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Date: November 30, 2022

Delivered Via: Electronic Mail

Lynette Norr
Senior Asst. Attorney General
Private Employer Vaccine Mandate Program
PL-01 The Capitol
Tallahassee, FL 32399

RE: -----, Complaint ID No. CFXMAP; DLA Case No. 2022-10276

Dear Attorney Norr,

Thank you for your correspondence and investigation into Mr. ----'s claim against Morgan & Morgan's unlawful Covid-19 vaccine mandate. I will answer your questions and supplement documentation in response as follows:

Please provide a copy of the employer's written vaccine policy requiring that you obtain a Covid-19 vaccination and without offering exemptions.

The Morgan & Morgan law firm, perhaps because it also practices in the area of Employment Law, was particularly mendacious in its implementation and execution of a Covid-19 vaccine mandate. There was never an official statement of the mandate with a resulting express deadline, as seen in most other cases. Instead, the firm name partner, John Morgan initiated a series of policy changes and issued relentless firm-wide, manipulative, emotional, yet contradictory emails that described his 100% vaccination policy on pain of termination. He further personally refused to give a deadline for vaccination, but fired employees for failure to vaccinate. Additionally, the Human Resources department complied with the policy of Mr. Morgan by following up with employees like Mr. ---- who had not registered their vaccination with HR. No one at the firm, including HR personnel, ever offered any exemption options whatsoever through email or official policy statements. Mr. Morgan personally refused any accommodations when asked specifically by employees. Employees that would not get the Covid-19 vaccine were fired for that reason. Your office has the referenced emails below as sent by Mr. ----, but I am resending them in chronological order appended to this response for convenience.

April 21, 2021 – Mr. Morgan stated to the entire firm “I would also like any of you who have not been able to get a vaccine to call me directly so I can arrange it.” This email announced a



full firm return to in-person work, and definitively stated that anyone wanting to remain in virtual work would need to find work with another employer.

May 14, 2021 –Mr. Morgan sent out a firm-wide email and called the day “momentous” and immediately declared, “I pray that each of you is now vaccinated....for your sake....and the sake of your family and coworkers.” Two days later, he sent a firm-wide email indicating that the firm disagreed with mandated vaccination for Covid-19. But, three months later, Mr. Morgan imposed a survey and mandatory vaccination registration.

August 3, 2021 – Human resources at Morgan & Morgan instituted a required survey of vaccine status, due August 4. Those who did not complete the mandatory registration of vaccination status for Covid-19 would be “coded as unvaccinated.” Mr. Morgan responded with a firm-wide email that it was “just collecting data to see our best course for protecting each other...”

August 4, 2021 – Mr. Morgan commenting on the mandatory vaccination registration from HR stated, “I want all of you to know that for those of you who do not choose to be vaccinated we are not judging you. Fear is real. Whether imagined or real. Some of us believe in ghosts. Ghosts scare me. Unfortunately, much of this has come down to politics. The Red states have low vaccination and the blue much higher....Once we get our information we can begin to plan to protect as many as possible and your children. ***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....***Interesting and ironic is the people most likely to be unvaccinated are evangelicals who voted Trump and African Americans and Hispanics. There are many reasons for not being vaccinated politics, irrational fears and genuine concerns....Some religious folks handle rattle snakes and are not vaccinated. Making sense of so many people is impossible.” (emphasis added) Mr. Morgan continued the lengthy email discussing phobias, like his cousin’s and sister’s fears of flying in comparison to the reasons people rejected Covid-19 vaccination. He also stated the firm would be proceeding toward a “workable plan” to 100% vaccination, and discussed other employers’ imposition of mandates.

August 25, 2021 – Mr. Morgan announced firm-wide that the vaccine mandate policy was soon to be announced and encouraged the unvaccinated to leave and look for another job: “I know making this mandate will cause us to lose great talent and friends...And I care enough about you to warn you. It is easier to get a job with a job.” He then asserted the cost that the unvaccinated would be to the firm’s self-insurance: “We have had unvaccinated coworkers in ICUs and on ventilators. Just imagine the cost of those stays. The expense is unsustainable.” Again, Mr. Morgan referenced handling venomous snakes in religious ceremonies while remaining unvaccinated.

September 2, 2021 – Mr. Morgan continued to pressure employees to get vaccinated, declaring the obligation to employees to protect co-workers and the business, and repeating that the firm’s insurance had taken a financial hit. He stated: “The vast majority of those unvaccinated are the undereducated and those with strong political beliefs.”

