *see also Lemy v. Direct Gen. Fin. Co.*, 884 F. Supp. 2d 1236, 1238–42 (M.D. Fla. 2012) (surveying the historical development of the separation of powers doctrine); *id.* at 1239 (citing ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 18–21 (2012)) ("To conceive a statute's 'purpose' too broadly, too generally, or at a too remote level of abstraction, while subordinating the statute's text, promotes promiscuous judicial speculation and other judicial mischief.").

Judicial review requires the application of plain language of statutes, as written; if any ambiguity or doubt exists, the courts should seek to resolve it by looking to Congressional intent, rather than amending or modifying law by court ruling. *Alexander v. Sandoval*, 532 U.S. 275, 286–87 (2001); *see Baze v. Rees*, 553 U.S. 35, 87–89, 93 (2008) (Scalia, J., concurring) (excoriating the subversion of plain statutory and constitutional text for personal experience and unsubstantiated popular conclusions labeled as "uncontroversial premises:" "Purer expression cannot be found of the principle of rule by judicial fiat."); *see also Passarella v. Aspirus, Inc.*, 108 F.4th 1005, 1010–11 (7th Cir. 2024) (reviewing Congress' "expansive definition" of religious belief under Title VII in the context of Covid-19).

Society's *response* to Covid-19 is not a sufficient basis for any Article III court to override the constitutional restrictions of its authority, nor to rule in contravention of clear and consistent Congressional intent, articulated by this Court's own clarification, in

agreement with the EEOC executive agency's regulatory guidance regarding the ADA definition of disability. *See Arizona v. Mayorkas*, 143 S. Ct. at 1315; *Nat'l Federation of Indep. Bus. v. DOL, OSHA*, 595 U.S. 109, 118 (2022) ("Although COVID-19 is a risk that occurs in many workplaces, it is not an *occupational* hazard in most. COVID-19 can and does spread at home, in schools, during sporting events, and everywhere else that people gather. That kind of universal risk is no different from the day-to-day dangers that all face from crime, air pollution, or any number of communicable diseases.").

In affirming the lower court's bases for dismissal, the Eleventh Circuit ignored the broad definition of disability under the ADA, and to do it, hid behind *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 663–64 (2009), repeating the implausibility mantra of other federal courts. Namely, the Eleventh Circuit held that an inference or allegation that an employer regarded an employee as disabled due to his immune system function without augmentation is unsupported in caselaw and fails to state a claim pursuant to Federal Rules of Civil Procedure 8 and 10. Pajer 11th Cir. Order App. A, at 14a.

The Eleventh Circuit also persisted in inferring that Appellants' claims address only "potential future disabilities" or the possibility of future infection in contravention to the allegations in the Petitioners' complaints that Disney's own direct statements identified them in accordance with Disney's own definitions for being dangerously sick, on a permanent basis regardless of symptoms. The Eleventh Circuit's citation to *STME* is easily distinguished because in that

case there was no allegation that the employer's statements or conduct indicated a perception of current, indefinite illness. *See* 938 F.3d at 1311.

The conclusory idea that employers could not plausibly be discriminating against their unvaccinated employees due to the employers' perceptions of them as disabled by contagion spread virally throughout the district courts; many courts have dismissed valid ADA claims without evaluating their merits by presupposing their facial absurdity as uncontroversial. *See Dayea Kim v. PGA Tour*, No. 3:23-cv-441-TJC-JBT, 2024 U.S. Dist. LEXIS 13145, at *12–13 (M.D. Fla. Jan. 25, 2024) (dismissing, with leave to amend, claim of disability based on perceived susceptibility to Covid-19 infection due to lack of vaccination); *McCone v. Exela Techs.*, Inc., No. 6:21-cv-912-CEM-DCI, 2022 U.S. Dist. LEXIS 45732, at *4 (M.D. Fla. Mar. 15, 2022) (dismissing *pro se* plaintiff's ADA regarded-as-disabled claim on shotgun pleading basis without assessment of the merits); *Sharikov*, 659 F. Supp. 3d at 278, 292 (dismissing as implausible *pro se* plaintiff's complaint alleging that employer perceived he "*carried* a specific, active, infectious disease," ***or*** "[he] had an impaired or suppressed immune system that made [him] *prone to contracting* [COVID]-19." (emphases added)), *aff'd* 103 F.4th 159 (2d Cir. 2024); *Johnson v. Mount Sinai Hosp. Grp., Inc.*, No. 22-CV-2936, 2023 U.S. Dist. LEXIS 29480, at *3 (E.D.N.Y. Feb. 22, 2023) (dismissing *pro se* plaintiff's regarded-as-disabled claims for refusing testing required by employer to determine whether plaintiff was sick or infectious). *Speaks v. Health Sys. Mgmt., Inc.*, No. 5:22-CV-00077-KDB-DCK, 2022 U.S. Dist LEXIS 146840, at *8 (W.D.N.C. Aug. 17, 2022) (disregarding *pro se* plaintiff's claims as "outrageous" "invective," and

opining on the veracity of medical and scientific evidence at the pleading stage in order to dismiss claims based on vaccination policy classifying her as unvaccinated).

Notably, none of the district courts in the cases cited above addressed their plaintiffs' ADA claims on a full record, falling prey to the same legal error as the district court below in dismissing Petitioners' claims here *with prejudice* based on the erroneous supposition that it is absurd to consider differential treatment of unvaccinated employees as prohibited discrimination by an employer who treats them as diseased and contagious, under the ADA regarded-as definition of disability. Unfortunately, the Eleventh Circuit rubber-stamped this as proper jurisprudence.

Even facts that society presumes true—especially during a frightening crisis—should be subordinate to due process in accordance with proper review standards. *See Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19–20 (2020) (granting injunction on emergency application from gubernatorial executive order restricting religious services during the Covid pandemic, "But even in a pandemic, the Constitution cannot be put away and forgotten. … The dissenting opinions argue that we should withhold relief because the relevant circumstances have now changed. … There is no justification for that proposed course of action."); *id.* at 25 (Gorsuch, J., concurring) ("Nor does any Justice seek to explain why anything other than our usual constitutional standards should apply during the current pandemic. … Why have some mistaken this Court's modest decision in *Jacobson* for a towering authority that overshadows the Constitution during a pandemic? In the end, I can

only surmise that much of the answer lies in a particular judicial impulse to stay out of the way in times of crisis. But if that impulse may be understandable or even admirable in other circumstances, we may not shelter in place when the Constitution is under attack."). This also certainly applies to the cases nationwide in which the ADA regarded-as-disabled claims arose under Covid-19 employer mandates. *See, e.g.*, *Health Freedom Defense Fund, Inc. v. Carvalho*, 104 F.4th 715, 718 (9th Cir. 2024) (vacating dismissal because district court reliance on *Jacobson v. Massachusetts*, 197 U.S. 11 (1905) was misplaced where plaintiff employees had sufficiently pleaded the Covid-19 vaccine mandate amounted to mandating medical treatment, not a vaccine), *vacated* 127 F.4th 750 (9th Cir. 2025), *aff'd by* ___ F.4th ___, No. 22-55908 (9th Cir. Jul. 31, 2025) (applying rational basis review to a vaccination policy "because *Jacobson v. Massachusetts* … is binding and controls"); *but see Roman Catholic Diocese of Brooklyn*, 592 U.S. at 23–24 (opining under *Jacobson* that strict scrutiny should be applied and noting that "*Jacobson* didn't seek to depart from normal legal rules during a pandemic, and it supplies no precedent for doing so.") (Gorsuch, J., concurring).

With the benefit of hindsight, we as a nation are able to evaluate previously accepted public health standards and principles, including those imprudently imposed in a perceived public emergency for what they really were—grotesque in their irrationality and based in the type of bigotry that the amendments to the ADA were made to curtail. During the AIDS epidemic of the 1980s, the widespread fear of HIV led otherwise reasonable people to place unnecessary and even absurd restrictions on those who were infected. *E.g.*, *Nolley v. Cnty. of Erie*, 776 F.

Supp. 715, 742 (W.D.N.Y. 1991) (reproving jail official for his irrational *ad hoc* policy prohibiting HIV-positive inmate from attending church or using the law library, even though it was clear neither of these could spread the virus).

To forego prudence and careful scrutiny of allegations as "implausible" merely by presuming today's popular inferences injects the judicial process with error. This error detrimentally replicates the harm that the courts are in place to protect against, especially when the facts at issue are proven to be accurate tomorrow.

This Court has held popularly accepted measures for "public welfare" as constitutional, even citing *Jacobson* as most Covid-19 vaccine mandate proponents do. *See Buck v. Bell*, 274 U.S. 200, 207 (1927) (citing *Jacobson* to uphold forced sterilization because "Three generations of imbeciles are enough."). However, even once widely accepted, popularly applauded measures, are in hindsight patently absurd or even morally repugnant. *See Box v. Planned Parenthood of Indiana & Kentucky, Inc.*, 587 U.S. 490, 500 (2019) (Thomas, J., concurring) (acknowledging this Court's *Buck* decision "gave the eugenics movement added legitimacy and considerable momentum" until "Americans became familiar with the eugenics of the Nazis and scientific literature undermined the assumptions on which the eugenics movement was built."). It is precisely the role of the Article III judiciary in these difficult matters and at times of crisis to review the facts pleaded by a Plaintiff and ensure he is provided due process, in spite of forces that would seek to suspend such bedrock rights.

Petitioners ought to be given a chance to address their claims in court, in accordance with express Congressional intent regarding a broad right of action against disability discrimination based on an employer's perception. Indeed, there is no dispute that the ADA provisions in question are constitutional and unambiguous. It is also undisputed that over a period spanning four decades, Congress made its intention to grant liberal access to individuals' judicial redress for disability discrimination known in direct response to judicial interpretation to the contrary. There is no articulable, non-arbitrary basis why the courts should now, as the Eleventh Circuit does, amend these unambiguous statutory provisions by judicial carve-out, particularly based on unproven factual premises which are contrary to the allegations actually pleaded by Petitioners *qua* plaintiffs against Disney.

At minimum, to avoid constitutional error and statutory amendment by judicial fiat, the district court could have provided Petitioners opportunity in which to seek leave to amend their complaints in accordance with Federal Rule of Civil Procedure 15. Thereafter, the district court would still be required to deem all allegations true, drawing all inferences from the facts alleged in the light most favorable to the plaintiffs, for the sake of assessing whether the claims were well-pleaded. The Eleventh Circuit's affirmance below is a legal error, which detrimentally reinforces impermissible judicial encroachment into Article I powers of the legislature.

## CONCLUSION

For the foregoing reasons, Petitioners respectfully request this Court grant their Petition and issue a writ of certiorari to the Eleventh Circuit.

Respectfully submitted,

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## APPENDIX TABLE OF CONTENTS

**APPENDIX A**

[DO NOT PUBLISH]

In the
**UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

No. 24-11146
Non-Argument Calendar

ADAM PAJER,
Plaintiff-Appellant,

*versus*

THE WALT DISNEY COMPANY, et al.,
Defendants,

DISNEY PARKS, EXPERIENCES
AND PRODUCTS, INC.,
WALT DISNEY PARKS AND RESORTS U.S. INC,
REEDY CREEK IMPROVEMENT DISTRICT,
Defendants-Appellees.

Appeals from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:23-cv-00254-ACC-EJK

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No. 24-11147
Non-Argument Calendar

STEPHEN CRIBB,
Plaintiff-Appellant,

*versus*

THE WALT DISNEY COMPANY, et al.,
Defendants,

DISNEY PARKS, EXPERIENCES
AND PRODUCTS, INC.,
DISNEY VACATION CLUB MANAGEMENT, LLC,
Defendants-Appellees.

Appeals from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:23-cv-00250-ACC-EJK

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No. 24-11148
Non-Argument Calendar

STEVEN GIBBONS,
Plaintiff-Appellant,

*versus*

THE WALT DISNEY COMPANY, et al.,
Defendants,

DISNEY PARKS, EXPERIENCES
AND PRODUCTS, INC.,
WALT DISNEY PARKS AND RESORTS U.S. INC,
REEDY CREEK IMPROVEMENT DISTRICT,
Defendants-Appellees.

Appeals from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:23-cv-00255-ACC-EJK

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No. 24-11160
Non-Argument Calendar

SETH SCHMIDT,
Plaintiff-Appellant,

*versus*

THE WALT DISNEY COMPANY, et al.,
Defendants,

DISNEY PARKS, EXPERIENCES AND PRODUCTS, INC.,
WALT DISNEY PARKS AND RESORTS U.S. INC,
REEDY CREEK IMPROVEMENT DISTRICT,
Defendants-Appellees.

Appeals from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:23-cv-00257-ACC-EJK

Before BRANCH, BRASHER, and ANDERSON, Circuit Judges.

PER CURIAM:

Adam Pajer, Stephen Cribb, Steven Gibbons, and Seth Schmidt were each terminated by their respective Disney-affiliated employer after refusing to comply

with Disney's COVID-19 protocols, which applied to unvaccinated employees. The employees alleged that their terminations violated multiple state and federal statutes. They sued Disney-affiliated and non-affiliated companies: Disney Parks, Experiences and Products, Inc., Walt Disney Parks and Resorts, U.S., Inc., and Disney Vacation Club Management, LLC (collectively referred hereinafter as "Disney"). The district court dismissed the employees' complaints for failure to state a claim upon which relief may be granted, and the employees appealed. After careful consideration of the record and the parties' arguments, we affirm.

## I.

During the COVID-19 pandemic, Disney adopted safety protocols requiring employees to wear masks and socially distance. In July 2021, Disney instituted a policy requiring employees to receive the COVID-19 vaccine. Later that year, on November 19, the Florida legislature passed a law forbidding non-public employer-enforced vaccine mandates, dubbed "vaccinate or terminate" policies. Disney responded to the new law by pausing enforcement of the vaccine mandate.

Although Disney stopped enforcing its mandate, Disney still required that employees report their vaccination status. Employees who failed to report their vaccination status were treated as unvaccinated. And Disney instituted additional "Augmented Health & Safety Protocols," which required unvaccinated employees to follow isolation, social distancing, and

masking procedures. All four employees were treated as unvaccinated by Disney and required to follow the additional isolation, social distancing, and masking protocols.

The employees asked for a religious exemption from Disney's July 2021 vaccine mandate. But, after suspending the mandate in November 2021, Disney informed them that it would not evaluate pending requests for vaccine mandate exemptions. The employees' religious exemption requests were submitted between August and October 2021. No substantive response was obtained to any of the requests.

The employees objected to the Augmented Protocols in various forms. But the employees did not request any exemption from the Augmented Protocols. Ultimately, the employees were terminated for their unwillingness to comply with the Augmented Protocols. The employees filed their respective complaints on February 14, 2023. In response, Disney moved to dismiss the employees' complaints under Federal Rule of Civil Procedure 12(b)(6) on March 27, 2023. The district court granted each motion to dismiss. Counts III-VII, the religious discrimination and retaliation claims, were dismissed without leave to amend. Counts VII-VIII, the ADA discrimination and retaliation claims, were dismissed with prejudice. Further, the court denied the employees' motion to amend the pleadings. The employees timely appealed.

## II.

We review a district court's order granting dismissal under Rule 12(b)(6) *de novo*. *Wainberg v. Mellichamp*, 93 F.4th 1221, 1224 (11th Cir. 2024). We "accept the facts alleged in the complaint as true and view them in the light most favorable to the plaintiff." *Johnson v. City of Atlanta*, 107 F.4th 1292, 1297 (11th Cir. 2024). The complaint must include "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). We review a district court's denial of leave to amend a complaint for an abuse of discretion. *Chabad Chayil, Inc. v. Sch. Bd. of Miami-Dade Cnty.*, 48 F.4th 1222, 1229 (11th Cir. 2022).

