

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

NO.:

DIVISION " \_ "

GREGG SMITH

VERSUS

TERMINIX PEST CONTROL, INC.

FILED: \_\_\_\_\_

\_\_\_\_\_  
DEPUTY CLERK

**COMPLAINT**

NOW INTO COURT, through undersigned counsel, comes Plaintiff, Gregg Smith (hereinafter "Plaintiff"), who respectfully files this Complaint against Terminix Pest Control, Inc. (hereinafter "Defendant"), presenting allegations and causes of action as follows:

**The Parties**

1. Plaintiff, Gregg Smith, is an individual of the full age of majority and a domiciliary of Louisiana.
2. Made defendant herein is Terminix Pest Control, Inc., a corporation organized under the laws of Louisiana and whose domicile is 6610 W. Main St., Houma, Louisiana, 70364.

**JURISDICTION AND VENUE**

3. This Court has federal question subject matter jurisdiction (28 U.S.C. § 1331) over Plaintiff's various claims under:
  - A. Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991 42 U.S.C. § 2000e, *et seq.*, which prohibits

discrimination based on RELIGION and RETALIATION in response to protected activity; Title VII also holds defendants liable for refusing to investigate Plaintiff's claim for a religious accommodation; and management retaliated against Plaintiff because of protected activity.

B. American with Disabilities Act ("ADA"), 42 U.S.C. § 12101 (12111 - 12117), for discrimination in employment based on disability.

C. The Emergency Use Authorization provisions of the United States Code, 21 U.S.C. §360bbb-3, *et seq.*

D. This court has supplemental jurisdiction over Plaintiff's state law claims brought pursuant to the Louisiana Employment Discrimination Law, set forth in La. R.S. 23:301, *et seq.*

4. This Court has jurisdiction over all parties because they live within this Court's jurisdictional boundaries.

5. Venue is proper in this court because the Defendant's actions being complained about herein occurred in Terrebonne Parish, which is situated within this court's jurisdiction.

#### **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

6. Plaintiff exhausted his administrative remedies as follows:

A. Plaintiff, Gregg Smith, was an employee with Terminix Pest Control, Inc., which, for all times pertinent, is an entity with more than 20 employees.

B. On March 14, 2022, Plaintiff filed a Charge of Discrimination with the EEOC against Defendant and was assigned Charge No. 461-2022-01253.

C. The EEOC investigated the following allegations: disability and religious discrimination.

D. Plaintiff alleged wrongful termination based on Plaintiff's medical disability and religious beliefs, despite Plaintiff requesting a reasonable accommodation as a result of Plaintiff's religious beliefs.

E. Plaintiff also requested reasonable accommodations under the ADA which are within the scope of the EEOC investigation and therefore within the jurisdiction of this Court.

F. Plaintiff received a Dismissal and Notice of Right To Sue letter from the EEOC on August 2, 2022, and thus, this suit is timely filed, as it is within 90 days from Claimant's receipt of the EEOC Right To Sue Letter.

### **FACTS**

7. Plaintiff was discriminated against by Defendant on the basis of his medical disability and his sincerely held religious beliefs. Specifically, on August 11, 2021, Plaintiff received an Interoffice Memo from Defendant advising "All Employees" that their continued employment with Defendant was contingent upon Plaintiff receiving "the first Covid-19 vaccination by September 15, 2021." The Interoffice Memo stated that the only exceptions included: "You have a disability verified by a physician that prevents you from taking the vaccine."

8. In response to Defendant's new requirement of continued employment (i.e., taking an Emergency Use Authorization ("EUA") Covid vaccine, which requires Informed Consent), Plaintiff informed Defendant that he had a documented history of asthma and that he could not give Informed Consent because he was afraid to take the Covid-19 vaccines due to fear of long-term adverse effects in light of his asthma. Additionally, Plaintiff's condition qualifies as a disability because he is substantially limited in a major life activity, i.e., being able to take certain medications and/or vaccines. When Plaintiff advised Defendant of his disability and fear based on

his disability, Defendant provided unscientific, anecdotal stories about why Plaintiff should take the vaccine.

9. Defendant's action to refuse to allow Plaintiff to give Informed Consent to take an Emergency Use Authorization drug, which the law requires may be administered only after obtaining Informed Consent, is not supported by the law and is directly contrary to the language of Defendant's August 11, 2021 Interoffice Memo. Instead, Defendant placed Plaintiff under duress when Defendant ignored the law and provided Plaintiff with the untenable choice of either submitting to an EUA shot without giving Informed Consent or losing his job.

10. Plaintiff also advised Defendant that his Catholic faith prevented him from getting a Covid-19 vaccine because it violates his sincerely held religious belief that he should not be injected with something derived from aborted fetal cell lines. In response, Employer simply stated, "The Pope wants you to take it."