September 28, 2021 – Mr. Morgan stated to the entire firm “We are in a fucking pandemic....Most all of us are vaccinated...The science on this is uncontroverted. We have people working in our offices who are scared for their lives because some are not. Wearing a mask seems a small price to pay for the 97% who are vaccinated....***I have told you that a day is coming soon that there will be mandatory vaccinations. I have hoped that watching all of this death may prod you into the vaccination for yourself and for your family....But when you***



decide to say “fuck you” to your vulnerable coworkers it’s time for you to go.” (emphasis added).

September 28, 2021 – The same day, ----, niece of the firm’s HR director asked Mr. Morgan by personal email if there was a deadline by which employees were to get the vaccine or be terminated. Mr. Morgan replied by asking only “are you vaccinated?” When Ms. ---- responded she was not vaccinated for Covid-19, Mr. Morgan offered to drive to Jacksonville and take her personally to Walgreens.

September 29, 2021 – Ms. ---- respectfully declined and provided Mr. Morgan with her medical recommendations by her doctors at Mayo Clinic against Covid-19 vaccination. She suggested that Mr. Morgan run a productivity report on each employee to determine who to allow to work from home as an accommodation against getting the Covid-19 vaccine. Mr. Morgan completely ignored Ms. ----’s request for exemption and accommodation. Instead, he *demand*ed the names of her doctors in order to “immediately report them to higher ups.” He further mocked her choice not to be vaccinated on medical recommendation to refusing to wear a seatbelt or refusing to lock her home doors at night.

The same day, Mr. Morgan demanded again that she give the names of “the two doctors at Mayo that gave you that false advice.” He also ended the email with “Would you want someone with leprosy working next to you? Covid is more contagious.”

September 30, 2021 – Mr. Morgan specifically declared, despite medical accommodation request, “working from home is not an option for you” and told her to focus on finding a new job. Ms. ---- again, requested a specific mandate deadline. Mr. Morgan did not give her one. Mr. Morgan, having never addressed Ms. ----’s medical accommodations request at all, fired her over email, making her termination effective the next day, October 1, 2021 because “you have made up your mind.”

In Mr. ----’s case, apparently because of the passage of Fl. Stat. §381.00317, the firm set about to prepare a pretextual firing, but the reality of Mr. ----’s unlawful termination was only because of his refusal of the Covid-19 vaccine and Morgan & Morgan’s failure to provide any exemptions. In November and December, Mr. ----’s immediate supervising attorney Michael Marrese came into Mr. ----’s office and also called Mr. ---- to his office to discuss the Covid-19 vaccines. He asserted his personal reasons for getting the shots and asserted that Mr. ---- should get the vaccine because the firm was going to fire Mr. ---- because he did not have the Covid-19 vaccine.

In February, 2022, HR again required Mr. ---- to register his vaccination or wear a mask. The director made no statement nor offered any exemption application nor accommodation discussion. Then, beginning *one week later* in March, the firm began a campaign to terminate Mr. ---- on fabricated disciplinary bases. On March 3, 2022, Mr. ---- was issued a written discipline regarding a attendance/hours policy which was not announced or circulated to the employees at all until March 14, 2022. Notwithstanding the new working hours policy, most of the supervising attorneys appeared to have waived the requirements thereof for their case managers, including the managing attorney’s staff of the Jacksonville firm location where Mr. --- worked. However, Mr. ---- was not granted a waiver from the new policy unlike his case manager colleagues.



In April and May, Mr. ----'s supervisor overtly demanded he get the vaccination or leave the firm. On May 10, 2022, Mr. ---- again received written discipline, ostensibly for violation of the new, arbitrary hours policy, but he was not allowed to review the written reprimand, nor policy statement or rule, if attached to it. Morgan & Morgan has subsequently produced an email from May 5, 2022 from Mr. Morgan's supervising attorney Mr. Marrese, apparently documenting a meeting in which Mr. Marrese asserts he was providing a warning to Mr. ---- regarding "tardiness", but Mr. ---- does not remember that meeting nor the email.¹

On May 13, 2022, Mr. Marrese informed Mr. ---- that he had been searching for a new job for Mr. ---- and provided him a job vacancy at Citizens Insurance. He expressly asked Mr. ---- if he would leave Morgan & Morgan. Mr. ---- was then terminated on May 16, 2022. That day, Mr. Marrese demanded again that Mr. ---- answer whether he would leave the firm voluntarily, and stated he could not understand Mr. ----'s choices, while calling himself a Christian.

