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Delivered Via: Electronic Mail

Florida Commission on Human Relations
ATTN: Investigator Brandon Meeks
CC: Frank C. Hernandez, State and Local Coordinator, MIA EEOC
4075 Esplanade Way, Room 110
Tallahassee, FL 32399

Rebuttal to Respondent Morgan & Morgan Position Statement;
----- v. *Morgan & Morgan*, Case No. 202336507; EEOC No.
RE: 15D-2022-01031

Dear Investigator Meeks,

This is a case in which one of the nation's largest law firms, indeed the largest American personal injury law firm and one which itself defends employees against civil rights violations in the workplace, is itself now caught with its proverbial pants at the ankles for violating laws it knows inside and out. Simply put, Respondent Morgan & Morgan herein acts with disregard for any law, as it appears to believe its own legend that it is law and virtue unto itself.¹

Mr. ---- challenges that ridiculous notion simply by challenging his unlawful termination, and he will never be forgiven by Respondent for declaring that the emperor, in fact, wears no clothing. Respondent has scrambled i) first, earlier this year, to be rid of one of its excellent employees because he would not be coerced into taking the covid-19 vaccine due to his religious beliefs; ii)

¹ Indeed, while the fact does not particularly address the salient claims of Mr. ---- in this case, it should be pointed out that Respondent's mandatory EEO report of its relevant Jacksonville office where Mr. ---- worked shows an incredible lack of diversity for the demographics of the community and the legal profession at large. Of a total of 486 employees, 100% of top management are white men. Non-management lawyers are more than 2:1 men to women, and only 3 of 75 lawyers are hispanic, 1 lawyer is African-American. Additionally, 75% of support staff and administrative positions are held by women. The office is 72% racially non-hispanic, white. Respondent's Position Statement, Exh L (hereinafter "MM. Exh ___"). Jacksonville, Florida demographics are estimated at 50% non-hispanic white, 31% African-American, and 13% Asian and other racial identity. See <https://www.census.gov/quickfacts/jacksonvillecityflorida>, last accessed October 14, 2022. It should be noted that since 2016, law school enrollment by women outranked male enrollment.



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second, scrambled for dirt on Mr. ---- in late May when Mr. ---- did not accept the insulting crumbs of severance offered him to resign after a relentless harassment campaign against him; and again iii) apparently around July 5, 2022, the day after Mr. ---- dared to challenge his termination, Respondent scrambled to prepare the rest of its smear campaign against him.

While undersigned counsel applauds the creativity of Respondent's mendacious response to this agency, likely honed through decades and millions of such shake-down tactics against insurance companies and employers, the facts simply will not support this elaborate, but rather sloppily constructed, house of cards.

Mr. ----'s Exceptional Employment History with Respondent

Respondent has enjoyed the lucrative case management services of Mr. ---- for nearly two decades. Respondent's position statement seeks to downplay this critical point because the truth regarding its hiring in 2002, and then its recruitment and rehiring of Mr. ---- in 2015 significantly undercuts its claim that he has exhibited consistently "incompetent performance," habitual tardiness, and "overall negative attitude and influence on other employees." MM Position at 4.

In fact, Mr. ---- was hired by partner Greg Prysock in 2002, was a consistently high-performing case manager, garnering millions of dollars for the firm for over a decade, and working for partners Mr. Prysock, Michael Marrese Donny Owens, and Jason Miller before he chose to leave in 2013. Respondent was desperate to have Mr. ---- back at the firm, so Mr. Prysock, together with Mr. Marrese and Mr. Owens in 2015 convinced Mr. ---- to return to work for the firm. Affidavit of ---- ("Aff. ---- ___"), ¶¶ 2, 7. When he returned to the firm, he was first placed in partner Donny Owens' "pod" or direct staffing team under the supervising attorney. This pod, however, had both Mr. ---- and Heidi Day as case managers. Eventually, Matt Morgan pressured Mr. Owens to drop Mr. ---- to retain the proper staffing composition under firm policy. Aff. ---- ¶¶ 8. Mr. ---- asked Mr. Owens directly what was the reason for his transfer to supervising attorney Jody Wade, and he provided this explanation. Mr. ---- also asked Mr. Prysock directly whether this was, in fact, true, and Mr. Prysock confirmed. *Id.* ¶ 9. As Mr. Prysock has since retired fully from Respondent, undersigned counsel sought to confirm this information, but Mr. Prysock refused to discuss the matter.