11. Plaintiff did not get a vaccine and, thus, was fired on August 25, 2021.

12. At no point during Defendant's meeting with Plaintiff did Defendant ever state or demonstrate to Plaintiff that granting Plaintiff an accommodation would result in undue hardship to Defendant's business, probably because the accommodation would have been the exact same work conditions Plaintiff was working under since the pandemic started, i.e., wearing personal protective equipment ("PPE"), hand washing, masking, and social distancing.

13. In the 4.5 years that Plaintiff was employed with Defendant, he satisfied all work requirements and was never disciplined.

14. Throughout the Covid pandemic, Plaintiff complied with all of Defendant's policies regarding wearing personal protective equipment ("PPE"), hand washing, masking, and social distancing.

**COUNT I – VIOLATION OF EMERGENCY USE AUTHORIZATION PROVISIONS OF THE UNITED STATES CODE, 21 U.S.C. §360bbb-3, et seq.**

15. Plaintiff reiterates, re-alleges and incorporates allegations of previous paragraphs.

16. The United States Code provides that:

**subject to the provisions of this section**, the Secretary (of the Department of Health and Human Services) may authorize the introduction into interstate commerce, during the effective period of a declaration under subsection (b), of a drug, device, or biological product intended for use in an actual or potential emergency (referred to in this section as an "emergency use."

21 U.S.C. §360bbb-3(a)(1) (emphasis added).

17. For ease of reference, Plaintiff will refer to the general provisions of 21 U.S.C. §360bbb-3 as the "Emergency Use Authorization statute" or "EUA statute."

18. Part of the explicit statutory conditions for an Emergency Use Authorization under the Emergency Use Authorization statute, **the statute mandates that all individuals to whom the product approved for Emergency Use may be administered be given the option to accept or refuse administration of the product.**

19. Specifically, 21 U.S.C. §360bbb-3(e)(1)(A)(ii)(III), states:

With respect to the emergency use of an unapproved product, the Secretary, to the extent practicable given the applicable circumstances described in subsection (b)(1), shall for a person who carries out an activity for which the authorization is issued, establish such conditions on an authorization under this section as the Secretary finds necessary or appropriate to protect the public health, including the following:

...

Appropriate conditions designed to ensure that individuals to whom the product is administered are informed—

- (I) that the Secretary has authorized the emergency use of the product;
- (II) of the significant known potential benefits and risks of such use, and of the extent to which such benefits are unknown; and
- (III) **of the option to accept or refuse administration of the product**, of the consequences, if any, of refusing administration of the product, and of the alternatives to the product that are available and of their benefits and risks.

21 U.S.C. §360bbb-3(e)(1)(A)(ii)(I)-(III) (emphasis added).

20. Put simply, the Emergency Use Authorization statute provides that, **as a condition of receiving authorization for Emergency Use, all individuals to whom the product may be administered are given the right to accept or refuse administration of the product.**

21. The three COVID-19 vaccines (Janssen/Johnson & Johnson, Moderna, and Pfizer/BioNTech) available in August/September 2021 were not FDA-approved products and were only authorized for use under the Emergency Use Authorization statute and have no general approval under the United States Code. Thus, they are considered “unapproved” products under 21 U.S.C. §360bbb-3, *et seq.*

22. Because all three of the available COVID-19 vaccines are subject only to Emergency Use under the Emergency Use Authorization statute, the Emergency Use Authorization statute mandates that all individuals to whom the product may be administered, including Plaintiffs, be given the right to accept or refuse administration of the product.

23. Additionally, the Emergency Use Authorization Fact Sheets for all three COVID-19 vaccines state that it is the individual’s right to refuse administration of the vaccine.

24. By imposing its mandatory COVID-19 vaccination policy on Plaintiff and refusing to grant Plaintiff a medical exemption from such mandatory vaccination, Defendant denied Plaintiff the right to accept or refuse administration of the three then-available COVID-19 vaccines, which are subject only to Emergency Use approval under the Emergency Use Authorization statute.

25. Defendant, by denying Plaintiff the right to accept or refuse administration of the three then-available COVID-19 vaccines, violated the provisions of the Emergency Use Authorization statute.

26. Defendant, by denying Plaintiff a medical exemption and reasonable accommodation, denied Plaintiff's statutory rights under the United States Code and infringed upon the explicit protections outlined in the Emergency Use Authorization statute.

27. Defendant's Mandatory COVID-19 Vaccination Policy has caused, is causing, and will continue to cause Plaintiff damage by denying his statutory right to accept or refuse administration of the COVID-19 vaccines, which are subject only to Emergency Use under the Emergency Use Authorization statute.

28. These violations have caused Plaintiff loss of pay (front and back); loss of benefits; loss of accumulated sick pay, vacation, compensatory time, and/or paid time off; negative tax consequences (in the event of a lump sum award), including related accountant fees; attorney's fees allowed for under the ADA; emotional distress; mental, psychological and physical harm; loss of income; loss of enjoyment of life; for which defendants are liable in compensatory, punitive, exemplary, legal, equitable, nominal and all other damages that this Court deems necessary and proper.