Nine days after his termination, and after he refused a severance package that would have waived his claims for unlawful termination, the firm requested of staff to make a record of "----' litify lies" referring to a case management software Litify which had been plagued with problems and failed continuously through its several year roll-out. Also, one day after Mr. ---- sent a demand letter to Mr. Morgan, on July 5, the firm had another prior supervising attorney Jody Wade write a highly disparaging email regarding Mr. ----'s performance. Mr. ----'s performance was never in doubt, considering he received multiple case manager performance- based bonuses during the entirety of his career, and particularly throughout 2021 and 2022 until his unlawful termination. Additionally, Mr. ---- has records of all of Mr. Wade's contradictory, real time text messages indicating Mr. ----'s excellent performance and award of incentive bonuses.

Please provide a copy of your dated and signed medical exemption request...your employer's communication granting you vaccine and mask exemptions. Please also provide a copy of your dated and signed religious exemption request that you sent to your employer and the response from your employer granting that request.

In fact, while Mr. ----'s *asserted* exemptions were not expressly denied by his employer, Morgan & Morgan also did not *approve* his exemptions. Moreover, after his assertion to HR in October that he had exemptions to the mandate, HR never followed up with any questions about the exemptions, had no request to fill out any form, including the Florida Department of Health official exemption forms, and provided no further explanation of next steps, nor set up an appointment for an interactive process to discuss exemptions. As a result, Mr. ---- had prepared the medical assessment by Dr. Grable to submit, but it was never submitted. Morgan & Morgan never asked for it nor any other application or documentation either as to Mr. ----'s medical or religious exemptions, and the firm also had no discussion at all with Mr. ---- regarding any accommodations.

Indeed, interactions with Mr. ---- indicate that his direct supervisors did not approve his exemptions for refusal of the Covid-19 vaccine. As noted above, his direct supervising attorney, Mr. Marrese, repeatedly demanded that he leave the firm and also expressed the fact that the firm

¹¹ Mr. ---- is aware in talking with his former colleague Ms. ---- that Morgan & Morgan recently, since undersigned counsel has been handling Mr. ----'s case, has been using software to delete emails sent out to private accounts, particularly the emails she had from Mr. Morgan regarding her termination.



would fire Mr. ---- for failure to obtain the vaccine. In fact, Mr. Marrese's comment to Mr. ---- expressing disbelief that Mr. ---- had Christian beliefs, yet would choose not to get vaccinated nor leave the firm voluntarily is maliciously discriminatory and shows a total disregard for Mr. --'s religious beliefs.

Furthermore, the entirety of the "performance/tardiness" pretext fabricated against Mr. ---- promptly after the passage of the Florida law prohibiting mandates without exemption options also indicates that Morgan & Morgan did not approve Mr. ----'s asserted exemptions and had no intention of doing so or properly processing them in any way.

Regarding the February 23, 2022 response from HR, does that communication mean that the employer offered employees the accommodation of masking in the office in lieu of obtaining the vaccine?

Did your employer provide the option, or accommodation, that you could continue to work remotely without being vaccinated or wearing a mask?

The fact is, Morgan & Morgan never discussed any exemptions and never offered any accommodations therefor, either in a global sense through Mr. Morgan's firm-wide emails, nor to Mr. ---- individually. Originally, remaining in work from home status was offered in advance of any mandate in April of 2021, when employees were offered an opportunity to extend their pandemic-era remote working status. Mr. ---- received an email from HR on April 13, 2021, offering for him to provide a medical note that would substantiate his obtaining approval to remain in a remote position for his job. He submitted that note from his Dr. Perry dated April 16, 2021, regarding a chronic pain condition. HR did not accept the initial note as "It does not state that your issue is effected [sic] by COVID." The prior request for medical substantiation had not required that the recommendation relate to Covid-19. However, Mr. ---- submitted more specific note from his Dr. Perry on April 20, 2021. The next day, Mr. Morgan issued a firm-wide email that suddenly denied any work from home status for any employee firm wide and declared May 3, 2021 as date for return to in-person work. Attached to this response are Mr. ----'s interactions with HR regarding his request for continued virtual work and Mr. Morgan's April 21, 2021 email.