## III.

The employees present several claims in this appeal, against multiple Disney-affiliated entities, which they argue were improperly dismissed by the district court. Adam Pajer, Steven Gibbons, and Seth Schmidt assert their claims against Walt Disney Parks and Resorts, U.S., Inc. Stephen Cribb asserts his claims against Disney Vacations Club Management, LLC. All four employees assert their claims against Disney Parks, Experiences and Products, Inc.

First, the employees allege religious

discrimination under both Title VII and Florida's Civil Rights Act. Second, the employees allege violations under the Americans with Disabilities Act. Third, the employees allege retaliation claims under Title VII, the FCRA, and the ADA. Lastly, the employees argue that the district court erred in its dismissal of their claims without leave to amend.

*A.*

The employees first argue that Disney discriminated against them based on religion in violation of Title VII and the FCRA. Specifically, the employees challenge Disney's vaccine mandate and the Augmented Protocols under both a disparate treatment and disparate impact theory. *See EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 786, 771-72 (2015).

We consider the Title VII and FCRA discrimination claims together because "the Florida act was patterned after Title VII" and both use the same analytical framework. *Harper v. Blockbuster Entm't Corp.*, 139 F.3d 1385, 1387 (11th Cir. 1998) (holding that because the complaint failed to state a Title VII, it likewise failed to state a FCRA claim).

1.

We first address the disparate treatment claims. Title VII and the FCRA "prohibit employers from discriminating against their employees on the basis of religion." *Id.* (citing 42 U.S.C. § 2000e- 2(a)(1)); *see* Fla. Stat. § 760.10(1)(a).

The employees present their disparate treatment claims under both a theory of traditional disparate treatment and a theory of reasonable accommodation. *Bailey v. Metro Ambulance Servs., Inc.*, 992 F.3d 1265, 1272 (11th Cir. 2021). We will address each theory in turn.

Under the traditional theory, a plaintiff must show that "(1) he belongs to a protected class; (2) he suffered an adverse employment action; (3) he was qualified to perform the job in question; and (4) his employer treated 'similarly situated' employees outside his class more favorably." *Jenkins v. Nell*, 26 F.4th 1243, 1249 (11th Cir. 2022) (citation omitted). The employees argue that they sufficiently pleaded that they are "(1) Christians; (2) were subjected to inherently discriminatory masking and distancing policies . . . because of their religious beliefs and practices and were subsequently terminated; (3) that employees who did not seek religious accommodations were treated more favorably; and (4) that the [employees] were qualified to perform their jobs." Further, the employees contend that the district court applied the *McDonnell Douglas* prima facie case too "rigidly" for the pleading stage.

We disagree that the employees pleaded a disparate treatment claim under the traditional theory. Nowhere in their complaints do the employees suggest that they were discriminated against for their religious beliefs. To be sure, the employees allege that they refused to verify their vaccination status for religious reasons and were, therefore, subject to the Augmented Protocols. But the Augmented Protocols

applied to anyone who did not verify his or her vaccination status, including anyone who was not vaccinated or refused to verify for non-religious reasons. The Protocols are not an accommodation to a vaccination requirement because Florida law prevented Disney from requiring vaccination. *Compare Cole v. Group Health Plan, Inc.*, 105 F.4th 1110, 1113 (8th Cir. 2024) (complaint stated claim about the reasonableness of masking as a religious accommodation to a vaccination-or-termination requirement). The employees also allege that they requested a religious exception to the vaccine mandate. But the vaccine mandate was not enforced, and the employees fail to present any factual allegations that Disney treated them differently than others who did not request religious accommodations to the vaccine mandate.

The employees also fail to state a claim under the reasonable accommodation theory. Under that theory, a plaintiff must plead that "(1) his sincere and bona fide religious belief conflicted with an employment requirement, and (2) his employer took adverse employment action against him because of his inability to comply with the employment requirement or because of the employer's perceived need for his reasonable accommodation." *Metro Ambulance*, 992 F.3d at 1275.

The employees failed to plead both elements of this claim. First, although the employees argue that "the Augmented Protocols were not reasonable accommodations for their refusal to get vaccinated," the vaccine mandate was not in effect when they were

terminated. Disney ceased enforcement of the vaccine mandate following Florida's prohibition of "vaccinate or terminate" policies and then introduced the Augmented Protocols as a substitute. The employees needed an accommodation to the Augmented Protocols, not the vaccine mandate. Second, the employees have not stated a claim for reasonable accommodation as for the Augmented Protocols. The employees never alleged that their religious beliefs were at odds with the Protocols – only the vaccine mandate. Accordingly, the employees fail to plausibly plead the first element of a reasonable accommodation claim – that their religious beliefs ever conflicted with Disney's Augmented Protocols in the first place. *See Metro Ambulance*, 992 F.3d at 1275. And the employees never requested accommodations from the Protocols due to their religious beliefs. So they cannot fault Disney for failing to grant a request for an accommodation that they never requested.

To sum up, Disney required its unvaccinated employees to follow certain social distancing and masking guidelines. The employees here have identified no religious objection to those protocols, and they never requested a religious-based accommodation to those protocols. Accordingly, they cannot state a plausible disparate treatment claim.

2.

The employees also allege Title VII and FCRA religious discrimination in the form of disparate impact claims. To establish a prima facie disparate impact claim, a plaintiff must show (1) "a significant

statistical disparity between the proportion of [members of a protected class] in the available labor pool and the proportion of [those individuals affected];" (2) "a specific, facially-neutral, employment practice which is the alleged cause of the disparity;" and (3) "that a causal nexus exists between the specific employment practice identified and the statistical disparity shown." *EEOC v. Joe's Stone Crab, Inc.*, 220 F.3d 1263, 1274 (11th Cir. 2000).

The employees argue that they alleged that (1) the vaccine mandate applied to all Disney cast members; (2) the employees requested accommodations from the mandate because of their religious beliefs; and (3) employees with religious beliefs "suffered adverse effects" by being subjected to the Augmented Protocols and terminated "for their inability to consent to the policies based on their [] beliefs." Further, the employees contend that they were not required to include statistics in their complaint and that it was "enough to allege that a large proportion of those affected and subjected to the Augmented Protocols were Christian."

Even if we accept the employees' argument that their complaint need not contain statistics to state a claim for disparate impact, the complaints still do not plead a facially plausible disparate impact claim. Once again, the complaint alleges that the employees were subject to the Augmented Protocols because of their unvaccinated status. But the complaints are missing any factual allegation that employees with religious objections were more likely to be unvaccinated than anyone else such that they were disparately impacted

by the Protocols. There are many reasons why one would forego vaccination, including preexisting medical conditions, a fear of needles, or non-religious health-related beliefs. With no factual allegations that would establish a religious-based disparity between those affected by the Protocols and those who are not affected, the complaints do not "raise a right to relief above the speculative level," and the employees fail to meet the pleading standard. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

*B.*

Next, we consider whether the employees properly stated a claim of discrimination under the Americans with Disabilities Act.

"To establish a prima facie case for disability discrimination, a plaintiff must produce sufficient evidence to permit a jury to find that [he]: (1) is disabled, (2) is a qualified individual, and (3) was discriminated against because of [his] disability." *Lewis v. City of Union City*, 934 F.3d 1169, 1179 (11th Cir. 2019). The ADA defined disability as (1) "a physical or mental impairment," (2) "a record of such an impairment," or (3) "being regarded as having such an impairment." 42 U.S.C. § 12102(1).

The employees contend that they were discriminated against based on their perceived disability as an unvaccinated employee. The employees' argument proposes that their unvaccinated status was "regarded as" a disability by their Disney employers. What matters, the employees argue, is the

employer's perception of the employee's alleged disability. The employees also contend that the "employer's perception need [not] . . . be accurate regarding disability." Further, the employees argue that the Augmented Protocols substituted the vaccine mandate as a "de facto mandate" policy. Because the Augmented Protocols allegedly employed portions of the 2020-2021 COVID-19 policies applied "solely to the symptomatically sick and testing-identified as infectious for Covid-19 or known to be exposed to the infection," the employees argue that Disney exhibited a perception that the employees were "currently diseased and dangerous on a permanent basis."

Our precedent forecloses the employees' argument that they were unlawfully regarded as having a disability because of their unvaccinated status. In *EEOC v. STME, LLC*, we were presented with a similar set of facts to those now before us. 938 F.3d 1305 (11th Cir. 2019). There, an employee was terminated because of the employer's concern that the employee would contract and later develop the Ebola disease while traveling abroad. *Id.* at 1311. We held that the employee could not have been "regarded as" disabled under the ADA because the statute does not "extend to an employer's belief than an employee might contract or develop an impairment in the future." Even if we were to construe the definition of disability "in favor of broad coverage of individuals" as directed by the ADA, *see* 42 U.S.C. § 12102(4)(A), and suggested by the employees, we are bound to conclude "that the terms of the ADA protect anyone who experiences discrimination because of a current, past, or perceived disability – not a potential future

disability." *STME, LLC*, 938 F.3d at 1316.

Here, the employees' unvaccinated status firmly suggests a potential future impairment. In fact, their allegations challenging the Augmented Protocols contradict the conclusory statements made that they were treated "as though [they] were a continually contagious vector of disease." The employees notably argue that that the Augmented Protocols imported portions of Disney's 2020- 2021 COVID-19 protocols, which applied to those "symptomatically sick and testing-identified as infectious for Covid-19 or known to be exposed to the infection." The employees, however, also alleged that the same 2020-2021 masking and social distancing protocols applied to *all* employees, including those who were not known to be sick or exposed to COVID-19. In other words, those employees who were at risk of a future sickness. Those that presently felt sick or tested positive for the virus were to isolate at home *in addition* to continuing to wear facial covering and socially distancing once cleared to return to work. The Augmented Protocols' masking and social distancing guidelines for unvaccinated individuals more closely resemble Disney's previous COVID-19 protocols relevant to employees not presently sick but who may be in the future. The employees' assertions that Disney regarded them as diseased and thus disabled find no support from our caselaw and fail to plausibly plead an ADA discrimination claim.

*C.*

The employees next argue that their retaliation

claims, arising out of their objection to Disney's allegedly unlawful practices under both federal and state law, were improperly dismissed by the district court.

First, the employees contend that the district court's order dismissing their Title VII and FCRA claims under Rule 12(b)(6) should be reversed. Due to the similarity between Title VII and FCRA retaliation claims, this Court uses the same analysis to address retaliation claims under both statutes. *Howard v. Walgreen Co.*, 605 F.3d 1239, 1244 n.4 (11th Cir. 2010) (citing *Harper*, 139 F.3d at 1387).

Under Title VII, and by extension the FCRA, retaliation against an employee "because he has opposed any practice made an unlawful employment practice by [Title VII], or because he has made a charge . . . under [Title VII]" is prohibited. 42 U.S.C. § 2000e-3(a). "To establish a prima facie case of retaliation, a plaintiff must show: (1) that he engaged in statutorily protected expression; (2) that he suffered an adverse employment action; and (3) that there is some causal relationship between the two events." *Johnson v. Miami-Dade County*, 948 F.3d 1318, 1325 (11th Cir. 2020) (internal quotation marks omitted).

Most relevant to our analysis is the first element: establishing statutorily protected expression. To establish statutorily protected expression, "[the plaintiff] must show[] that he had a good faith, reasonable belief that the employer was engaged in unlawful employment practices." *Howard*, 605 F.3d at 1244 (quoting *Little v. United Techs., Carrier*

*Transicold Div.*, 103 F.3d 956, 960 (11th Cir. 1997)) (internal quotation marks omitted). "He must show both that he *subjectively* believed that [his employer] engaged in unlawful discrimination and that 'his belief was *objectively* reasonable in light of the facts and record present.'" *Id.* (emphasis added) (citation omitted).

The employees target the Augmented Protocols in their retaliation claims. They allege that their objection to the Protocols and to "threats of termination if they did not participate" is statutorily protected expression. The employees attempt to propel their argument by unconvincingly relying on the Supreme Court's decision in *Muldrow v. City of St. Louis*, 601 U.S. 346 (2024). Whatever the employees' reason for the decision's mention, *Muldrow* does not apply here because it addressed a discrimination claim under Title VII and enunciated clear separation from the anti-retaliation provision. *See id.* at 976 (refusing to import a standard from Title VII's anti-retaliation provision into the Title VII anti-discrimination provision at issue).

In any case, the employees' argument that they possessed a *subjective* belief that the Augmented Protocols violated their religious rights under Title VII is critically weakened by the fact that none of the employees alleged that they requested a religious exemption from the Protocols – only the vaccine mandate. By extension, because the employees are unable to present the required subjective belief, the employees' factual allegations cannot then point to the objective reasonability of a belief that is not there in

the first place. Because the employees fail to show the necessary subjective belief and thus are unable to establish "statutorily protected expression," they fail to plead a Title VII or FCRA retaliation claim. *See Johnson*, 948 F.3d at 1325.

As for the ADA retaliation claim, the employees fail to properly present the issue in their appellate briefing. As we have long held, "an appellant abandons a claim when he either makes only passing references to it or raises it in a perfunctory manner without supporting arguments and authority." *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014). Though the employees open their discussion of the retaliation claims by explicitly acknowledging both Title VII and the FCRA, the ADA is passively referenced within a single parenthetical. Without further expansion of the ADA retaliation claim, we are not convinced that the claim is adequately presented. Thus, the employees abandoned their ADA retaliation claim by improperly presenting it on appeal.

*D.*

Lastly, we consider whether the district court abused its discretion by dismissing the employees' claims without leave to amend. The district court held that the employees improperly raised their request for leave to amend under Federal Rule of Civil Procedure 15(a)(2) and had not made the requisite showing under Federal Rule of Civil Procedure 16(b). Because the employees failed to file a motion to amend their complaint by the deadline given to them and instead included the request for leave to amend in their

opposition brief, the district court denied the request.

The employees argue that the district court should have granted leave to amend "in the interests of justice" as instructed by Rule 15. Fed. R. Civ. P. 15(a)(2) ("The court should freely give leave when justice so requires."). They contend that refusal "in the absence of a declared or apparent reason" is an abuse of discretion. *Thomas v. Farmville Mfg. Co.*, 705 F.2d 1307, 1307-08 (11th Cir. 1983). As for the deadline given to them by the district court, the employees suggest that a motion was not filed in time because "there was no guarantee that the district court would grant such a[] [motion] nor give leave to file amended pleadings."

Our binding precedent leaves the employees' arguments unconvincing. First, the district court correctly concluded that the employees improperly raised their request to amend under Federal Rule of Procedure 15(a)(2) by including it in their opposition briefing. *See Chabad Chayil, Inc. v. Sch. Bd. of Miami-Dade Cnty.*, 48 F.4th 1222, 1236 (11th Cir. 2022) (citing *Newton v. Duke Energy Fla., LLC*, 895 F.3d 1270, 1277 (11th Cir. 2018)). Second, by failing to file a motion for leave to amend by the deadline provided by the district court, the employees likewise did not properly request leave to amend. *See Advance Trust & Life Escrow Serv., LTA v. Protective Life*, 93 F.4th 1315, 1336-37 (11th Cir. 2024). And as required by Rule 16(b), the employees "did not indicate with any specificity the good cause [they] had for untimely moving to amend [their] complaint[ s]." *Smith v. Sch. Bd. of Orange Cnty.*, 487 F.3d 1361, 1367 (11th Cir.

2007). It cannot be said that the district court's refusal was an abuse of discretion when the employees "never filed a motion to amend," did not properly "request[] leave to amend before the district court," nor showed good cause for why they failed meet the court's deadline. *See Wagner v. Daewoo Heavy Indus. Am. Corp.*, 314 F.3d 541, 542 (11th Cir. 2002); *see also Sosa v. Airprint Sys.*, 133 F.3d 1417, 1419 (11th Cir. 1998).