In similar fashion, Respondent's breathless allegations regarding Mr. Wade's complaints against Mr. ---- ring particularly hollow when compared with Mr. Wade's own personal text messages to Mr. ---- during the period of his employment under Mr. Wade's supervision. We note that Respondent's Exh. C email is dated July 5, 2022, the day after undersigned counsel presented Respondent with a detailed demand letter on behalf of Mr. ----.² Apparently, Respondent had not prepared that particular pillar of its pretext narrative sufficiently in advance.

² We would like this agency to have as part of the official record the fact that undersigned counsel, in the July 4 demand, placed Respondent on notice with a document preservation demand in light of prospective litigation,



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In contrast to disparaging and defaming comments in his July 5, 2022 email, Mr. Wade's texts from 2020 and 2021 show his bonus payments to Mr. ----, including paying above the case manager bonus schedule "because of the effort...Thanks for the hustle," in August 2020. Aff. --- - ¶ 11, pp3-7. Again, October 2, 2020, "Good effort last month. October will be big for you me thinks." In early December, Mr. Wade confirmed Mr. ---- received a performance bonus in Novembr, and relating to a \$100 bonus for January 2021, he texted, "More where that came from big dawg." *Id.* at 5. Mr. Wade also texted Mr. ---- regarding status of cases, Mr. ---- provided Mr. Wade with reminders on needed attorney follow up, and other scheduling and intake for new matters. In April 2021, Mr. Wade asked regarding new policies, and Mr. ---- responded "Banking 2 more 10s. I have a 25k policy that should pay I'll send you an email on that -----." (redacted to keep Respondent client information and Mr. ----'s banking information confidential). In response, Mr. Wade texted, "Also FYI I'm gonna throw you some coin for ---- this next paycheck. You worked him and held his hand, realized the goldmine it could be and gave it attention....Good job on that one...." (redacted client name). *Id.* at 5-6.

Mr. ---- was not given any reason for his transfer from Mr. Wade to Mr. Marrese, under whom he had worked before he was rehired. However, we note that the transfer came at a crucial transition time in the firm when Mr. Morgan abruptly decided that all remote workers, even like Mr. ---- who were approved to remain full-time remote employees, must instead return in-person to work; and at the same time, Mr. Morgan began an email campaign of harassment and psychological pressure against employees who were not covid-19 vaccinated, like Mr. ----. Aff. ---- ¶¶ 12-15, 16-17, 19-29, 32-33, 35.

Unsurprisingly, Respondent's repeated refrain of Mr. ----'s subpar case manager performance under Mr. Marrese (see both sworn affidavits MM Exh. J-K) is also unsubstantiated by Mr. Marrese's own statements to Mr. ---- and his, and Respondent's, bonus payments made to Mr. --- - through March 2022. As will be reviewed with additional falsehoods in the affidavits below, we note that the two affidavits are poorly written, pulled from a template and adjusted to the specific witness, but contain many identical paragraphs and sentences to parrot the same false pretextual narrative, defaming Mr. ----. Mr. Marrese describes "attendance issues" that "were creating problems with other case managers in the firm" (MM Exh K, ¶ 11) and a vague statement of need "to discuss subpar performance in assisting to resolve cases" (*Id.* ¶ 22), but precisely nothing in this flimsy statement by partner Michael Marrese describes *why* or *how* Mr. ----'s actual productivity as a case manager suffered based on all of these allegations of his "tardiness". Indeed, former employee ----, niece of HR Director Tonya Williams, declares in her statement in support of Mr. ----'s claims, that Mr. ----'s performance was actually inspiring to her, contrary to Respondent's defamatory pretextual claims. Decl. ---- ¶ 15.

covering at a minimum, related documents from January 2020, ongoing. However, there is evidence we have from witnesses that Respondent is deleting relevant emails.