**COUNT II – VIOLATION OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964**

29. Plaintiff reiterates, re-alleges and incorporates allegations of previous paragraphs.

30. By denying Plaintiff's request for a religious exemption, Defendant violated Plaintiff's rights under Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991 42 U.S.C. § 2000e, et seq., which prohibits discrimination and retaliation in employment based on religion.

31. Defendant's actions evidence reckless or careless disregard or indifference to Plaintiff's protected rights, thereby entitling Plaintiff to a recovery of punitive damages.

32. These violations have caused Plaintiff loss of pay (front and back); loss of benefits; loss of accumulated sick pay, vacation, compensatory time, and/or paid time off; negative tax consequences (in the event of a lump sum award), including related accountant fees; attorney's fees allowed for under the ADA; emotional distress; mental, psychological and physical harm; loss of income; loss of enjoyment of life; for which defendants are liable in compensatory, punitive, exemplary, legal, equitable, nominal and all other damages that this Court deems necessary and proper.

**COUNT III – VIOLATION OF THE AMERICANS WITH DISABILITIES ACT**

33. Plaintiff reiterates, re-alleges and incorporates allegations of previous paragraphs.

34. By committing the acts complained of herein, Defendant violated Plaintiff's rights under the ADA, 42 U.S.C. § 12101 (12111 - 12117), by discrimination in employment based on disability. The ADA prohibits discrimination and retaliation in employment based on disability but by Defendant's actions, Plaintiff suffered an adverse employment action because of his disability.



35. Defendant's actions evidence malice or reckless indifference to Plaintiff's protected rights, thereby entitling Plaintiff to a recovery of punitive damages.

36. These and other violations have caused Plaintiff loss of pay (front and back); loss of benefits; loss of accumulated sick pay, vacation, compensatory time, and/or paid time off; negative tax consequences (in the event of a lump sum award), including related accountant fees; emotional distress; mental, psychological and physical harm; loss of income; loss of enjoyment of life; for which defendants are liable in compensatory, punitive, exemplary, legal, equitable, nominal and all other damages that this Court deems necessary and proper.

#### **COUNT IV - RETALIATION**

37. Plaintiff reiterates, re-alleges and incorporates allegations of previous paragraphs.

38. Defendant's retaliation against Plaintiff was immediate and unwavering; as soon as Plaintiff stated he could not give Informed Consent due to his medical disability and that his sincerely held personal beliefs prevented him from taking any of the Covid-19 vaccines, Defendant advised Plaintiff that he would be terminated, which actually occurred on September 14, 2021.

#### **COUNT V – VIOLATION OF LOUISIANA REVISED STATUTES 23:301, ET SEQ**

39. Plaintiff reiterates, re-alleges and incorporates allegations of previous paragraphs.

40. Defendant's actions described herein violate the Louisiana Employment Discrimination Law, set forth in La. R.S. 23:301, *et seq.* ("LEDL"), because of Defendant's discrimination against Plaintiff in his employment based on Plaintiff's disability. The LEDL prohibits discrimination and retaliation in employment based on disability, but by Defendant's actions, Plaintiff suffered an adverse employment action because of his disability.

41. Specifically, Defendant's actions described hereinabove violate the LEDL, which provides, in pertinent part, that an employer shall not engage in any of the following practices:

(1) Fail or refuse to hire, promote, or reasonably accommodate an otherwise qualified disabled person on the basis of a disability, when it is unrelated to the individual's ability, with reasonable accommodation, to perform the duties of a particular job or position.

(2) Discharge or otherwise discriminate against an otherwise qualified disabled person with respect to compensation or the terms, conditions, or privileges of employment on the basis of a disability when it is unrelated to the individual's ability to perform the duties of a particular job or position.

\* \* \*

(7) Discharge or take other discriminatory action against an otherwise qualified disabled person when adaptive devices or aids may need to be utilized to enable that individual, at the individual's own expense, to perform the specific requirements of the job.

42. As a result of Defendant's violation of the LEDL, Plaintiff seeks compensatory damages, back pay, benefits, front pay, reasonable attorney fees, and court costs and all other damages that this Court deems necessary and proper.

**DEMAND FOR JURY TRIAL**

43. Plaintiff is entitled to, and hereby requests, a trial by jury.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, Gregg Smith, prays that this Complaint be filed and served on Defendant, Terminix Pest Control, Inc., and, after due proceedings are had, there be judgment in Plaintiff's favor and against Defendant, Terminix Pest Control, Inc., for compensatory, punitive, exemplary, general, legal, and equitable damages. Plaintiff further prays for relief under all relevant statutes, and for costs, attorney's fees, expert fees, and judicial interest from the date of judicial demand, in obtaining the relief and damages against Defendant, and for all other damages and relief, equitable and legal, that this Court deems necessary and proper.

**SCHEXNAYDRE LAW FIRM**

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**Plaintiff will issue a Notice of Lawsuit  
and Request for Waiver of Service and  
Citation to Defendant**