## IV.

We **AFFIRM** the district court's order.

**UNITED STATES COURT OF APPEALS**
**FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE
COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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July 02, 2025

**MEMORANDUM TO COUNSEL OR PARTIES**

Appeal Number: 24-11146-CC ; 24-11147-CC ; 24-11148-CC ; 24-11160-CC
Case Style: Adam Pajer v. Disney Parks, Experiences and Products, Inc., et al
District Court Docket No: 6:23-cv-00254-ACC-EJK

**Opinion Issued**
Enclosed is a copy of the Court's decision issued today in this case. Judgment has been entered today pursuant to FRAP 36. The Court's mandate will issue at a later date pursuant to FRAP 41(b).

**Petitions for Rehearing**
The time for filing a petition for panel rehearing or rehearing en banc is governed by 11th Cir. R. 40-2. Please see FRAP 40 and the accompanying circuit rules for information concerning petitions for rehearing. Among other things, **a petition for rehearing must include a Certificate of**

**Interested Persons**. *See* 11th Cir. R. 40-3.

**Costs**
Costs are taxed against Appellant(s) / Petitioner(s).

**Bill of Costs**
If costs are taxed, please use the most recent version of the Bill of Costs form available on the Court's website at www.ca11.uscourts.gov. For more information regarding costs, see FRAP 39 and 11th Cir. R. 39-1.

**Attorney's Fees**
The time to file and required documentation for an application for attorney's fees and any objection to the application are governed by 11th Cir. R. 39-2 and 39-3.

**Appointed Counsel**
Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation via the eVoucher system no later than 45 days after issuance of the mandate or the filing of a petition for writ of certiorari. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

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## APPENDIX B

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**ORLANDO DIVISION**

ADAM PAJER,
Plaintiff,

v. Case No. 6:23-cv-254-ACC-EJK

DISNEY PARKS, EXPERIENCES AND PRODUCTS, INC. and WALT DISNEY PARKS AND RESORTS, U.S., INC.,
Defendants.

**ORDER**

This cause comes before the Court on Defendant Disney Parks, Experiences, and Products, Inc.'s ("DPEP") Motion to Dismiss Plaintiff Adam Pajer's Complaint. (Doc. 32). Pajer has filed a Response in Opposition (Doc. 43), and DPEP has filed a Reply (Doc. 56). Thus, the Motion is ripe for review.[1]

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[1] Pajer has also filed two notices of supplemental authority, which include excerpts from a *Report on Past Practices of the Reedy Creek Improvement District* published by the Central Florida Tourism Oversight District (Doc. 59), and opposition responses filed by a Disney subsidiary, Walt Disney Parks and Resorts U.S., Inc., in a different lawsuit (Doc. 60). Defendants filed a motion to strike, arguing that the filings violate Middle

In his nine-count Complaint, Pajer alleges that DPEP violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq*. ("Title VII"); the Americans with Disabilities Act, 42 U.S.C. §§ 12111, *et seq*. ("ADA"); Florida's Private Sector Whistleblower Act, Fla. Stat. §§ 448.101 *et seq*. ("Private Sector FWA"); Florida's Public Sector Whistleblower Act, Fla. Stat. §§ 112.3187 *et seq*. ("Public Sector FWA"); Florida's Civil Rights Act, Fla. Stat. §§ 760.07, 760.10 ("FCRA"); and Florida's Constitution, Art. I, § 23. (Doc. 1). For the reasons below, the Court will grant DPEP's Motion.

## I. BACKGROUND

### *A. Plaintiff Pajer's Employment History*

Pajer started working as a cast member at Disney[2] in 2015. (Doc. 1 ¶ 12). He was "employed by Walt Disney Parks & Resorts, U.S., Inc.," ("WDPR") where he most recently worked as a banquet server with Disney resorts in Orlando, Florida. (*Id.* ¶¶ 1, 46). In that role, Pajer was responsible for, among other things, setting up tables, buffets, and bars. (*Id.* ¶ 46).

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District of Florida Local Rule 3.01(i) and are otherwise irrelevant. (Doc. 62). Since these supplemental authorities do not change the outcome of this Motion to Dismiss (Doc. 32), the Court denies as moot Defendants' motion to strike.

[2] The Court recognizes that Pajer's use of the term "Disney" is ambiguous. As demonstrated in the first page of the Complaint, Pajer uses the term "Disney" to collectively refer to all Defendants. (Doc. 1). The only sensible way to read this defined term is under a theory that Pajer seeks to hold Defendants collectively responsible for all actions.

His job, among many others, was materially altered in early 2020 when the company responded to the COVID-19 health crisis. (*Id.* ¶ 12).

In response to the COVID-19 pandemic, Disney instituted various safety measures. In July 2021, a senior executive from The Walt Disney Company ("TWDC")—the Disney parent entity—announced a new company policy requiring employees to receive the COVID-19 vaccine. (*Id.* ¶¶ 15, 47; Doc. 1-3 at 4). Upon Pajer's information and belief, DPEP had significant control over the design, implementation, and enforcement of the vaccine policy. (Doc. 1 ¶ 16). Being opposed to the vaccine on religious grounds, Pajer submitted an exemption request on October 15, 2021. (*Id.* ¶ 47; Doc. 1-3 at 22). However, Pajer never received a final determination on his request. (Doc. 1 ¶ 47).

Shortly after, on November 19, 2021, the Florida government passed legislation forbidding "vaccinate or terminate" policies. (*Id.* ¶ 20). That same day, a health and safety group from TWDC sent an email to Florida cast members informing them that the company was pausing enforcement of the vaccine mandate. (*Id.* ¶ 21; Doc. 1-3 at 6). However, Disney also specified that unvaccinated employees were still required to verify their vaccination status and that unverified employees were required to follow undefined safety protocols, "including face coverings and physical distancing." (Doc. 1 ¶ 22).

Following the repeal of the vaccine mandate, Disney instituted "Augmented Health & Safety

Protocols" ("Augmented Protocols"), which established heightened procedures for isolating, social distancing, and masking. (*Id.* ¶¶ 24, 29–30). The Augmented Protocols required varied use of face shields, safety glasses, and N95 masks. (*Id.* ¶ 30). While it is not clear exactly who was subject to the policy or upon which dates the policy was modified, it is evident that the restrictions applied to employees who did not verify their vaccination status. (*Id.* ¶¶ 30–36). Pajer was in this cohort. (*Id.* ¶ 51).

Pajer often voiced his objection to the company's Augmented Protocols. (*Id.* ¶¶ 50, 54). On one occasion, in February 2022, Pajer sent an instant chat message to fellow Disney cast members, asserting that "[m]anagers are starting to discriminate against people who didn't take the experimental propaganda procedures," and that the "[managers] tried on [him] but could not even show where it says that [he] had to wear a mask backstage when others do not." (*Id.* ¶ 50).

Pajer voiced his concerns with various individuals, including Disney's human resources team. (*Id.* ¶ 53). Specifically, on May 5, 2022, Pajer informed Disney that he filed a report with the Private Employer Vaccine Mandate Program ("PEVMP"). (*Id.*).

Shortly after, on May 12, 2022, a manager approached Pajer during his shift to enforce Pajer's compliance with the Augmented Protocols. (*Id.* ¶ 54). By this time, Pajer had printed out written statements explaining his objections:

[GRAPHIC]

**Discrimination in the Workplace:**

> I Adam Pajer am being discriminated against by you _____. Alongside with the Walt Disney Company at WDW Orlando. You are hereby notified that you are breaking the law: attacking mine and other civil liberties, our God given rights endowed inside the United States Constitution and Discriminating against us by means of harassment ~~intimation~~ Intimidation, segregation, and bullying.
>
> This needs to stop immediately and action to resolve your actions must be accounted for.

(*Id.*). When the manager confronted Pajer about wearing a mask, Pajer distributed his written statement. (*Id.*). In response, three managers called Pajer into an office, where they allegedly belittled and harassed him. (*Id.* ¶ 55). One of the managers even attempted to dispose of Pajer's written statement by burning it with a lighter while it was still in Pajer's hand. (*Id.* ¶ 56). Finally, the managers demanded Pajer leave the premises and abandon the remainder of his shift. (*Id.* ¶ 57). Disney suspended Pajer two days later. (*Id.* ¶ 58). Ultimately, on June 28, 2022, Disney terminated Pajer's employment. (*Id.* ¶ 64). In response, Pajer filed grievances with the EEOC and Florida Commission on Human Relations ("FCHR"). (*Id.*). The EEOC issued a notice to sue on December

23, 2022. (*Id.*).

Near the time of Pajer's suspension and termination, national and local authorities gradually relaxed their guidance regarding COVID-19 safety measures. (*Id.* ¶¶ 27, 38). Disney followed suit. On May 10, 2022, Disney lifted its mask requirement for vaccinated cast members. (*Id.* ¶ 28). A few weeks later, Pajer, along with two other employees, sued various Disney-related entities in Florida state court. (*Andreas v. Walt Disney Co.*, No. 6:23-cv-107, Doc. 1-3 at 4–27). On August 16, 2022, Disney lifted its Augmented Protocols for employees who did not verify their vaccination status. (Doc. 1 ¶ 39).

### *B. Procedural History*

On June 29, 2022, plaintiffs Barbara Andreas, Stephen Cribb, and Adam Pajer sued defendants TWDC and DPEP in the Circuit Court of the Ninth Judicial Circuit in and for Osceola County, Florida. (*Andreas*, No. 6:23-cv-107, Doc. 1-3). In their original Complaint, plaintiffs Andreas, Cribb, and Pajer asserted one count against defendants TWDC and DPEP under Florida law. (*Id.* at 25 (citing Fla. Stat. §§ 448.101, *et seq.*)). Thereafter, on December 23, 2022, the three original plaintiffs along with Steven Gibbons, Cheron Hayes, Cathryn Koepke, and Seth Schmidt collectively filed the First Amended Complaint, in which they asserted additional state and federal claims against TWDC and DPEP, as well as WDPR, Reedy Creek Improvement District ("Reedy Creek"), Disney Gift Card Services, Inc. ("DGCS"), Disney Human Resources Services Co., LLC ("DHRS"), and

Disney Vacation Club Management, LLC ("DVCM"). (*Andreas*, No. 6:23-cv-107, Doc. 1-1). On January 20, 2023, the defendants removed the case to this Court. (*Andreas*, No. 6:23-cv-107, Doc. 1 ¶ 4; Doc. 3).

In their First Amended Complaint, the plaintiffs generally alleged that the defendants wrongfully terminated their employment after the plaintiffs requested exemptions from defendants' COVID-19 vaccine mandates and otherwise objected to defendants' increased safety protocols for unvaccinated cast members. (*Andreas*, No. 6:23-cv-107, Doc. 1-1). At various points in time, the plaintiffs requested exemptions from the vaccine mandate and/or mask mandate based on their religious beliefs. (*Id.*). In total, the seven plaintiffs asserted nine claims against the seven defendants. (*Id.*). Because of the great variation in factual circumstances concerning each plaintiff, the Court severed the plaintiffs' claims on January 24, 2023, instructing each plaintiff to "pursue his or her claims only as they relate to the corporations relevant to his or her employment." (*Andreas*, No. 6:23-cv-107, Doc. 7 at 3–4).

On February 14, 2023, Pajer filed his Complaint against TWDC, WDPR, DPEP, and Reedy Creek.[3] (Doc. 1). Pajer alleges claims for discrimination and retaliation under Title VII (Counts V–VI); for

[3] Only DPEP remains in the suit. Pajer voluntarily dismissed TWDC from this suit. (Docs. 63–64). Meanwhile, the Court dismissed Reedy Creek in its December 8, 2023 Order (Doc. 58), and WDPR in its February 29, 2024 Order (Doc. 70).

discrimination, retaliation, and coercion under the ADA (Counts VII–VIII); for violation of the Private Sector FWA (Count I); for violation of the Public Sector FWA (Count II); for discrimination and retaliation under the FCRA (Count III–IV); and for violation of Florida's Constitutional Right to Privacy (Count IX). All but the Public Sector FWA claim and Florida Constitutional Right to Privacy claim are before this Court.[4]

DPEP, as Pajer acknowledges, is a foreign corporation registered to do business in Florida. (*Id.* ¶ 2). DPEP moves to dismiss Pajer's Complaint on various grounds.

## II. LEGAL STANDARD

For purposes of deciding a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), the Court accepts as true the factual allegations in the complaint and draws all reasonable inferences in the light most favorable to the plaintiff. *Randall v. Scott*, 610 F.3d 701, 705 (11th Cir. 2010). When reviewing a motion to dismiss, courts are generally bound "to the face of the complaint and attachments thereto." *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1368 (11th Cir. 1997).

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[4] Pajer withdrew the Public Sector FWA claim (Count II) and the Florida Constitutional Right to Privacy claim (Count IX). (Doc. 69).

"Generally, under the Federal Rules of Civil Procedure, a complaint need only contain 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *Randall*, 610 F.3d at 705 (quoting Fed. R. Civ. P. 8(a)(2)). However, the plaintiff's complaint must provide "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). Thus, the Court is not required to accept as true a legal conclusion merely because it is labeled a "factual allegation" in the complaint; it must also meet the threshold inquiry of facial plausibility. *Id.*

## III. ANALYSIS

### *A. Shotgun Pleading*

DPEP contends that Pajer's Complaint must be dismissed for being an impermissible shotgun pleading. "Shotgun pleadings" refer to complaints that violate either Rule 8(a)(2) or Rule 10(b) of the Federal Rules of Civil Procedure. *Weiland v. Palm Beach Cnty. Sheriff's Office*, 792 F.3d 1313, 1320 (11th Cir. 2015). "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.* at 1323; *see Lampkin-Asam v. Volusia Cnty. Sch. Bd.*, 261 F. App'x

274, 277 (11th Cir. 2008) ("A complaint that fails to articulate claims with sufficient clarity to allow the defendant to frame a responsive pleading constitutes a 'shotgun pleading.'"). "[D]ismissal under Rules 8(a)(2) and 10(b) is appropriate where 'it is virtually impossible to know which allegations of fact are intended to support which claim(s) for relief.'" *Weiland*, 792 F.3d at 1325 (emphasis omitted) (quoting *Anderson v. Dist. Bd. of Trs. of Cent. Fla. Cmty. Coll.*, 77 F.3d 364, 366 (11th Cir. 1996)).

The Eleventh Circuit has delineated four categories of shotgun pleadings:

> (1) "a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint," (2) "a complaint that . . . is . . . replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action," (3) a complaint that fails to "separat[e] into a different count each cause of action or claim for relief," and (4) a complaint that "assert[s] multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against."

*Id.* at 1321–23.

DPEP argues that the Complaint is a shotgun pleading because it fails to clarify which conduct is attributable to which Defendant. In response, Pajer asserts that dismissal is only warranted in cases where it is virtually impossible to understand the claims—a standard DPEP apparently cannot satisfy. This conflict clearly touches on the fourth category of shotgun pleadings.

While it is clear which claims are brought against each Defendant, less clear is for which acts or omissions each Defendant is allegedly responsible. Surprisingly, very few of Pajer's allegations specify a particular Defendant by name. Instead, Pajer uses the broadly defined term *Disney* to encompass all Defendants.

Significantly, "nothing in the pleading rules prohibits lodging the same claim against multiple [d]efendants if they are all alleged to have participated in the same acts rising to the claim." *Whitehurst v. G & A Rest. Mgmt., Inc.*, No. 2:20-cv-67- MRM, 2020 WL 2062462, at *2 (M.D. Fla. Apr. 29, 2020). However, "unless it is possible that [all] [d]efendants could have engaged in the same conduct," a complaint that lumps together the defendants "will be found to be a shotgun pleading." *Norris v. Honeywell Int'l, Inc.*, No. 8:22-cv-1675-CEH-TGW, 2023 WL 6256183, at *4 (M.D. Fla. Sept. 26, 2023).