The firm-wide email from Mr. Morgan is odd, given that after about 13 months of having the entire firm work remotely during the pandemic, and after HR had engaged in a campaign of processing requests firm-wide for employees to remain in remote status, suddenly, the cost was apparently too high to continue. "A very few people have asked to continue to work from home. I am sorry to say that will not be happening. We are not equipped to support both at home and in office work. Our business is a collaborative effort: being together and working together is essential. If it wasn't I would have had work from home before covid. If you are determined to work from home it won't be with our firm. Please let us know so we can be moving to replace you." Mr. Morgan's express statements make it clear work from home would not be tolerated at all. His personal emails with Ms. ----, as referenced above, are clear that he would not accept virtual employment status as an accommodation either.

In the same email, Mr. Morgan began his campaign for Covid-19 vaccination for all employees. This continued through September 2021, relentlessly, and more than one employee were fired expressly because they failed to get the Covid-19 vaccine. Interestingly, the HR director has lied



under oath in a sworn affidavit submitted to the FCHR that “The Firm has never fired anyone for not being vaccinated.” Her own niece was expressly fired by Mr. Morgan personally for being unvaccinated.

A firm-wide email from Mr. Morgan on May 14, 2021 declared financial and collaborative reasons for refusing any work from home requests, despite virtual status employment for the entire 8000 employee firm since March 2020 without financial duress: “For our core business that just doesn’t work or we would have done it before the pandemic.” However, in contradiction, he added that “Rent is one of our main overhead expenses....I would love to pay no rent.”

Two days later, his May 16, 2021, states: “Beginning tomorrow the vaccinated will be allowed to work with no mask....So do not feel compelled to wear a mask at work. And please respect the choices made by our coworkers.” However, the email makes no statement that those unvaccinated for Covid-19 could continue unvaccinated and masked, nor is it clear that the request for respect of choices applies to the unvaccinated or that the unvaccinated could continue working unmasked. The unvaccinated employees are simply treated as if they do not or will not exist in the work ecosystem. However, several months later, on September 28, 2021 Mr. Morgan indicates by firm-wide email that “only the unvaccinated are required to wear a mask” upon announcing he fired [an unvaccinated] paralegal who would not wear a mask. However, this is not stated in the form of an accommodation, nor was it indicated that this was in lieu of termination and an exception to the firm policy of August 4, that the firm would be fully vaccinated.

It would seem to undersigned counsel based on the facts of this matter, that Morgan & Morgan, in fact, had no accommodations for refusing the Covid-19 vaccine, including remaining in remote employment status or masking, and it merely sought individualized mendacious pretextual bases for firing employees who continued to refuse Covid-19 vaccination. The request for Mr. ---- to continue masked² also appears to be merely biding time – *approximately one week* - until the pretext for unlawful termination was in place.

Please provide any and all vaccination exemption requests, as required by §381.00317 FS, that you submitted to your employer after the Florida law became effective.

Because Morgan & Morgan HR never had any discussions with Mr. ---- regarding his asserted exemptions, Mr. ---- did not provide any written *request* by form or other writing after the passage of the new law. Since Title VII and ADA terms, like Florida’s Civil Rights Act terms, require that an employee merely *assert* their need for religious and medical accommodations, respectively, Mr. ---- did so when prompted. Moreover, the firm’s leadership, all the way to the top including Mr. Morgan, were well aware of Mr. ----’s religious faith and beliefs. (see Mr. ----’s affidavit attached at ¶¶ 4-5). Per *EEOC v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2033 (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.” Thus, according to the US Supreme Court, Morgan & Morgan had sufficient notice to have required

² The email from HR notably is one day before Florida’s Department of Health official Covid-19 Health Guideline as of February 24, 2022 issued, stating unequivocally that “Businesses are advised to no longer require facial coverings for employees, as there is no proven significant clinical benefit for facial coverings among the general population.” <https://clay.floridahealth.gov/newsroom/2022/02/covid19-guidance.html>.



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them to act in providing reasonable accommodation or at least have an interactive process in discussion with Mr. ---- regarding appropriate accommodations. As such, they had sufficient notice to present a process, including citation to and acceptance of the Florida Health Department forms, at a minimum, that would comply with Fl. Stat. §381.00317. Instead, they did nothing to address accommodations and spent time and effort in preparing a mendacious pretext for termination.

Please let me know if you have any further questions, and I'd be happy to answer them.

Respectfully submitted,

Rachel L.T. Rodriguez

Enclosures