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The reason Mr. Marrese cannot provide this explanation is that Mr. ---- continued – as for the prior two decades – to perform above-average and earn performance bonuses. At the end of 2021, Mr. Marrese gave Mr. ---- a \$5000.00 bonus. Aff. ---- ¶35, Exh. D. He also indicated to Mr. ---- that he would personally pay out of pocket for \$500 monthly to Mr. ---- to make up for the disparity between firm revenues and Mr. ----’s pay. Aff. ---- ¶36, Exh. D, and MM Exh. G, H. This Mr. Marrese paid in January, February, and March of 2022 before he abruptly stopped. Mr. Marrese’s May 5, 2022 email to Mr. ---- does admit Mr. Marrese’s \$500 monthly payments, indeed claims, “\$8600 in extra incentives this year” (which relates to case manager bonus plan payout for performance), but falsely indicates that the payments were ended as they could no longer be justified for Mr. ----. MM Exh. G, H. The sentence, frankly, makes no sense: Mr. ---- was being paid so handsomely for performance incentives....that he could no longer receive additional bonuses due to poor performance?

We will return to the time-traveling of Respondent’s partners and staff below with regard to their alleged “schedule” policy imposed in March of 2022, but with regard to Respondent’s allegations that Mr. ---- was an abysmal case manager, it is important to note Respondent does not allege any disciplinary record for his nearly twenty years...until the last 2 months before his unlawful termination. Of course, that is because, until Morgan & Morgan needed a pretextual reason to be rid of one of their top employees because he would not obtain the covid-19 vaccination due to religious belief, he had never received any discipline at all.

John Morgan Campaigns Against Unvaccinated Employees

The real reason Mr. ---- was terminated by Respondent is that, for a year, he did not succumb to the immense pressure and harassment techniques of Respondent’s partners, HR department under director Ms. Williams, and Mr. Morgan himself to violate Mr. ----’s own deeply held religious beliefs. In the spring of 2021, Mr. Morgan began sending out firm-wide emails regarding covid-19 vaccination, correlated with his sudden decision to require all employees to return to in-person work, after having allowed employees, like Mr. ----, to apply to remain as remote workers. Aff. ---- ¶¶ 14-17, 20-33.

Mr. ----’s lengthy sworn statement provides extensive detail regarding the vulgar, unprofessional, psychologically abusive, factually inaccurate, and coercive emails sent by Mr. Morgan from May through September 2021. Aff. ---- at pp 8-14, and see Exh. B, Email correspondence from John Morgan firmwide. While Mr. Morgan’s breathtaking emails compare covid-19 unvaccinated to ‘snake handlers’ multiple times, this is unsurprising given Mr. Morgan’s apparent anti-Catholic religious bias. See Aff. ---- ¶¶ 4-5. Mr. Morgan’s firm-wide blasts also consistently contemplate only one basis for refusing covid-19 vaccination: irrational fear, or phobia/ mental illness. *Id.* ¶ 17, 20, 22, 26, 33 and Exh B, emails of 5/16/21, 8/4/21, 8/23/21, 9/28/21.

Mr. Morgan also acknowledged that forcing covid-19 vaccines on his employees at the firm would unevenly affect non-white, evangelical employees because he knew statistically these groups rejected the covid-19 vaccines at higher rates. Aff. ---- ¶ 21, and Exh B, email of 8/4/21.