Complaints alleging that defendants operated jointly have survived a shotgun pleading challenge. *See id.* (finding that a complaint was not a shotgun pleading where plaintiff "adequately convey[ed] a

theory of collective liability" between a parent corporation and its subsidiary regarding a vaccine policy); *Marino v. Spizzigo Enters., LLC*, No. 10-24391-CIV, 2021 WL 8894429, at *7 (S.D. Fla. Feb. 3, 2021) (finding that a complaint was not a shotgun pleading where plaintiff alleged that two defendants were "owned and/or controlled, directly or indirectly by" a third defendant).

Here, Pajer uses the term Disney to refer to all Disney-related entities and argues that all "Disney entities . . . form an integrated enterprise." (Doc. 43 at 3–4). While this is far from a model pleading,[5] Pajer has narrowly conveyed a theory of collective liability and survives DPEP's shotgun-pleading challenge.

### *B. Employer-Employee Relationship*

DPEP contends that all Pajer's remaining claims directed at itself should be dismissed because Pajer failed to plausibly allege that DPEP is his employer. (Doc. 32 at 12–13). In response, Pajer argues that DPEP can be liable under a theory of joint or integrated liability. (Doc. 43 at 3–4).

Title VII makes it unlawful for an "employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of

[5] Pajer variously and inconsistently uses the term Disney and makes little effort to specify DPEP's role. That said, the Court makes no determination at this point regarding the sufficiency of Pajer's allegations.

employment, because of such individual's . . . religion." 42 U.S.C. § 2000e–2(a)(1). Meanwhile, the ADA makes it unlawful for an employer to "discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." *Id.* § 12112(a). Finally, the Private Sector FWA prohibits an "employer" from taking "any retaliatory personnel action against an employee" because of the employee's protected activity. Fla. Stat. § 448.102.

An employment discrimination claim under Title VII "can only be brought by an employee against his employer."[6] *Peppers v. Cobb Cnty.*, 835 F.3d 1289, 1297 (11th Cir. 2016). "To decide whether an entity is a qualified employer," the Eleventh Circuit has asked one "basic question: 'who (or which entity) is in control of the fundamental aspects of the employment relationship that gave rise to the claim.'" *Id.* (quoting *Lyes v. City of Riviera Beach*, 166 F.3d 1332, 1345 (11th Cir. 1999)). "This question requires consideration

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[6] The Court will consider the Title VII and ADA claims together because the standards are the same. *See, e.g.*, *Huck v. Mega Nursing Servs., Inc.*, 989 F. Supp 1462, 1463 (S.D. Fla. 1997) ("[S]ince the language in Title VII was analogous to the ADA, the courts have used the Title VII cases as a guide for determining employee liability under the ADA."). This analysis will also simultaneously address Pajer's FCRA and Private Sector FWA claims because the FCRA and Private Sector FWA are generally interpreted as consistent with Title VII. *Harper v. Blockbuster Entm't Corp.*, 139 F.3d 1385, 1387 (11th Cir. 1998); *Sierminski v. Transouth Fin. Corp.*, 216 F.3d 945, 950 (11th Cir. 2000).

of the totality of the employment relationship." *Id.* In certain circumstances, courts have aggregated ostensibly separate entities as joint or integrated employers. *Id.* at 1298.

The joint and integrated employer determinations are fact-specific and often more appropriate for disposition at summary judgment. *EEOC v. Princess Martha, LLC*, No. 8:22-cv-2182-CEH-AAS, 2023 WL 8544223, at *10 (M.D. Fla. Dec. 11, 2023). However, upon a motion to dismiss, the court must still evaluate whether the plaintiff has alleged enough facts to plausibly establish the requisite level of control for each test. *See id.*

To establish an integrated relationship, the court must evaluate four factors: "(1) interrelation of operations, (2) centralized control of labor relations, (3) common management, and (4) common ownership or financial control." *Lyes*, 166 F.3d at 1342. Meanwhile, to establish a joint relationship, the court must find that the defendant was "in control of the fundamental aspects of the employment relationship that gave rise to the claim." *Id.* at 1345. In other words, "[w]hile the [integrated] employer test looks at the overall relationships of the two entities, joint employer status is determined by focusing on the entities' relationships to a given employee or class of employees." *Peppers*, 835 F.3d at 1300 (quoting *Sandoval v. City of Boulder, Colo.*, 388 F.3d 1312, 1324 (10th Cir. 2004)).

Looking to the Complaint, Pajer's allegations fall short for both tests. Strikingly, the most discernible allegation regarding DPEP states that, "[u]pon

information and belief," DPEP had "significant design and implementation authority as well as enforcement oversight regarding Disney's vaccine mandate in Florida." (Doc. 1 ¶ 16). This allegation, however, is conclusory and cannot support a finding of integrated control between DPEP and WDPR—Pajer's direct employer. *See Mann v. Palmer*, 713 F.3d 1306, 1315 (11th Cir. 2013) (disregarding conclusory allegations made "upon information and belief"). This determination is reinforced by the lack of supporting allegations.

In fact, the only remaining allegation in Pajer's Complaint relevant to DPEP suggests that DPEP maintained an email address associated with contact tracing for COVID-19. (Doc. 1 ¶ 14). Drawing all reasonable inferences from this allegation in Pajer's favor justifies a finding that DPEP maintained some authority over COVID- 19 policies. However, such a finding does not come close to satisfying the fourfactor integrated employer test. For example, there are no facts that allow this Court to consider whether DPEP and WDPR centralized control of labor relations or shared common management, ownership, or financial control. *Key v. Hyundai Motor Mfg., Ala., LLC*, No. 2:19-CV-767-ECM, 2021 WL 3909663, at *7 n.4 (M.D. Ala. Aug. 31, 2021) (rejecting an integrated employer argument where "[p]laintiff has not pleaded enough facts to show the sufficient level of interrelation . . . [b]eyond conclusory assertions").

In his Response, Pajer argues that "DPEP implemented the TWDC enterprisewide employment policy that resulted in discrimination against Mr.

Pajer." (Doc. 43 at 5). However, as previously discussed, this is not supported by any non-conclusory factual allegations. Finally, Pajer emphasizes that "WDPR is encompassed by" and "moves at the direction and will of DPEP." (*Id.* at 5–6). This, too, is conclusory. In short, Pajer has not sufficiently alleged that DPEP is an integrated employer with WDPR.

Turning to the joint employer test, Pajer's allegations suffer a similar fate. As previously noted, drawing all reasonable inferences in Pajer's favor only justifies a finding that DPEP had some control over the vaccine mandate across Disney-related entities. However, such a finding does not salvage Pajer's claims.

A similar issue arose in *Norris v. Honeywell International Inc.*, No. 8:22-cv- 1675-CEH-TGW, 2023 WL 6256183 (M.D. Fla. Sept. 26, 2023). There, a class of employees sued their direct employer and its corporate parent under Title VII and the ADA for religious discrimination related to the defendants' enforcement of COVID-19 vaccine and mask policies. *Id.* at *1. On a motion to dismiss, the employees argued that the corporate parent could be liable under a theory of joint liability. *Id.* at *22. Even though the employees plausibly alleged that the parent company "was involved in policies related to the vaccine mandate and the exemption process," the court nevertheless dismissed the discrimination claims against the parent company because the employees failed to plead that the parent company "was involved in any of the specific adverse employment decisions" or that the parent company "was generally involved in its

subsidiaries' hiring, termination, or payment." *Id.* at *24. Because Pajer has not alleged that DPEP was involved in any of the specific adverse employment decisions or that DPEP was generally involved in his hiring, termination, or payment, he has failed to plausibly allege a joint employer theory.

### *C. Exhausting FCRA Administrative Remedies*

As a final matter, the Court also addresses DPEP's argument that Pajer failed to exhaust his administrative remedies for his FCRA claims. In particular, DPEP argues that Pajer's FCRA claims are premature because Pajer filed this lawsuit before the expiration of the FCHR's 180-day review period. (Doc. 32 at 17). Pajer does not directly respond to this challenge, thus relying on his allegation that he "exhausted his administrative remedies prior to bringing [his FCRA] claim[s]." (Doc. 1 ¶¶ 101, 113).

Section 760.11 of the FCRA provides that a plaintiff can only bring a civil action when the commission has issued a "reasonable cause" determination or when the commission fails to make a determination altogether. Fla. Stat. § 760.11(4)(a), (8)(a). The commission has 180 days to make this determination. *Id.* Where plaintiff's right to file a lawsuit is "contingent upon the occurrence of an event that may or may not occur, the appropriate disposition is dismissal." *Sheridan v. State, Dep't of Health*, 182 So. 3d 787, 794 (Fla. Dist. Ct. App. 2016). However, this deficiency may be cured by the passage of time. *Id.* at 795 (finding that plaintiff's premature FCRA claims

were cured by the passage of time because the EEOC never referred the claims to the FCHR).

Pajer filed this lawsuit well before the completion of the 180-day review period. He filed his administrative charge on December 9, 2022, (Doc. 32 at 17; Doc. 32-1 at 1),[7] and this lawsuit on February 14, 2023. (Doc. 1). Because Pajer does not respond to this challenge, the Court cannot draw a reasonable inference that he has satisfied his administrative prerequisites under the FCRA. *See Wilson v. Collier Cnty. Fla.*, No. 2:21-cv-861-JLB-NPM, 2022 WL 767715, at *2–*3 (M.D. Fla. Mar. 14, 2022) (dismissing a claim for failure to exhaust administrative remedies under the FCRA despite plaintiff's allegation that he "exhausted all administrative remedies"). Thus, Pajer's FRCA claims are also due to be dismissed on this basis.

In summary, Pajer fails to plausibly allege that

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[7] Pajer does not attach his EEOC charge against DPEP to his Complaint. However, DPEP attaches the document in its Motion. (*See* Doc. 32-1). The document is central to Pajer's claims, and its authenticity is not at issue. Although a court is typically limited to the four corners of the complaint when addressing a motion to dismiss, the Court finds that it may consider the EEOC charge in this circumstance. *Gombosh v. Univ. of Miami*, No. 21-23525-CIV, 2022 WL 18584337,at *9 (S.D. Fla. Mar. 8, 2022) ("The EEOC charge is properly considered on the motion to dismiss because [p]laintiff has not disputed its authenticity and refers to it in [his] [c]omplaint."). Moreover, "[i]n discrimination cases, the EEOC charge is a document that courts routinely consider when ruling on motions to dismiss, even if it was not attached to a pleading." *Id.*

DPEP is an integrated or joint employer with WDPR.[8] Pajer also fails to plausibly allege that he exhausted administrative remedies under the FCRA. Because there are no alternative theories or plausible allegations to justify DPEP's liability, all remaining claims against DPEP are dismissed.[9]

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[8] The Court dismissed all remaining claims against WDPR in its February 29, 2024 Order (Doc. 70), because of various pleading deficiencies. The same pleading deficiencies plague Pajer's claims against DPEP. Thus, the Court's rationale in its February 29, 2024 Order provide an additional basis to dismiss the remaining claims against DPEP.

[9] The Court denies Pajer's request for leave to amend because Pajer has not properly raised the request under Federal Rule of Civil Procedure 15(a)(2) and has not made the requisite showing under Rule 16(b). Instead, Pajer improperly included his request for leave to amend in his opposition brief. *Newton v. Duke Energy Fla., LLC*, 895 F.3d 1270, 1277 (11th Cir. 2018) ("[W]here a request for leave to file an amended complaint simply is imbedded within an opposition memorandum, the issue has not been raised properly."); *Wright v. Gilead Scis., Inc.*, No. 3:20-cv-1026-J-34PDB, 2021 WL 641327, at *1 (M.D. Fla. Jan. 11, 2021) ("[A] request for affirmative relief, such as a request for leave to amend a pleading, is not properly made when simply included in a response to a motion."). Additionally, Pajer has not made a "good cause" showing, which is required under Rule 16(b) when a party seeks to amend a pleading after the deadline has passed. *Regions Bank v. Kaplan*, No. 8:12-cv-1837-T-17MAP, 2015 WL 13704669, at *1 (M.D. Fla. Sept. 24, 2015) ("When leave to amend is sought after the deadline to amend the pleadings has passed, the movant must . . . show 'good cause' under Federal Rule of Civil 16(b) in order to obtain the right to amend."). Pajer's deadline to amend the pleading passed on May 31, 2023. (Doc. 27 at 1). While the Court gave Pajer leave to file a motion to amend his Complaint by June 30, 2023 (Doc. 38), he failed to do so.

Based on the foregoing, it is ordered as follows:

1. Disney Parks, Experiences, and Product's, Inc. (DPEP)'s Motion to Dismiss Pajer's Complaint (Doc. 32) is **GRANTED**.

2. Defendants' Motions to Strike Pajer's Supplemental Authorities (Doc. 62) is **DENIED** as moot.

3. The clerk is **DIRECTED** to close the file.

**DONE** and **ORDERED** in Chambers, in Orlando, Florida on March 12, 2024.

/s/
ANNE C. CONWAY
United States District Judge

Copies furnished to:

Counsel of Record

## APPENDIX C

**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**ORLANDO DIVISION**

ADAM PAJER,
Plaintiff,

v. Case No. 6:23-cv-254-ACC-EJK

DISNEY PARKS, EXPERIENCES AND PRODUCTS, INC. and WALT DISNEY PARKS AND RESORTS, U.S., INC.,
Defendants.

**ORDER**

This cause comes before the Court on Defendant Walt Disney Parks & Resorts, U.S., Inc.'s ("WDPR") Motion to Dismiss Plaintiff Adam Pajer's Complaint. (Doc. 31). Pajer has filed a Response in Opposition (Doc. 44), and WDPR has filed a Reply (Doc. 54). Thus, the Motion is ripe for review.

In his nine-count Complaint, Pajer alleges that WDPR violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq.* ("Title VII"); the Americans with Disabilities Act, 42 U.S.C. §§ 12111, *et seq*. ("ADA"); Florida's Private Sector Whistleblower Act, Fla. Stat. §§ 448.101 *et seq.* ("Private Sector FWA"); Florida's Public Sector Whistleblower Act, Fla.

Stat. §§ 112.3187 *et seq*. ("Public Sector FWA"); Florida's Civil Rights Act, Fla. Stat. §§ 760.07, 760.10 ("FCRA"); and Florida's Constitution, Art. I, § 23. (Doc. 1). For the reasons below, the Court will grant WDPR's Motion.

## I. BACKGROUND

### *A. Plaintiff Pajer's Employment History*

Pajer started working as a cast member at Disney[1] in 2015. (Doc. 1 ¶ 12). He was "employed by [WDPR]," where he most recently worked as a banquet server with Disney resorts in Orlando, Florida. (*Id.* ¶¶ 1, 46). In that role, Pajer was responsible for, among other things, setting up tables, buffets, and bars. (*Id.* ¶ 46). His job, among many others, was materially altered in early 2020 when the company responded to the COVID-19 health crisis. (*Id.* ¶ 12).

In response to the COVID-19 pandemic, Disney instituted various safety measures. In July 2021, a senior executive from The Walt Disney Company ("TWDC")—the Disney parent entity—announced a new company policy requiring employees to receive the COVID-19 vaccine. (*Id.* ¶¶ 15, 47; Doc. 1-3 at 4). Upon Pajer's information and belief, Disney Parks,

[1] The Court recognizes that Pajer's use of the term "Disney" is ambiguous. As demonstrated in the first page of the Complaint, Pajer uses the term "Disney" to collectively refer to all Defendants. (Doc. 1). The only sensible way to read this defined term is under a theory that Pajer seeks to hold Defendants collectively responsible for all actions.

Experiences and Products, Inc. ("DPEP") had significant control over the design, implementation, and enforcement of the vaccine policy. (Doc. 1 ¶ 16). Being opposed to the vaccine on religious grounds, Pajer submitted an exemption request on October 15, 2021. (*Id.* ¶ 47; Doc. 1-3 at 22). However, Pajer never received a final determination on his request. (Doc. 1 ¶ 47).

Shortly after, on November 19, 2021, the Florida government passed legislation forbidding "vaccinate or terminate" policies. (*Id.* ¶ 20). That same day, a health and safety group from TWDC sent an email to Florida cast members informing them that the company was pausing enforcement of the vaccine mandate. (*Id.* ¶ 21; Doc. 1-3 at 6). But Disney also specified that unvaccinated employees were still required to verify their vaccination status and that unverified employees were required to follow undefined safety protocols, "including face coverings and physical distancing." (Doc. 1 ¶ 22).

Following the repeal of the vaccine mandate, Disney instituted "Augmented Health & Safety Protocols" ("Augmented Protocols"), which established heightened procedures for isolating, social distancing, and masking. (*Id.* ¶¶ 24, 29–30). The Augmented Protocols required varied use of face shields, safety glasses, and N-95 masks. (*Id.* ¶ 30). While it is not clear exactly who was subject to the policy or upon which dates the policy was modified, it is evident that the restrictions applied to employees who did not verify their vaccination status. (*Id.* ¶¶ 30–36). Pajer was in this cohort. (*Id.* ¶ 51).

Pajer often voiced his objection to the company's Augmented Protocols. (*Id.* ¶¶ 50, 54). On one occasion, in February 2022, Pajer sent an instant chat message to fellow Disney cast members, asserting that "[m]anagers are starting to discriminate against people who didn't take the experimental propaganda procedures," and that the "[managers] tried on [him] but could not even show where it says that [he] had to wear a mask backstage when others do not." (*Id.* ¶ 50).

Pajer voiced his concerns with various individuals, including Disney's human resources team. (*Id.* ¶ 53). Specifically, on May 5, 2022, Pajer informed Disney that he filed a report with the Private Employer Vaccine Mandate Program ("PEVMP"). (*Id.*).

Shortly after, on May 12, 2022, a manager approached Pajer during his shift to enforce Pajer's compliance with the Augmented Protocols. (*Id.* ¶ 54). By this time, Pajer had printed out written statements explaining his objections:

[GRAPHIC]

**Discrimination in the Workplace:**

> I Adam Pajer am being discriminated against by you _____. Alongside with the Walt Disney Company at WDW Orlando. You are hereby notified that you are breaking the law: attacking mine and other civil liberties, our God given rights endowed inside the United States Constitution and Discriminating against us by means of

> harassment ~~intimation~~ Intimidation, segregation, and bullying.
>
> This needs to stop immediately and action to resolve your actions must be accounted for.

(*Id.*). When the manager confronted Pajer about wearing a mask, Pajer distributed his written statement. (*Id.*). In response, three managers called Pajer into an office, where they allegedly belittled and harassed him. (*Id.* ¶ 55). One of the managers even attempted to dispose of Pajer's written statement by burning it with a lighter while it was still in Pajer's hand. (*Id.* ¶ 56). Finally, the managers demanded Pajer leave the premises and abandon the remainder of his shift. (*Id.* ¶ 57). Disney suspended Pajer two days later. (*Id.* ¶ 58). Ultimately, on June 28, 2022, Disney terminated Pajer's employment. (*Id.* ¶ 64). In response, Pajer filed grievances with the EEOC and Florida Commission on Human Relations ("FCHR"). (*Id.*). The EEOC issued a notice to sue on December 23, 2022. (*Id.*).

Near the time of Pajer's suspension and termination, national and local authorities gradually relaxed their guidance regarding COVID-19 safety measures. (*Id.* ¶¶ 27, 38). Disney followed suit. On May 10, 2022, Disney lifted its mask requirement for vaccinated cast members. (*Id.* ¶ 28). A few weeks later, Pajer, along with two other employees, sued various Disney-related entities in Florida state court. (*Andreas v. Walt Disney Co.*, No. 6:23-cv-107, Doc. 1-3 at 4–27). On August 16, 2022, Disney lifted its Augmented

Protocols for employees who did not verify their vaccination status. (Doc. 1 ¶ 39).

### *B. Procedural History*

On June 29, 2022, plaintiffs Barbara Andreas, Stephen Cribb, and Adam Pajer sued defendants TWDC and DPEP in the Circuit Court of the Ninth Judicial Circuit in and for Osceola County, Florida. (*Andreas*, No. 6:23-cv-107, Doc. 1-3). In their original Complaint, plaintiffs Andreas, Cribb, and Pajer asserted one count against defendants TWDC and DPEP under Florida law. (*Id.* at 25 (citing Fla. Stat. §§ 448.101, *et seq.*)). Thereafter, on December 23, 2022, the three original plaintiffs along with Steven Gibbons, Cheron Hayes, Cathryn Koepke, and Seth Schmidt collectively filed the First Amended Complaint, in which they asserted additional state and federal claims against TWDC and DPEP, as well as WDPR, Reedy Creek Improvement District ("Reedy Creek"), Disney Gift Card Services, Inc. ("DGCS"), Disney Human Resources Services Co., LLC ("DHRS"), and Disney Vacation Club Management, LLC ("DVCM"). (*Andreas*, No. 6:23-cv-107, Doc. 1-1). On January 20, 2023, the defendants removed the case to this Court. (*Andreas*, No. 6:23-cv-107, Doc. 1 ¶ 4; Doc. 3).

In their First Amended Complaint, the plaintiffs generally alleged that the defendants wrongfully terminated their employment after the plaintiffs requested exemptions from defendants' COVID-19 vaccine mandates and otherwise objected to defendants' increased safety protocols for unvaccinated cast members. (*Andreas*, No. 6:23-cv-107, Doc. 1-1). At

various points in time, the plaintiffs requested exemptions from the vaccine mandate and/or mask mandate based on their religious beliefs. (*Id.*). In total, the seven plaintiffs asserted nine claims against the seven defendants. (*Id.*). Because of the great variation in factual circumstances concerning each plaintiff, the Court severed the plaintiffs' claims on January 24, 2023, instructing each plaintiff to "pursue his or her claims only as they relate to the corporations relevant to his or her employment." (*Andreas*, No. 6:23-cv-107, Doc. 7 at 3–4).

On February 14, 2023, Pajer filed his Complaint against TWDC,[2] WDPR, DPEP, and Reedy Creek.[3] (Doc. 1). Pajer alleges claims for discrimination and retaliation under Title VII (Counts V–VI); for discrimination, retaliation, and coercion under the ADA (Counts VII–VIII); for violation of the Private Sector FWA (Count I); for violation of the Public Sector FWA (Count II); for discrimination and retaliation under the FCRA (Count III–IV); and for violation of Florida's Constitutional Right to Privacy (Count IX). All but the Public Sector FWA claim and Florida Constitutional Right to Privacy claim are before this Court.[4]

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[2] Pajer voluntarily dismissed TWDC from this suit. (Docs. 63–64).

[3] The Court dismissed Reedy Creek from this suit in its December 8, 2023 Order. (Doc. 58).

[4] Pajer withdrew the Public Sector FWA claim (Count II) and the Florida Constitutional Right to Privacy claim (Count IX).

WDPR, as Pajer acknowledges, is a Florida corporation and is Pajer's employer. (*Id.* ¶¶ 1–2). WDPR moves to dismiss Pajer's Complaint on various grounds.

## II. LEGAL STANDARD

For purposes of deciding a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6), the Court accepts as true the factual allegations in the complaint and draws all reasonable inferences in the light most favorable to the plaintiff. *Randall v. Scott*, 610 F.3d 701, 705 (11th Cir. 2010). When reviewing a motion to dismiss, courts are generally bound "to the face of the complaint and attachments thereto." *Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1368 (11th Cir. 1997).

"Generally, under the Federal Rules of Civil Procedure, a complaint need only contain 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *Randall*, 610 F.3d at 705 (quoting Fed. R. Civ. P. 8(a)(2)). However, the plaintiff's complaint must provide "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)

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(Doc. 69).

(citing *Twombly*, 550 U.S. at 556). Thus, the Court is not required to accept as true a legal conclusion merely because it is labeled a "factual allegation" in the complaint; it must also meet the threshold inquiry of facial plausibility. *Id.*

A district court may dismiss a complaint with prejudice when granting leave to amend would be futile. *W. Sur. Co. v. Steuerwald*, 760 F. App'x 810, 814 (11th Cir. 2019).[5] If a more carefully drafted complaint could state a viable claim, a district court should give the plaintiff at least one chance to amend before dismissing with prejudice. *Id.*

## III. ANALYSIS

### *A. Shotgun Pleading*

WDPR contends that Pajer's Complaint must be dismissed for being an impermissible shotgun pleading. "Shotgun pleadings" refer to complaints that violate either Rule 8(a)(2) or Rule 10(b) of the Federal Rules of Civil Procedure. *Weiland v. Palm Beach Cnty. Sheriff's Office*, 792 F.3d 1313, 1320 (11th Cir. 2015). "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.* at 1323; *see*

[5] Unpublished opinions of the Eleventh Circuit generally constitute persuasive, and not binding, authority. *See* 11th Cir. R. 36-2 and I.O.P. 6.

*Lampkin-Asam v. Volusia Cnty. Sch. Bd.*, 261 F. App'x 274, 277 (11th Cir. 2008) ("A complaint that fails to articulate claims with sufficient clarity to allow the defendant to frame a responsive pleading constitutes a 'shotgun pleading.'"). "[D]ismissal under Rules 8(a)(2) and 10(b) is appropriate where 'it is virtually impossible to know which allegations of fact are intended to support which claim(s) for relief.'" *Weiland*, 792 F.3d at 1325 (emphasis omitted) (quoting *Anderson v. Dist. Bd. of Trs. of Cent. Fla. Cmty. Coll.*, 77 F.3d 364, 366 (11th Cir. 1996)).

The Eleventh Circuit has delineated four categories of shotgun pleadings:

> (1) "a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint," (2) "a complaint that . . . is . . . replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action," (3) a complaint that fails to "separat[e] into a different count each cause of action or claim for relief," and (4) a complaint that "assert[s] multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against."

*Id.* at 1321–23.

WDPR argues that the Complaint is a shotgun pleading because it fails to clarify which conduct is attributable to which Defendant. In response, Pajer asserts that dismissal is only warranted in cases where it is virtually impossible to understand the claims—a standard WDPR apparently cannot satisfy. This conflict clearly touches on the fourth category of shotgun pleadings.

While it is clear which claims are brought against each Defendant, less clear is for which acts or omissions each Defendant is allegedly responsible. Surprisingly, very few of Pajer's allegations specify a particular Defendant by name. Instead, Pajer uses the broadly defined term *Disney* to encompass all Defendants.

Significantly, "nothing in the pleading rules prohibits lodging the same claim against multiple [d]efendants if they are all alleged to have participated in the same acts rising to the claim." *Whitehurst v. G & A Rest. Mgmt., Inc.*, No. 2:20-cv-67- MRM, 2020 WL 2062462, at *2 (M.D. Fla. Apr. 29, 2020). However, "unless it is possible that [all] [d]efendants could have engaged in the same conduct," a complaint that lumps together the defendants "will be found to be a shotgun pleading." *Norris v. Honeywell Int'l, Inc.*, No. 8:22-cv-1675-CEH-TGW, 2023 WL 6256183, at *4 (M.D. Fla. Sept. 26, 2023).

Complaints alleging that defendants operated jointly have survived a shotgun pleading challenge. *See id.* (finding that a complaint was not a shotgun pleading where plaintiff "adequately convey[ed] a

theory of collective liability" between a parent corporation and its subsidiary regarding a vaccine policy); *Marino v. Spizzigo Enters., LLC*, No. 10-24391-CIV, 2021 WL 8894429, at *7 (S.D. Fla. Feb. 3, 2021) (finding that a complaint was not a shotgun pleading where plaintiff alleged that two defendants were "owned and/or controlled, directly or indirectly by" a third defendant).

Here, Pajer uses the term Disney to refer to all Disney-related entities and argues that all "co-Defendants are part of an integrated enterprise." (Doc. 44 at 4). While this is far from a model pleading,[6] Pajer has narrowly conveyed a theory of collective liability and survives WDPR's shotgun-pleading challenge.

### *B. Failure to State a Claim*

#### *1. Title VII & FCRA Discrimination (Counts III & V)*

Turning next to Pajer's Title VII discrimination claims,[7] the Court must first analyze the precise

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[6] Pajer variously and inconsistently uses the term Disney and makes little effort to specify WDPR's role. That said, the Court makes no determination at this point regarding the sufficiency of Pajer's allegations.

[7] The Court will consider Pajer's Title VII and FCRA religious discrimination claims together because they are governed by the same requirements of proof and the same analytical framework. *Harper v. Blockbuster Entm't Corp.*, 139 F.3d 1385, 1387 (11th Cir. 1998).

nature of Pajer's allegations. In short, Pajer seems to challenge WDPR's vaccine mandate, Augmented Protocols, and WDPR's enforcement thereof.

Specifically, Pajer alleges that Disney violated Title VII by "imposing a [COVID]-19 vaccine mandate" and by imposing its Augmented Protocols, which "segregated and classified" Pajer because of his religious beliefs against the COVID- 19 vaccine. (Doc. 1 ¶¶ 92, 94, 118, 120). Pajer further alleges that Disney violated Title VII by "refusing to process or respond to" his religious exemption from the vaccine mandate. (*Id.* ¶¶ 93, 119). In response, WDPR argues that Pajer's Title VII claims must fail because Pajer confuses the elements of his claims; Pajer's claims directed to Disney's vaccine mandate are moot; and Pajer alleges no religious conflict with WDPR's Augmented Protocols. (Doc. 31 at 18–19).

Given Pajer's allegations and supporting brief, the Court understands Pajer as alleging two claims: (1) a disparate treatment claim under a traditional theory and a reasonable accommodation theory, and (2) a disparate impact claim. The Court will address each in turn.

### *a. Disparate Treatment*

Title VII recognizes two causes of action: disparate treatment and disparate impact. The disparate treatment provision in Title VII makes it unlawful 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 . . . religion."[8] 42 U.S.C. § 2000e–2(a)(1); *see E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 771 (2015). Disparate treatment claims may proceed under multiple theories, including traditional disparate treatment and reasonable accommodation. *Bailey v. Metro Ambulance Servs., Inc.*, 992 F.3d 1265, 1272 (11th Cir. 2021).

To state a prima facie case of disparate treatment under a traditional theory, plaintiff must show that "(1) [he] is a member of a protected class; (2) [he] was subjected to adverse employment action; (3) [his] employer treated similarly situated employees more favorably; and (4) [he] was qualified to do the job." *E.E.O.C. v. Joe's Stone Crab, Inc.*, 220 F.3d 1263, 1286 (11th Cir. 2000).

Pajer has failed to plead the third element. While Pajer argues in his Response brief that he alleged that "employees who did not seek religious accommodations were treated more favorably," (Doc. 44 at 14), this allegation is nowhere to be found in his Complaint. Further absent are any allegations claiming that another group was similarly situated to Pajer. Thus, Pajer has not plausibly alleged a disparate treatment

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[8] Title VII defines religion to "include[] all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate" a "religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j).

claim under a traditional theory.

Pajer also seeks a disparate treatment claim under a reasonable accommodation theory. "To establish a reasonable[] accommodation claim of religious disparate treatment, a plaintiff must first set forth a prima facie case by showing that (1) his sincere and bona fide religious belief conflicted with an employment requirement, and (2) his employer took adverse employment action against him because of his inability to comply with the employment requirement or because of the employer's perceived need for his reasonable accommodation." *Metro Ambulance*, 992 F.3d at 1275. As discussed above, Pajer directs his reasonable accommodation claim against WDPR's vaccine mandate.