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Several emails from Mr. Morgan led Mr. ---- to believe that the firm would terminate anyone like Mr. ---- who remained unvaccinated for covid-19, regardless of religious beliefs. “I have instructed all of HR to hire no more staff or attorneys who are not vaccinated. It is simply not worth that risk and it allows us to become fully vaccinated over time.” Aff. ---- ¶ 23-25, 29, 32-33, and Exh B, emails of 8/4/21, 8/23/21, 8/25/21, 9/28/21. In fact, contrary to the perjurious affidavit of Ms. Williams (MM Exh. J at ¶ 22), **Respondent, by personal email from Mr. Morgan himself, actually fired Ms. Williams’ niece, Ms. ---- on September 30**, giving her one day’s notice for her final date of employment on October 1, 2021. Decl. ----, ¶¶ 11-13.

The strident, even angry, emails from Mr. Morgan on behalf of Respondent regarding its covid-19 vaccination policy declared Respondent’s perception of Mr. ---- in his medical status as unvaccinated to be an ongoing danger and threat which could not be tolerated in the workplace. Indeed, Respondent’s assertions that Mr. ---- was performing poorly lends credence to its perception of him as disabled and impaired from performing his job functions. 42 USC § 12102(1)(c). Rather than seek to address its perception of his disability, the firm discriminated heavily against him, engaged in a campaign of harassment, abuse, disciplining him for lawful use of sick leave and approved family emergency leave, suspension without pay, and ultimately unlawful termination.

Mr. ----’s religious faith in Jesus Christ was well known within his office. Mr. Morgan himself knew Mr. ---- is a Christian, at least since around 2012, from the lawyer and case manager Christmas event at Ruth’s Chris Steakhouse when Mr. ---- confirmed his religious faith. Aff. ---- ¶¶ 4-5. Mr. ----’s religious views prohibit him from “knowingly harming, or being reckless with substances and medicines that could harm, my physical body as the ‘temple of the Holy Spirit’ and require me to take care of what God has given me in this life.” *Id.* ¶ 19. In accordance with federal and state law, Mr. ---- asserted his religious exemption and medical exemption to HR on October 21, 2021. *Id.* ¶ 34, and Exhibit C Emails from Marrese and HR. Respondent needed nothing further from Mr. ---- to be required to provide his religious exemption. See *EEOC v. Abercrombie & Fitch Stores, Inc.*, 731 F. 3d 1106 (2015) (“an employer who acts with the motive of avoiding accommodation may violate Title VII even if he has no more than an unsubstantiated suspicion that accommodation would be needed.”) Not once did anyone in HR or in management ever discuss with Mr. ---- his religious beliefs and need for accommodation to obtaining the covid-19 vaccine.³ Instead, Respondent began plotting its pretext for firing Mr. ----, alleging poor work performance, specifically based on tardiness.

³ Bizarrely, Respondent’s co-chair of its Employee Rights Group Ryan Morgan declared to undersigned counsel in July 2022 that there is no “legitimate religious objection” to obtaining covid-19 vaccination because “Christianity has come out in favor of the vaccination.” This is insulting as it is a grotesque misstatement of the law that Mr. Morgan knows is incorrect. Respondent’s General Counsel also threatened undersigned counsel with criminal liability for “extortion” due to service of a reasonable demand letter, outlining the facts and Respondent’s violations of law and requesting suitable damages for Mr. ----. Respondent’s lawyers could be advised to take continuing legal education courses in basic issues of civil rights law.



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Respondent Prepares Pretext Unlawfully to Terminate Mr. ---- for His Religious Beliefs against covid-19 Vaccination.

Respondent's position statement is chronologically challenged, which is the crux of its legality challenge: fundamentally because a policy imposed in Mr. ----'s Jacksonville, Florida office related to hourly schedules was only announced to the firm on March 14, 2022; yet Mr. ---- was disciplined as a result of that policy nearly two weeks prior on March 3, 2022. Aff. ---- ¶¶44-45, Exh. C emails of 3/14/22 and 3/17/22. Respondent's position paper at 5 states: "Charging Party continued to fail to keep the regular hours required by the schedule he chose, and as a result, Mr. Marrese formally wrote him up on March 3, 2022. (See, **Exhibit "F," March 3, 2022 Employee Warning Report**)."