Pajer's reasonable accommodation claim cannot be premised on WDPR's enforcement of the vaccine mandate because he fails the second element. For starters, Pajer never received a final determination on his vaccine accommodation request. (Doc. 1 ¶ 47). That is so because WDPR indefinitely suspended the vaccine mandate in November 2021. (Doc. 1-3 at 6). So, any claim that WDPR took an adverse action based on a defunct policy is particularly suspect.

Further, it is implausible for this Court to conclude that WDPR suspended and terminated his employment because of his inability to comply with an unenforced vaccine mandate. This is evidenced by the six months that lapsed between the suspension of the vaccine mandate in November 2021 and Pajer's suspension in May 2022. Instead, Pajer's allegations

clearly suggest that he was terminated for his repeated noncompliance with the company's Augmented Protocols. In fact, Pajer acknowledges that he had multiple confrontations with his supervisors who demanded that he wear a mask. (Doc. 1 ¶¶ 51–52, 54). But Pajer refused. (*Id.* ¶ 52). Then, on May 12, 2022, two days before Pajer was suspended, he again got into a disagreement with a manager because she was enforcing the Augmented Protocols. (*Id.* ¶ 54). Thus, Pajer cannot base his reasonable accommodation claim on WDPR's vaccine mandate.

Finally, Pajer cannot state a reasonable accommodation claim based on WDPR's enforcement of the Augmented Protocols because Pajer never sought a religious exemption from that policy. At no point did Pajer mention that his religious beliefs prohibited his compliance with WDPR's masking protocols. *See Norris v. Honeywell Int'l, Inc.*, No. 8:22-cv-1675-CEH-TGW, 2023 WL 6256183, at *16 (M.D. Fla. Sept. 26, 2023) (rejecting Title VII claims for failure to accommodate where "[n]one of the [p]laintiffs assert that their religious beliefs prevented them from complying with a testing requirement, or with any other employment conditions aside from the receipt of the vaccine"). Thus, Pajer cannot state a disparate treatment claim for reasonable accommodation based on WDPR's Augmented Protocols.

### *b. Disparate Impact*

Disparate impact claims challenge "practices that have a disproportionately adverse effect on [a protected group] and are otherwise unjustified by a

legitimate rationale." *Texas Dep't of Hous. & Cmty. Affs. v. Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 524–525 (2015) (internal quotations omitted). The disparate impact provision in Title VII makes it unlawful for an employer to "limit, segregate, or classify his employees . . . in any way which would deprive . . . any individual of employment opportunities . . . because of such individual's . . . religion." 42 U.S.C § 2000e-2(a)(2); *see Abercrombie*, 575 U.S. at 771. To establish a prima facie disparate impact claim, a plaintiff must show a (1) "facially neutral, employment practice," (2) "an identified statistical disparity" for a protected group, and (3) a causal connection. *Joe's Stone Crab*, 220 F.3d at 1268.

Pajer argues that he has satisfied these elements because he alleged that both policies applied to all cast members, that he requested accommodations,[9] and that "he suffered adverse effect[s] for his inability to consent to the policies based on his religious beliefs." (Doc. 44 at 15). Meanwhile, WDPR argues that Pajer has failed to state a claim for disparate impact because he does not identify an adverse effect on a protected group. (Doc. 31 at 19). Pajer's disparate impact claims are deficient for various reasons.

First, there are no allegations to support a disparate impact claim against WDPR's vaccine

[9] Despite his argument that he requested accommodation from both policies, nowhere in Pajer's Complaint does he allege that he requested an exemption from WDPR's Augmented Protocols.

mandate. Pajer only alleges that he was "segregated and classified" apart from other cast members by WDPR's Augmented Protocols, not by the vaccine mandate. (Doc. 1 ¶¶ 94, 120). Without a comparable allegation in his Complaint, the Court cannot consider a disparate impact claim directed at WDPR's vaccine mandate.

Second, Pajer's argument that WDPR's Augmented Protocols had a disparate impact is unsupported. In a typical disparate impact claim, a plaintiff must "offer[] statistical evidence sufficient to show that the challenged practice resulted in prohibited discrimination." *Krop v. Nicholson*, 506 F. Supp. 2d 1170, 1176 (M.D. Fla. 2007) (internal quotations omitted); *see also Ricci v. DeStefano*, 557 U.S. 557, 587 (2009) (describing the "prima facie case of disparate[] impact liability" as "essentially, a threshold showing of a significant statistical disparity"). Here, Pajer's Complaint is devoid of any allegations to suggest a statistical disparity for his protected class.

Third, Pajer's framing of his protected class also stands on precarious ground. Pajer's protected group appears not to be based on a particular faith or subgroup, but rather a specific religious belief—namely, opposition to the COVID-19 vaccine. As one court explained:

> If a plaintiff could narrowly define its class based on its particular religious belief, rather than the broader religious faith or group to which it belongs, then disparate[]

> impact claims would have a nearly limitless reach. This is because any policy impacting a plaintiff's specific religious belief would generally impact 100% of the members of a class defined by that belief, which would virtually always amount to a disproportionate impact as compared to those falling outside the class. For example, a Jewish man impacted by a policy affecting a belief rooted in his idiosyncratic, personalized interpretation of Judaism could claim disparate impact even though no other Jewish people hold that belief.

*Coral Ridge Ministries Media, Inc. v. Amazon.com, Inc.*, 406 F. Supp. 3d 1258, 1305 n.36 (M.D. Ala. 2019), *aff'd*, 6 F.4th 1247 (11th Cir. 2021); *see also Dunbar v. Walt Disney Co.*, No. CV 22-1075-DMG (JCX), 2022 WL 18357775, at *3 (C.D. Cal. July 25, 2022) (rejecting plaintiff's disparate impact claim based on a theory that his protected group included "all those who share a religious belief against vaccinations").

As a final matter, Pajer argues that his claims should survive dismissal because he is not required to establish a prima facie case of each type of discrimination. (Doc. 44 at 13). He cites *Booth v. GTE Federal Credit Union* for the proposition that "the prima facie case for discriminatory employment decisions 'is an evidentiary standard, not a pleading requirement.'" (*Id.* (citing *Booth v. GTE Fed. Credit Union*, No. 8:21-cv-1509-KKM-JSS, 2021 WL 5416690, at *2 (M.D. Fla. Nov. 20, 2021) (quoting *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506, 510 (2002)))). Pajer's

reliance on *Booth* is unavailing.

The Eleventh Circuit has held that "[e]ven if a plaintiff need not plead a prima facie case to survive dismissal, the complaint must satisfy *Iqbal*'s 'plausible on its face' standard, and the allegations must be sufficient to 'raise a right to relief above the speculative level' under *Twombly*." *McCullough v. Bd. of Regents of the Univ. Sys. of Ga.*, 623 F. App'x 980, 983 (11th Cir. 2015); *see Edwards v. Prime, Inc.*, 602 F.3d 1276, 1300 (11th Cir. 2010) (noting, after *Twombly* and *Iqbal*, that a plaintiff is required to allege a prima facie case of discrimination). Based on the plausibility pleading standard, and having drawn all reasonable inferences in Pajer's favor, he has not alleged factual content that allows the Court to draw a reasonable inference that WDPR is liable for religious discrimination.

In summary, Pajer has failed to state a claim for disparate treatment and disparate impact because he has not alleged enough factual content to render either claim plausible. Pajer's discrimination claims under Title VII and the FCRA are dismissed without prejudice and without leave to amend.[10]

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[10] The Court denies Pajer's request for leave to amend because Pajer has not properly raised the request under Federal Rule of Civil Procedure 15(a)(2) and has not made the requisite showing under Rule 16(b). Instead, Pajer improperly included his request for leave to amend in his opposition brief. *Newton v. Duke Energy Fla., LLC*, 895 F.3d 1270, 1277 (11th Cir. 2018) ("[W]here a request for leave to file an amended complaint simply is imbedded within an opposition memorandum, the issue has not

### *2. Title VII & FCRA Retaliation (Counts IV & VI)*

Pajer also alleges that Disney violated the retaliation provision under Title VII when it disciplined him because he challenged Disney's allegedly unlawful conduct.[11] Pajer specifies that he objected to Disney's allegedly unlawful conduct on numerous occasions—which includes his email communications with his supervisors; his counsel's letter to Disney outlining legal violations; and his filing of administrative charges with the EEOC, FCHR, and PEVMP. (Doc. 1 ¶¶ 105–07, 127–29).

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been raised properly."); *Wright v. Gilead Scis., Inc.*, No. 3:20-cv-1026-J-34PDB, 2021 WL 641327, at *1 (M.D. Fla. Jan. 11, 2021) ("[A] request for affirmative relief, such as a request for leave to amend a pleading, is not properly made when simply included in a response to a motion."). Additionally, Pajer has not made a "good cause" showing, which is required under Rule 16(b) when a party seeks to amend a pleading after the deadline has passed. *Regions Bank v. Kaplan*, No. 8:12-cv-1837-T-17MAP, 2015 WL 13704669, at *1 (M.D. Fla. Sept. 24, 2015) ("When leave to amend is sought after the deadline to amend the pleadings has passed, the movant must . . . show 'good cause' under Federal Rule of Civil 16(b) in order to obtain the right to amend."). Pajer's deadline to amend the pleading passed on May 31, 2023. (Doc. 27 at 1). While the Court gave Pajer leave to file a motion to amend his Complaint by June 30, 2023 (Doc. 38), he failed to do so.

[11] The Court will consider Pajer's Title VII and FCRA retaliation claims together "[b]ecause [the retaliation] provision of the FCRA is almost identical to its federal counterpart, 42 U.S.C. § 2000e-3(a), [and because] Florida courts follow federal case law when examining FCRA retaliation claims." *Carter v. Health Mgmt. Assoc.*, 989 So. 2d 1258, 1262 (Fla. Dist. Ct. App. 2008).

WDPR argues, among other reasons, that Pajer cannot sufficiently plead causation (Doc. 31 at 22).

Title VII prohibits retaliation against an employee "because he has opposed any practice made an unlawful employment practice by [Title VII], or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing [thereunder]." 42 U.S.C. § 2000e–3(a). "To establish a prima facie case of Title VII retaliation, [plaintiff] must show that (1) [he] engaged in statutorily protected activity; (2) [he] suffered a materially adverse employment action; and (3) there was a causal link between the two." *Dixon v. Hallmark Cos., Inc.*, 627 F.3d 849, 856 (11th Cir. 2010). Before addressing the causation element, it is imperative to understand which of Pajer's activities satisfy element one.

For starters, as discussed above, Pajer has failed to sufficiently plead that WDPR's policies violated Title VII. Nevertheless, the Eleventh Circuit recognizes that a plaintiff can establish a statutorily protected expression for a retaliation claim under the opposition clause if he demonstrates "a good faith, reasonable belief that the employer was engaged in unlawful employment practices." *Weeks v. Harden Mfg. Corp.*, 291 F.3d 1307, 1311 (11th Cir. 2002) (quoting *Little v. United Techs., Carrier Transicold Div.*, 103 F.3d 956, 960 (11th Cir. 1997)). "This standard has both a subjective and an objective component." *Id.* at 1312 (quoting *Little*, 103 F.3d at 960). That means, a plaintiff must "show that he subjectively (that is, in good faith) believed that his employer was engaged in

unlawful employment practices" and "that his belief was objectively reasonable in light of the facts and record presented." *Id.* Both aspects are called into question to the extent that Pajer's protected activities challenge WDPR's Augmented Protocols.

First, unlike WDPR's vaccine mandate, Pajer does not request a religious accommodation from WDPR's Augmented Protocols. This distinction criticality undermines Pajer's subjective belief that the Augmented Protocols violated his religious rights under Title VII. The only allegation to ostensibly support Pajer's argument is his belief that the Augmented Protocols amounted to an unlawful "de facto [COVID]-19 vaccination mandate." (Doc. 1 ¶ 24).

The Court is unpersuaded. In fact, multiple courts have held that masking, testing, and social distancing requirements are not even recognized adverse actions under Title VII. *Norris*, 2023 WL 6256183, at *15 ("Eleventh Circuit caselaw is inconsistent with [p]laintiffs' argument that an employment requirement to mask, test, and socially distance constitutes an objectively serious and material change to employment conditions."); *Savel v. MetroHealth Sys.*, No. 22-CV-2154, 2023 WL 4490395, at *2, *7 (N.D. Ohio July 12, 2023) (rejecting a Title VII religious accommodation claim for failure to plead an adverse action where the employer required unvaccinated plaintiffs to "wear[] surgical masks and . . . maintain social distancing whenever possible, including by not eating in group environments"). Given that the Augmented Protocols are arguably not serious and material changes to Pajer's employment under

Title VII, there is no merit to his argument that the Augmented Protocols are so harsh as to be deemed a de facto vaccine mandate. As a result, Pajer fails to plausibly establish that he had a good faith, objectively reasonable basis for believing that the Augmented Protocols violated Title VII.

Thus, Pajer's retaliation claim rests on the notion that he suffered an adverse action because of his protected activities challenging WDPR's defunct vaccine mandate. As discussed above, this casual inference is unreasonable given that the allegations clearly demonstrate that Pajer's suspension and termination were related to his repeated noncompliance with the company's Augmented Protocols.

While Pajer claims that his suspension related, in part, to his distribution of typed notes setting forth WDPR's alleged discrimination, this does not win the day. As already discussed, Pajer had no good faith, objectively reasonable belief that the Augmented Protocols violated his religious rights under Title VII. And any argument that his suspension in May 2022 and termination in June 2022 were related to his objections to a vaccine mandate that remained unenforced since November 2021 are wholly unsupported. In other words, Pajer's attempt to tie his suspension and termination to his objections and administrative filings challenging WDPR's defunct

vaccine mandate is not plausible.[12]

While he argues that his termination was pretextual, this is not enough. At this stage, Pajer is required to "raise a right to relief above the speculative level," which demands "more than a sheer possibility that a defendant has acted unlawfully." *McCullough*, 623 F. App'x at 983 (internal quotations omitted). Simply put, Pajer has not met his pleading burden. As a result, his Title VII and FCRA retaliation claims are dismissed without prejudice and without leave to amend.

### *3. Exhausting FCRA Administrative Remedies (Counts III & IV)*

While Pajer's FCRA claims are due to be dismissed for the same reasons as his Title VII claims,

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[12] Pajer alleges that he filed administrative charges with the EEOC and the FCHR (Doc. 1 ¶¶ 107, 129), but there is no indication that he informed WDPR of said filing or that he filed the charges before he was suspended and terminated. Without more, the Court cannot plausibly infer that WDPR retaliated based on actions of which it was unaware or that WDPR retaliated based on actions that occurred after WDPR suspended and terminated Pajer. *See Gooden v. Internal Revenue Serv.*, 679 F. App'x 958, 968 (11th Cir. 2017) (noting that alleged conduct cannot be retaliatory when it occurs before a protected activity). While Pajer also alleges that he informed Disney that he filed a report with the PEVMP regarding "Disney's de facto violation of [COVID]-19 vaccination prohibition" regulations (Doc. 1 ¶¶ 106, 128), there are no supporting allegations to render this filing a plausible causal factor for his suspension and termination. Further, this allegation is weakened by the substantive deficiency that this Court addressed above.

the Court also addresses WDPR's argument that Pajer failed to exhaust his administrative remedies. In particular, WDPR argues that Pajer's FCRA claims are premature because Pajer filed this lawsuit before the expiration of the FCHR's 180-day review period. (Doc. 31 at 17). Pajer does not directly respond to this challenge, thus relying on his allegation that he "exhausted his administrative remedies prior to bringing [his FCRA] claim[s]." (Doc. 1 ¶¶ 101, 113).

Section 760.11 of the FCRA provides that a plaintiff can only bring a civil action when the commission has issued a "reasonable cause" determination or when the commission fails to make a determination altogether. Fla. Stat. § 760.11(4)(a), (8)(a). The commission has 180 days to make this determination. *Id.* Where plaintiff's right to file a lawsuit is "contingent upon the occurrence of an event that may or may not occur, the appropriate disposition is dismissal." *Sheridan v. State, Dep't of Health*, 182 So. 3d 787, 794 (Fla. Dist. Ct. App. 2016). However, this deficiency may be cured by the passage of time. *Id.* at 795 (finding that plaintiff's premature FCRA claims were cured by the passage of time because the EEOC never referred the claims to the FCHR).

Pajer filed this lawsuit well before the completion of the 180-day review period. He filed his administrative charge on December 9, 2022, (Doc. 31 at 17; Doc. 31-1 at 1),[13] and this lawsuit on February

[13] Pajer does not attach his EEOC charge against WDPR to his Complaint. However, WDPR attaches the document in its

14, 2023. (Doc. 1). Because Pajer does not respond to this challenge, the Court cannot draw a reasonable inference that he has satisfied his administrative prerequisites under the FCRA. *See Wilson v. Collier Cnty. Fla.,* No. 2:21-cv-861-JLB-NPM, 2022 WL 767715, at *2–*3 (M.D. Fla. Mar. 14, 2022) (dismissing a claim for failure to exhaust administrative remedies under the FCRA despite plaintiff's allegation that he "exhausted all administrative remedies"). Thus, Pajer's FRCA claims are also due to be dismissed on this basis.

### *4. ADA Discrimination (Count VII)*

Pajer alleges that WDPR violated the ADA by enforcing policies based on his perceived disability as an unvaccinated employee. In particular, Pajer alleges that Disney engaged in a prohibited employment practice by imposing a COVID-19 vaccine mandate; by enforcing the Augmented Protocols on those who did not follow the mandate; and by terminating his employment for noncompliance. (Doc. 1 ¶¶ 143–45). By

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Motion. (*See* Doc. 31-1). The document is central to Pajer's claims, and its authenticity is not at issue. Although a court is typically limited to the four corners of the complaint when addressing a motion to dismiss, the Court finds that it may consider the EEOC charge in this circumstance. *Gombosh v. Univ. of Miami*, No. 21-23525-CIV, 2022 WL 18584337, at *9 (S.D. Fla. Mar. 8, 2022) ("The EEOC charge is properly considered on the motion to dismiss because [p]laintiff has not disputed its authenticity and refers to it in [his] [c]omplaint."). Moreover, "[i]n discrimination cases, the EEOC charge is a document that courts routinely consider when ruling on motions to dismiss, even if it was not attached to a pleading." *Id.*

enforcing rules on employees who did not get vaccinated—thus segregating them from the vaccinated employees—Pajer alleges that Disney perceived those individuals as disabled and unable to complete their jobs. (*Id.*) In Pajer's words, Disney treated the unvaccinated as though they were "a continually contagious vector of disease and dangerous." (*Id.* ¶ 146). In response, WDPR argues that Pajer's ADA claim must fail because susceptibility to COVID-19 is not a disability within the terms of the ADA. (Doc. 31 at 20).

The ADA prohibits employers from discriminating "against a qualified individual on the basis of a disability." 42 U.S.C. § 12112(a). "To establish a prima facie case for disability discrimination, a plaintiff must produce sufficient evidence to permit a jury to find that [he]: (1) is disabled, (2) is a qualified individual, and (3) was discriminated against because of [his] disability." *Lewis v. City of Union City, Ga.*, 934 F.3d 1169, 1179 (11th Cir. 2019) (emphasis omitted). Under the ADA, disability is defined as (1) "a physical or mental impairment," (2) "a record of such an impairment," or (3) "being regarded as having such an impairment." 42 U.S.C. § 12102(1).

Pajer relies on the third category. (Doc. 1 ¶ 140 (quoting 42 U.S.C. § 12102(3))). The ADA provides that "an individual meets the requirement of 'being regarded as having such an impairment' if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or

is perceived to limit a major life activity." 42 U.S.C. § 12102(3)(A). This section does not apply to "impairments that are transitory and minor." *Id.* § 12102(3)(B).

Pajer's "regarded as" disability theory fails as a matter of law. The Eleventh Circuit in *EEOC v. STME, LLC* affirmed dismissal of an ADA claim under 42 U.S.C. § 12102(1)(C) on the grounds that the ADA does not apply to potential future disabilities. 938 F.3d 1305, 1311 (11th Cir. 2019). The Eleventh Circuit rejected plaintiff's argument that her employer unlawfully regarded her as having a disability because of her potential future exposure to a virus. *Id.* at 1315. In doing so, the Eleventh Circuit reasoned that the ADA only applies to "current, past, or perceived disabilit[ies]"—it does not "extend to an employer's belief that an employee might contract or develop an impairment in the future." *Id.*

Multiple courts have applied this reasoning to reject ADA claims based on potential susceptibility to COVID-19 and the status of being unvaccinated. *See Norris*, 2023 WL 6256183, at *9 (reasoning that an "unvaccinated status is not a disability under the ADA" because "the potential to contract COVID-19" is "a future impairment rather than an existing one"); *Kim v. PGA TOUR*, No. 3:23-cv-441-TJCJBT, 2024 WL 280297, at *5 (M.D. Fla. Jan. 25, 2024) (rejecting an ADA claim premised on an employer's alleged perception that employees were "susceptible to COVID-19" because of their unvaccinated status).

In response, Pajer relies on *Booth v. GTE Federal*

*Credit Union* to argue that COVID-19 is a non-transitory non-minor impairment under the ADA. (Doc. 44 at 16). But Pajer's reliance is misplaced. *Booth* is distinguishable for the simple reason that *Booth* addresses a current perceived impairment—not a potential future impairment. The plaintiff in *Booth* alleged a perceived disability based on her thenexisting COVID-19 symptoms. 2021 WL 5416690, at *3. This critical allegation is nowhere to be found in Pajer's Complaint. So, *Booth* is consistent with *STME* and is inapplicable to Pajer's case.[14]

In short, Pajer's ADA claim clearly rests on the theory that WDPR perceived Pajer as disabled for being unvaccinated from COVID-19. (*See* Doc. 1 ¶ 143 ("Disney[] perce[ived] [that Pajer's] 'handicap' relat[ed] to or ar[ose] from [his] lack of [COVID]-19 vaccination.")). In accordance with Eleventh Circuit precedent, an unvaccinated COVID-19 status only

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[14] Also, numerous courts have departed from *Booth*. *See e.g.*, *McCone v. Exela Techs.*, Inc., No. 6:21-cv-912-CEM-DCI, 2022 WL 801772, at *4 (M.D. Fla. Jan. 14, 2022), *report and recommendation adopted*, No. 6:21-cv-912-CEM-DCI (M.D. Fla. Mar. 15, 2022) (dismissing an ADA claim "because being infected with COVID-19, standing alone, does not meet the ADA's definitions of disability or impairment"); *Sharikov v. Philips Med. Sys. MR, Inc.*, 659 F. Supp. 3d 264, 279 (N.D.N.Y. 2023) ("Courts have generally held that an employer perceiving a plaintiff as having COVID-19, without the plaintiff enumerating specific symptoms or long-term effects, does not constitute 'regarded as' disabled under the ADA."); *Johnson v. Mount Sinai Hosp. Grp., Inc.*, No. 22-CV-2936, 2023 WL 2163774, at *6 (E.D.N.Y. Feb. 22, 2023) (dismissing an ADA claim because "having COVID-19" is not a "transitory and minor" condition).

suggests a potential future impairment, not an existing one. Because the ADA does not protect potential future impairments, Pajer has no rights under the ADA and cannot state a claim. *See STME*, 938 F.3d at 1321 (affirming that an amendment to an ADA claim would be futile because an employee with a potential future impairment "had no rights under the ADA").[15] Since amendment would be futile, Pajer's ADA discrimination claim is dismissed with prejudice.[16]

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[15] Further, Pajer's argument that WDPR's vaccine mandate violated the ADA fails because the policy was applied to all employees. Accepting Pajer's argument would require the Court to infer that WDPR perceived all its employees as disabled before receiving the vaccine. This inference is, of course, implausible. *Speaks v. Health Sys. Mgmt., Inc.*, No. 5:22-CV-00077-KDBDCK, 2022 WL 3448649, at *5 (W.D.N.C. Aug. 17, 2022) ("[I]nferring that the [employer] classified [the employee] as impaired by requiring her to become vaccinated or seek an exemption would mean that [the employer] considered all its employees to have an 'impairment,' which is of course not a plausible inference . . . .").

[16] Pajer also couches a perceived disability claim within his FCRA discrimination claim in Count III. (Doc. 1 ¶ 95). This practice notably offends the "one-claim-per-count rule." *Kennedy v. Bell S. Telecomms., Inc.*, 546 F. App'x 817, 818, 820 (11th Cir. 2013). Nevertheless, the Court's analysis of Pajer's ADA discrimination claim in Count VII applies with equal force to his FCRA disability allegations. *Holly v. Clairson Indus., L.L.C.*, 492 F.3d 1247, 1255 (11th Cir. 2007) ("[D]isability-discrimination claims under the FCRA are analyzed using the same framework as ADA claims."). For the above reasons, Pajer's FCRA disability claim is also dismissed with prejudice.

### *5. ADA Retaliation & Coercion (Count VIII)*

Pajer alleges that WDPR violated the ADA by retaliating against him and coercing him for objecting to and refusing to participate in Disney's allegedly unlawful policies. Pajer alleges the same protected activities as described in his Title VII retaliation claim. (Doc. 1 ¶ 156). Pajer specifies that Disney fabricated disciplinary charges against him, failed to properly investigate his claims, and terminated him on pretextual grounds. (*Id.* ¶¶ 160–61). In response, WDPR argues that Pajer's ADA retaliation claim must fail because he has not sufficiently alleged a protected activity under the ADA and because he cannot satisfy causation. (Doc. 31 at 22).

The ADA prohibits discrimination "against any individual because such individual has opposed any act or practice made unlawful by [the ADA] or because such individual made a charge . . . under [the ADA]." 42 U.S.C. § 12203(a). This section further prohibits "coerc[ion] . . . [of] any individual in the exercise or enjoyment of . . . any right granted or protected by [the ADA]." *Id.* § 12203(b). To establish a prima facie case under this section of the ADA, a plaintiff must show: (1) a "statutorily protected expression"; (2) "an adverse employment action"; and (3) "a causal connection." *Washington v. Sch. Bd. of Hillsborough Cnty.*, No. 808-cv-2023-T-33MAP, 2009 WL 4042938, at *6 (M.D. Fla. Nov. 23, 2009) (citing *Stewart v. Happy Herman's Cheshire Bridge, Inc.*, 117 F.3d 1278, 1287 (11th Cir. 1997)).

As discussed above, to establish a statutorily protected expression for a retaliation claim, a plaintiff must show "a good faith, reasonable belief that the employer was engaged in unlawful employment practices." *Weeks*, 291 F.3d at 1311. "This standard has both a subjective and an objective component." *Id.* at 1312 (quoting *Little*, 103 F.3d at 960).

The Eleventh Circuit has provided guidance in assessing objective reasonableness where, as here, Pajer's subjective belief as to his disability is mistaken. In *Butler v. Alabama Department of Transportation*, the Eleventh Circuit stated that "[w]here binding precedent squarely holds that particular conduct is not an unlawful employment practice by the employer . . . an employee's contrary belief that the practice is unlawful is unreasonable." 536 F.3d 1209, 1214 (11th Cir. 2008). Here, *STME* provides that binding precedent.

Again, the Eleventh Circuit in *STME* clarified that the ADA does not "protect persons who experience discrimination because . . . of a potential future disability." 938 F.3d at 1311. The *STME* court further applied that reasoning to reject a proposed claim under the ADA's anti-coercion provision because it was premised on a potential future disability. *See id.* at 1320–21. Given this precedent, Pajer's belief that WDPR improperly acted upon his alleged disability—though likely in good faith—is unreasonable and unactionable under the ADA. Since amendment would be futile, Pajer's ADA retaliation and coercion claim is dismissed with prejudice.

### *6. Private Sector FWA (Count I)*

Pajer alleges that WDPR is liable under the Private Sector FWA. (Doc. 1 ¶¶ 66–73). In response, WDPR argues that Pajer fails to state a claim on multiple grounds. (Doc. 31 at 12–13).

Typically, FWA claims are analyzed in the same manner as Title VII retaliation claims. *Sierminski v. Transouth Fin. Corp.*, 216 F.3d 945, 950 (11th Cir. 2000). "[I]n order to establish a prima facie case of retaliation under the FWA, [p]laintiff must prove that (1) [he] engaged in statutorily protected expression; (2) [he] suffered an adverse employment action; and (3) the adverse employment action was causally linked to the statutorily protected activity." *White v. Purdue Pharma, Inc.*, 369 F. Supp. 2d 1335, 1336 (M.D. Fla. 2005).

The FWA recognizes three types of protected expression: (1) disclosure, or threatened disclosure, to any appropriate governmental agency, which requires submission of the violation, in writing, to the employer with a reasonable opportunity to correct; (2) providing information to a governmental agency conducting an investigation, hearing, or inquiry into an alleged violation by the employer, or (3) objecting or refusing to participate in an activity, policy or practice of the employer which violates a law, rule, or regulation. Fla. Stat. § 448.102.

Pajer alleges the same predicate facts to support his Private Sector FWA claim that he provided in support of his retaliation claims above. (Doc. 1 ¶¶ 68,

105, 127). Consequently, his Private Sector FWA claim fails for the same reasons this Court explained in dismissing his Title VII and FCRA retaliation claims—namely, his failure to sufficiently plead a protected activity and causation. *Cf. Luna v. Walgreen Co.*, 575 F. Supp. 2d 1326, 1342–43 & n.13 (S.D. Fla. 2008), *aff'd*, 347 F. App'x 469 (11th Cir. 2009) (applying the same reasoning to reject an ADA retaliation claim and an FWA claim where plaintiff "allege[d] the same set of factual allegations to support [both] claim[s]").

Pajer argues that the Private Sector FWA claim requires a different causation analysis because Florida Statute § 448.102(3) expressly protects his refusal to participate in a policy of his employer. (Doc. 44 at 10). In turn, Pajer asserts that he can base his Private Sector FWA claim on his refusal to comply with the Augmented Protocols because to rule otherwise, as argued by WDPR, would undermine the text of the FWA. (*Id.*). It does not.

Section 448.102(3) requires that the policy at issue be in "violation of a law, rule, or regulation." Fla. Stat. § 448.102(3). There is a split among the Florida intermediate appellate courts regarding whether this section requires a plaintiff to prove an actual violation of a law, rule, or regulation, or whether a plaintiff need only show a good faith, objectively reasonable belief. *Butterfield v. JetBlue Airways Corp.*, No. 20-13473,

2022 WL 291003, at *5 (11th Cir. Feb. 1, 2022).[17] As discussed above, Pajer's claim fails under both standards. Pajer has not sufficiently alleged that WDPR's Augmented Protocols violated Title VII, the FCRA, or the ADA. Nor has he sufficiently alleged that he had a good faith, objectively reasonable belief that the Augmented Protocols were unlawful in part because he never requested an exemption. Thus, Pajer's Private Sector FWA claim is dismissed without prejudice and without leave to amend.

Based on the foregoing, it is ordered as follows:

1. WDPR's Motion to Dismiss (Doc. 31) is **GRANTED**. Count I, Count III, Count IV, Count V, and Count VI are dismissed without prejudice and without leave to amend. Count VII and Count VIII are dismissed with prejudice.