Mr. Marrese's *sworn affidavit* lists, as if in time order, that in March 2022, he observed Mr. ----'s "attendance issues"; and that he explained that Mr. ---- had to "remedy his attendance"; that HR implemented a policy affecting case managers to record their hours "in March of 2022"; that Mr. Marrese learned that Mr. ---- chose the hourly schedule between 9-6p; and that "**Thereafter**, [he] observed that Charging Party was still not working a full day" (emphasis added); and finally, that HR then provided Mr. Marrese with garage entry and exit times as proof of Mr. ----'s tardiness. MM Exh. K ¶¶ 11-16. Mr. Marrese's sworn testimony further states that he had a meeting with Mr. ---- and presented him with the garage time information and asked for an explanation, but Mr. ---- only stated the garage times did not pertain to his entry and exit. *Id.* ¶ 17. Of course, Ms. Williams *sworn affidavit* also tracks identical time bending problems, and as noted above, also states falsely under oath that the firm has never fired anyone for not being covid-19 vaccinated, although Mr. Morgan fired Ms. Williams' own niece in September 2021. Aff. Williams ¶¶ 11-17, 22; Decl. ---- ¶¶ 10-13.

The truth actually is that Respondent uses a document it claims is entry and exit from VyStar Tower Garage using card no. 39252 between January 3 – March 2, 2022 to claim Mr. ---- was tardy *after* he chose an hourly schedule based on an email announcement from HR on March 14, 2022, and Mr. ---- was never shown any firm garage entry and exit records at all. Aff. ---- ¶¶ 43-45, 48. It is also the truth that the policy was never uniformly enforced as to salaried case managers, and most supervising attorneys in Mr. ----'s office waived compliance with the policy for their case managers. *Id.* ¶¶ 46, 49-51; Decl. ---- ¶ 18. Respondent also violated law, as the March 3 Employee Warning Report presented to Mr. ---- attached no policy statement or documentation regarding his discipline.

Furthermore, if Mr. ---- was perpetually tardy *after* the hours policy was implemented on March 14, where is Respondent's records of Mr. ----'s remaining garage entry and exit times for March through May 2022? Ostensibly, this is the reason for the creative misrepresentation that Mr. ---- "chose to actively conceal his attendance hours, and he began parking at an off-site location adjacent to the Firm's building so his parking could not be monitored by the Firm." Why did Respondent not include photographs showing Mr. ----'s car so positioned for several months? Respondent never presented to Mr. ---- the May 10, 2022 written discipline nor any attachment thereto. Aff. ---- ¶ 59. The May 5, 2022 email from Mr. Marrese reads like a documentation of



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event, ostensibly a meeting on May 4 to reprimand Mr. ---- for his perpetual tardiness, an event Mr. ---- has no recollection having taken place. *Id.* ¶ 58. Mr. ---- has no recollection of Mr. Marrese’s alleged April meeting with him to discuss his subpar performance – right in the timeframe Mr. ---- received his first quarter performance bonus of \$750.00 (Exh. D Bonus payment records) – nor that he compared a junior team member to him in any way. MM Exh. K at ¶22.

It is notable that Respondent focuses on case management software Litify to create the pretextual narrative of Mr. ----’s lack of performance. See MM Position at 5 and MM Exh I, 5/27/22 email exchange. Nine days after Mr. ---- was unlawfully terminated on May 16, 2022 and when it was clear he would not take the severance package from the firm and release Respondent from liability, Mr. Marrese requested of staff member Aaron Goins, “Give me email about ----’ litify lies.” Mr. Goins responded that he reviewed Litify software and found cases without updates. *Id.* Of course Respondent had to focus on Litify data because the software was fraught with problems and could not be rolled out by Respondent for three years due, predominantly, because it *failed to update case files* by software error. Aff. ---- ¶¶ 70-73 and Decl. ---- ¶¶ 16-17. What Respondent does not provide this agency is the fact that Mr. ---- and the entire firm operated in another case management software, Client Profiles, and that this software kept the cases up to date, unlike Litify which failed in nearly all of its automated and updating functions.