**DONE** and **ORDERED** in Chambers, in Orlando, Florida on February 29, 2024.

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[17] The Fourth District Court of Appeal held that a plaintiff need only show a "a good faith, objectively reasonable belief that h[is] activity is protected by the statute." *Aery v. Wallace Lincoln-Mercury, LLC*, 118 So. 3d 904, 916 (Fla. Dist. Ct. App. 2013). Meanwhile the Second District Court of Appeal held that a plaintiff must "prove that he objected to an actual violation of law or that he refused to participate in activity that would have been an actual violation of law." *Kearns v. Farmer Acquisition Co.*, 157 So. 3d 458, 465 (Fla. Dist. Ct. App. 2015).

/s/
ANNE C. CONWAY
United States District Judge

Copies furnished to:

Counsel of Record

## APPENDIX D

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Miami District Office**
100 SE 2nd St, Suite 1500
Miami, FL 33131
(800) 669-4000
Website: www.eeoc.gov

**DETERMINATION AND NOTICE OF RIGHTS**
(This Notice replaces EEOC FORMS 161 & 161-A)
Issued On: 01/09/2023

To: Stephen Cribb
c/o Carroll Sander, Esq.
CGS Law
1101 E. Cumberland Ave., Suite 201H-133
Tampa, FL 33602

Charge No: 15D-2022-00693
EEOC Representative and email:
Frank Hernandez
State, Local and Tribal Program Manager
frank.hernandez@eeoc.gov

**DETERMINATION OF CHARGE**

The EEOC has adopted the findings of the state or local fair employment practices agency that investigated your charge.

## NOTICE OF YOUR RIGHT TO SUE

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.** Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission,

Digitally Signed By: Evangeline Hawthorne
01/09/2023
Evangeline Hawthorne
District Director

Walt Disney Parks and Resorts
c/o Zachar Fletcher, Esq.

Labor Relations Manager, The Walt Disney Company
Walt Disney Parks and Resorts U.S., Inc.
1675 E. Buena Vista Dr., Suite 250
Lake Buena Vista, FL 32830

Please retain this notice for your records.

## INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC

*(This information relates to filing suit in Federal or State court **under Federal law**. If you also plan to sue claiming violations of State law, please be aware that time limits may be shorter and other provisions of State law may be different than those described below.)*

## IMPORTANT TIME LIMITS – 90 DAYS TO FILE A LAWSUIT

If you choose to file a lawsuit against the respondent(s) named in the charge of discrimination, you must file a complaint in court **within 90 days of the date you *receive* this Notice**. Receipt generally means the date when you (or your representative) opened this email or mail. You should **keep a record of the date you received this notice**. Once this 90-day period has passed, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and the record of your receiving it (email or envelope).

If your lawsuit includes a claim under the Equal Pay Act (EPA), you must file your complaint in court within 2 years (3 years for willful violations) of the date you did not receive equal pay. This time limit for filing an EPA lawsuit is separate from the 90-day filing period under Title VII, the ADA, GINA or the ADEA referred to above. Therefore, if you also plan to sue under Title VII, the ADA, GINA or the ADEA, in addition to suing on the EPA claim, your lawsuit must

be filed within 90 days of this Notice **and** within the 2- or 3-year EPA period.

Your lawsuit may be filed in U.S. District Court or a State court of competent jurisdiction. Whether you file in Federal or State court is a matter for you to decide after talking to your attorney. You must file a "complaint" that contains a short statement of the facts of your case which shows that you are entitled to relief. Filing this Notice is not enough. For more information about filing a lawsuit, go to https://www.eeoc.gov/employees/lawsuit.cfm.

**ATTORNEY REPRESENTATION**

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**HOW TO REQUEST YOUR CHARGE FILE AND 90-DAY TIME LIMIT FOR REQUESTS**

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Since a lawsuit must be filed within 90 days of this

notice, please submit your request for the charge file promptly to allow sufficient time for EEOC to respond and for your review. Submit a signed written request stating it is a "FOIA Request" or a "Section 83 Request" for Charge Number 15D-2022-00693 to the District Director at Evangeline Hawthorne, 100 SE 2nd St Suite 1500 Miami, FL 33131.

You can also make a FOIA request online at https://eeoc.arkcase.com/foia/portal/login.

You may request the charge file up to 90 days after receiving this Notice of Right to Sue. After the 90 days have passed, you may request the charge file only if you have filed a lawsuit in court and provide a copy of the court complaint to EEOC.

For more information on submitting FOIA Requests and Section 83 Requests, go to:

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**NOTICE OF RIGHTS UNDER THE ADA AMENDMENTS ACT OF 2008 (ADAAA)**

The ADA was amended, effective January 1, 2009, to broaden the definitions of disability to make it easier for individuals to be covered under the ADA/ADAAA. A disability is still defined as (1) a physical or mental impairment that substantially limits one or more major life activities (actual disability); (2) a record of a substantially limiting impairment; or (3) being regarded as having a disability. *However, these terms are redefined, and it is easier to be covered under the*

*new law.*

If you plan to retain an attorney to assist you with your ADA claim, we recommend that you share this information with your attorney and suggest that he or she consult the amended regulations and appendix, and other ADA related publications, available at:

http://www.eeoc.gov/laws/types/disability_regulations.cfm.

**"Actual" disability or a "record of" a disability**

If you are pursuing a failure to accommodate claim you must meet the standards for either "actual" or "record of" a disability:

- ✔ **The limitations from the impairment no longer must be severe or significant** for the impairment to be considered substantially limiting.

- ✔ In addition to activities such as performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, thinking, concentrating, reading, bending, and communicating (more examples at 29 C.F.R. § 1630.2(i)), **"major life activities" now include the operation of major bodily functions**, such as: functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal,

and reproductive functions; or the operation of an individual organ within a body system.

✔ **Only one** major life activity need be substantially limited.

✔ Except for ordinary eyeglasses or contact lenses, the beneficial effects of **"mitigating measures"** (e.g., hearing aid, prosthesis, medication, therapy, behavioral modifications) **are not considered** in determining if the impairment substantially limits a major life activity.

✔ An impairment that is **"episodic"** (e.g., epilepsy, depression, multiple sclerosis) or "**in remission**" (e.g., cancer) is a disability if it **would be substantially limiting when active**.

✔ An impairment **may be substantially limiting even though** it lasts or is expected to last **fewer than six months**.

**"Regarded as" coverage**

An individual can meet the definition of disability if an **employment action was taken because of an actual or perceived impairment** (e.g., refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment).

✔ "Regarded as" coverage under the ADAAA no longer requires that an impairment be

substantially limiting, or that the employer perceives the impairment to be substantially limiting.

- ✔ The employer has a defense against a "regarded as" claim only when the impairment at issue is objectively **both** transitory (lasting or expected to last six months or less) **and** minor.

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***Note:*** *Although the amended ADA states that the definition of disability "shall be construed broadly" and "should not demand extensive analysis," some courts require specificity in the complaint explaining how an impairment substantially limits a major life activity or what facts indicate the challenged employment action was because of the impairment. Beyond the initial pleading stage, some courts will require specific evidence to establish disability.* For moreinformation, consult the amended regulations and appendix, as well as explanatory publications, available at http://www.eeoc.gov/laws/types/disability_regulations.cfm.

## APPENDIX E

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Miami District Office**
100 SE 2nd St, Suite 1500
Miami, FL 33131
(800) 669-4000
Website: www.eeoc.gov

**DISMISSAL AND NOTICE OF RIGHTS**
(This Notice replaces EEOC FORMS 161 & 161-A)

Issued On: 12/22/2022

**To:** Mr. Adam Pajer
9963 Tawny Meadow Alley
WINTER GARDEN, FL 34787

Charge No: 510-2023-01093

EEOC Representative and email:
Jeanette Wooten
Investigator
jeanette.wooten@eeoc.gov

**DISMISSAL OF CHARGE**

The EEOC has granted your request that the agency issue a Notice of Right to Sue, where it is unlikely that EEOC will be able to complete its investigation within 180 days from the date the charge was filed.

The EEOC is terminating its processing of this charge.

**NOTICE OF YOUR RIGHT TO SUE**

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.** Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)

If you file a lawsuit based on this charge, please sign-in to the EEOC Public Portal and upload the court complaint to charge 510-2023-01093.

On behalf of the Commission,

Digitally Signed By: Evangeline Hawthorne
12/22/2022
Evangeline Hawthorne
District Director

**Cc:**
Alison Newingham
The Walt Disney Company
1675 E Buena Vista Dr, Ste 250
Lake Buena Vista, FL 32830

Rachel L Rodriguez
Vires Law Group, PLLC
515 N. Flagler Dr., Suite P-
West Palm Beach, FL 33401

Please retain this notice for your records.

**INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court* ***under Federal law****. If you also plan to sue claiming violations of State law, please be aware that time limits may be shorter and other provisions of State law may be different than those described below.)*

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If you choose to file a lawsuit against the respondent(s) named in the charge of discrimination, you must file a complaint in court **within 90 days of the date you *receive* this Notice**. Receipt generally means the date when you (or your representative) opened this email or mail. You should **keep a record of the date you received this notice**. Once this 90-day period has passed, your right to sue based on the charge referred to in this Notice will be lost. If you intend to consult an attorney, you should do so promptly. Give your attorney a copy of this Notice, and the record of your receiving it (email or envelope).

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If you plan to retain an attorney to assist you with your ADA claim, we recommend that you share this information with your attorney and suggest that he or she consult the amended regulations and appendix, and other ADA related publications, available at:

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If you are pursuing a failure to accommodate claim you must meet the standards for either "actual" or "record of" a disability:

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***Note:*** *Although the amended ADA states that the definition of disability "shall be construed broadly" and "should not demand extensive analysis," some courts require specificity in the complaint explaining how an impairment substantially limits a major life activity or what facts indicate the challenged employment action was because of the impairment. Beyond the initial pleading stage, some courts will require specific evidence to establish disability.* For moreinformation, consult the amended regulations and appendix, as well as explanatory publications, available at http://www.eeoc.gov/laws/types/disability_regulations.cfm.

## APPENDIX F

## U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

**Miami District Office**
100 SE 2nd St, Suite 1500
Miami, FL 33131
(800) 669-4000
Website: www.eeoc.gov

**DISMISSAL AND NOTICE OF RIGHTS**
(This Notice replaces EEOC FORMS 161 & 161-A)

Issued On: 10/11/2022

**To:** Seth A. Schmidt
8811 Dunes Ct. Apt 6108
Kissimmee, FL 34747

Charge No: 510-2022-01401

EEOC Representative and email:
Christopher Griffin
Investigator
christopher.griffin@eeoc.gov

### DISMISSAL OF CHARGE

The EEOC has granted your request that the agency issue a Notice of Right to Sue, where it is unlikely that EEOC will be able to complete its investigation within 180 days from the date the charge was filed.

The EEOC is terminating its processing of this charge.

**NOTICE OF YOUR RIGHT TO SUE**

This is official notice from the EEOC of the dismissal of your charge and of your right to sue. If you choose to file a lawsuit against the respondent(s) on this charge under federal law in federal or state court, **your lawsuit must be filed WITHIN 90 DAYS of your receipt of this notice.** Receipt generally occurs on the date that you (or your representative) view this document. You should keep a record of the date you received this notice. Your right to sue based on this charge will be lost if you do not file a lawsuit in court within 90 days. (The time limit for filing a lawsuit based on a claim under state law may be different.)

If you file a lawsuit based on this charge, please sign-in to the EEOC Public Portal and upload the court complaint to charge 510-2022-01401.

On behalf of the Commission,

Digitally Signed By: Evangeline Hawthorne
10/04/2022
Evangeline Hawthorne
Acting Director

**Cc:**
Jihane Elizee
1675 E. Buena Vista Drive
Lake Buena Vista, FL 32830

Rachel Rodriguez
Vines Law Group
515 N. Flagler Drive Suite P-300
West Palm Beach, FL 33401

Please retain this notice for your records.

**INFORMATION RELATED TO FILING SUIT UNDER THE LAWS ENFORCED BY THE EEOC**

*(This information relates to filing suit in Federal or State court* ***under Federal law****. If you also plan to sue claiming violations of State law, please be aware that time limits may be shorter and other provisions of State law may be different than those described below.)*

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***Note:*** *Although the amended ADA states that the definition of disability "shall be construed broadly" and "should not demand extensive analysis," some courts require specificity in the complaint explaining how an impairment substantially limits a major life activity or what facts indicate the challenged employment action was because of the impairment. Beyond the initial pleading stage, some courts will require specific evidence to establish disability.* For moreinformation, consult the amended regulations and appendix, as well as explanatory publications, available at http://www.eeoc.gov/laws/types/disability_regulations.cfm.

## APPENDIX G

**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Miami District Office**
100 SE 2nd St, Suite 1500
Miami, FL 33131
(800) 669-4000
Website: www.eeoc.gov

**DETERMINATION AND NOTICE OF RIGHTS**
(This Notice replaces EEOC FORMS 161 & 161-A)

Issued On: 10/03/2022

**To:** Steven Gibbons
2448 Clear Water Drive
APOPKA, FL 32703
Charge No: 510-2022-08165

EEOC Representative and email:
Christopher Griffin
Federal Investigator
Christopher.Griffin@eeoc.gov

**DETERMINATION OF CHARGE**

The EEOC issues the following determination: The EEOC will not proceed further with its investigation and makes no determination about whether further investigation would establish violations of the statute. This does not mean the claims have no merit. This

determination does not certify that the respondent is in compliance with the statutes. The EEOC makes no finding as to the merits of any other issues that might be construed as having been raised by this charge.

**NOTICE OF YOUR RIGHT TO SUE**

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If you file a lawsuit based on this charge, please sign-in to the EEOC Public Portal and upload the court complaint to charge 510-2022-08165.

On behalf of the Commission,

/s/
Evangeline Hawthorne
Acting Director

**Cc:**
Jihane Elizee
Walt Disney Parks, and Resorts
1675 E Buena Vista Drive

Lake Buena Vista, FL 32830

Rachel L T Rodriguez
Vires Law Group
515 N. Flagler Drive, Suite P-300
West Palm Beach, FL 33401

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✔ **Only one** major life activity need be substantially limited.

✔ Except for ordinary eyeglasses or contact lenses, the beneficial effects of **"mitigating measures"** (e.g., hearing aid, prosthesis, medication, therapy, behavioral modifications) **are not considered** in determining if the impairment substantially limits a major life activity.

✔ An impairment that is **"episodic"** (e.g., epilepsy, depression, multiple sclerosis) or "**in remission**" (e.g., cancer) is a disability if it **would be substantially limiting when active**.

✔ An impairment **may be substantially limiting even though** it lasts or is expected to last **fewer than six months**.

**"Regarded as" coverage**

An individual can meet the definition of disability if an **employment action was taken because of an**

**actual or perceived impairment** (e.g., refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment).

- ✔ "Regarded as" coverage under the ADAAA no longer requires that an impairment be substantially limiting, or that the employer perceives the impairment to be substantially limiting.

- ✔ The employer has a defense against a "regarded as" claim only when the impairment at issue is objectively **both** transitory (lasting or expected to last six months or less) **and** minor.

- ✔ A person is not able to bring a failure to accommodate claim **if** the individual is covered only under the "regarded as" definition of "disability".

***Note:*** *Although the amended ADA states that the definition of disability "shall be construed broadly" and "should not demand extensive analysis," some courts require specificity in the complaint explaining how an impairment substantially limits a major life activity or what facts indicate the challenged employment action was because of the impairment. Beyond the initial pleading stage, some courts will require specific evidence to establish disability.* For moreinformation, consult the amended regulations and appendix, as well as explanatory publications, available at http://www.eeoc.gov/laws/types/disability_regulations.cfm.