Consistently, Respondent, through Mr. Morgan’s emails and personally through Mr. ----’s supervising attorney, Mr. Marrese, sought to make Mr. ---- resign. Aff. ---- ¶¶ 23-24, 29, 33, 38-40, 52, 54, 60-68, and Exh. C. Mr. Marrese expressed his beliefs to Mr. ---- that he should leave if he wouldn’t get vaccinated; he provided Mr. ---- a job vacancy notice he suggested Mr. ---- should apply to just before he was terminated; and Mr. Marrese, with Mr. Miller and Ms. Williams all asked Mr. ---- if he would resign before terminating him that day. *Id.* Respondent also twice or three times, through Mr. Marrese, Ms. Williams, and Mr. Miller, tried to use Mr. ----’s earned PTO in cash-out payment as leverage to force him to resign. *Id.* ¶¶ 61, 66, 68. Right before firing Mr. ----, Mr. Marrese also made clear that Respondent discriminated against Mr. ---- because of his religious convictions, expressing surprised that Mr. ---- could “call yourself a Christian” and make the choices Mr. ---- made regarding covid-19 vaccination and refusing to resign. *Id.* ¶ 64.

Conclusion

It is somewhat surprising that Respondent, as a large law firm, obligated to uphold the law and zealously represent its clients, comply with ethics laws, and safeguard against witnesses’ lying under oath would put forth such a flimsy pretextual narrative, buttressed by unimaginative misrepresentations and false witnesses, all to terminate Mr. ----, and cover up its unlawful termination, merely because he chose not to obtain an experimental medical treatment pursuant to his sincerely held religious beliefs. Morgan & Morgan has maliciously and intentionally discriminated against Mr. ---- for his sincerely held religious beliefs and because it perceives him as disabled due to his medical status. Moreover, Respondent has discriminated against him due



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to his age and has violated its contractual obligations and the law with regard to Mr. ----'s lawfully taken sick leave and other approved paid time off. We are certain that the evidence presented by Mr. ---- in his rebuttal will provide this agency, indeed, as we request, the EEOC, to conduct its investigation thoroughly and provide justice and remedies to Mr. ---- for the harm he has suffered at the hands of Respondent.

As an additional matter, undersigned counsel has uncovered a disturbing pattern of blanket denials of claims from this agency for matters involving Florida employees discriminated against due to their religious beliefs prohibiting covid-19 vaccination. Lamentably, because of the terms of Fl. Stat. § 760.11(7), if this agency were to make a Determination of No Reasonable Cause also in Mr. ----'s case, he could be curtailed from ever presenting his claims before a jury of his peers in a court of competent jurisdiction, which is his constitutional right. This is in stark contrast to the attention and careful consideration being given to claims filed before the EEOC in covid discrimination cases. Moreover, given the inordinate influence that Respondent has in this state as a top employer within the state and also as a practitioner before this agency, we feel that the investigation should continue before a non-Florida entity to avoid the appearance of impropriety or undue bias in the review of Mr. ----'s claims.

Thus, we respectfully request that this agency transfer primary investigative responsibility to the federal Equal Employment Opportunity Commission in Mr. ----'s case for completion of the investigation in this matter. Thank you for your consideration of this request, and we look forward to resuming this investigation before the EEOC.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rachel L.T. Rodriguez".

Rachel L.T. Rodriguez, Esq.

Exhibits:

- A - Affidavit of ----
- B - Emails from John Morgan firmwide
- C - Emails between Michael Marrese and ----, HR emails
- D - Proof of performance bonus payments
- E - Affidavit of ----