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David W. Stanton, Executive Officer/Clerk of Court
By: R. Mendoza, Deputy

Superior Court of California
County of Los Angeles
Stanley Mosk Courthouse
Department 39

INGO RADEMACHER,

Plaintiff,

v.

AMERICAN BROADCASTING
COMPANIES, INC.,

Defendant.

Case No.: 21STCV45383

Hearing Date: April 5, 2023

ORDER

- 1. GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
- 2. DENYING PLAINTIFF'S MOTION FOR SUMMARY ADJUDICATION**

I.

INTRODUCTION

Plaintiff Ingo Rademacher ("Plaintiff") filed this action against the American Broadcasting Companies, Inc. ("ABC" or "Defendant"). Plaintiff is an actor who was on the soap opera "General Hospital" for approximately 25 years. Defendant implemented a policy requiring employees, including actors on television shows, to get a COVID-19 vaccination unless they received an exemption for medical or religious reasons. Plaintiff requested a religious exemption, but Defendant denied the request and then terminated Plaintiff after he refused to get vaccinated. Based upon the foregoing, Plaintiff asserts the following causes of action in the operative second amended complaint: (1) Violation of the right to privacy under Article I, section 1 of the California Constitution; (2) Religious discrimination under the

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1 California Fair Employment and Housing Act, Government Code sections 12900, *et seq.*
2 (“FEHA”); (3) Medical condition discrimination under FEHA; (4) Retaliation under FEHA;
3 (5) Wrongful termination under FEHA; and (6) Breach of an employment contract.

4 Now, Defendant moves for summary judgment or, in the alternative, summary
5 adjudication of each cause of action. Plaintiff moves for summary adjudication of the second
6 cause of action (religious discrimination under FEHA) and the eleventh affirmative defense
7 (any accommodation was unreasonable, constituted an undue hardship, and/or increased the
8 health and safety risks associated with the pandemic). Following a hearing, the court took the
9 motions under submission. Now, the court grants Defendant’s motion for summary judgment
10 and denies Plaintiff’s motion for summary adjudication.

11 **II.**

12 **LEGAL STANDARD**

13 “[T]he party moving for summary judgment bears the burden of persuasion that there is
14 no triable issue of material fact and that he is entitled to judgment as a matter of law[.] There
15 is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of
16 fact to find the underlying fact in favor of the party opposing the motion in accordance with the
17 applicable standard of proof.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826,
18 850.) “[T]he party moving for summary judgment bears an initial burden of production to
19 make a prima facie showing of the nonexistence of any triable issue of material fact; if he
20 carries his burden of production, he causes a shift, and the opposing party is then subjected to a
21 burden of production of his own to make a prima facie showing of the existence of a triable
22 issue of material fact.” (*Ibid.*) “A party may move for summary adjudication as to one or
23 more causes of action within an action, one or more affirmative defenses, one or more claims
24 for damages, or one or more issues of duty, if the party contends that the cause of action has no
25 merit, that there is no affirmative defense to the cause of action, that there is no merit to an
26 affirmative defense as to any cause of action, that there is no merit to a claim for damages, as
27 specified in Section 3294 of the Civil Code, or that one or more defendants either owed or did
28 not owe a duty to the plaintiff or plaintiffs.” (Code Civ. Proc., § 437c, subd. (f)(1).)

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III.
DISCUSSION

A. First Cause of Action

Plaintiff's first cause of action alleges that Defendant violated his right to privacy under Article I, section 1 of the California Constitution and seeks a judicial determination that Defendant's policy is unconstitutional both facially and as applied to Plaintiff. "[A]rticle I, section 1 of the California Constitution protects Californians against invasions of privacy by nongovernmental as well as governmental parties." (*Shulman v. Group W Productions, Inc.* (1998) 18 Cal.4th 200, 227.) This includes private sector employers. (See, e.g., *Semore v. Pool* (1990) 217 Cal.App.3d 1087, 1092.)

A facial challenge to the constitutional validity of a statute or policy considers only the text itself, not its application to the particular circumstances of an individual. (See *Sturgeon v. Bratton* (2009) 174 Cal.App.4th 1407, 1418.) Essentially, Plaintiff argues that no private employer may require a COVID-19 vaccination as a condition of employment. There is no fundamental constitutional right to work for, or to have continued employment with, a particular public or private sector employer. (See, e.g., *Graham v. Kirkwood Meadows Pub. Util. District* (1994) 21 Cal.App.4th 1631, 1643-1644.) Vaccine mandates have been upheld in the context of schools, notwithstanding that public education, unlike employment, is a fundamental right. (See, e.g., *Love v. State Dept. of Ed.* (2018) 29 Cal.App.5th 980, 993-995.) Therefore, Defendant's policy is not unconstitutional on its face.

An "as applied" challenge relates to the manner or circumstances in which the statute or policy has been applied to an individual or a class of similarly-situated individuals. (See *Sturgeon, supra*, 174 Cal.App.4th at pp. 1418-1419.) In order to assert such a claim, Plaintiff must establish three elements. First, Plaintiff must establish "a legally protected privacy interest." (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 39-40.) Second, Plaintiff must establish a reasonable expectation of privacy under the circumstances. (*Id.*, p. 40.) Plaintiff must show Defendant "penetrated some zone of physical or sensory privacy surrounding, or obtained unwanted access to data about, the plaintiff." (*Shulman, supra*, 18

1 Cal.4th at p. 232.) Third, Plaintiff must establish “conduct by defendant constituting a serious
2 invasion of privacy.” (*Hill*, *Supra*, 7 Cal.4th at p. 40.) Plaintiff must demonstrate that
3 Defendant’s actions were conducted “in a manner highly offensive to a reasonable person.”
4 (*Schulman*, *supra*, 18 Cal.4th at p. 231.)

5 Plaintiff predicates his claim upon “a legally protected privacy interest in his bodily
6 integrity and private medical information.” (Second Amended Complaint, ¶ 48.) The court
7 will address each theory separately.

8 1. Plaintiff waived any expectation of privacy in his medical information

9 To the extent Plaintiff asserts a privacy interest in his vaccination status, the claim fails.
10 The undisputed evidence demonstrates that Plaintiff voluntarily and repeatedly disclosed that
11 he is opposed to vaccines and has not been vaccinated against COVID-19. Moreover,
12 Plaintiff’s union agreed to Defendant’s policy, including the right to request proof of
13 vaccination status. (Declaration of Sean Quinn, ¶ 7 & Exh. A.) This defeats Plaintiff’s claim
14 as a matter of law. “[T]he plaintiff in an invasion of privacy case must have conducted himself
15 or herself in a manner consistent with an actual expectation of privacy” (*Hill*, *supra*, 7
16 Cal.4th at p. 26, citations and internal quotations omitted.) Plaintiff failed to do so.

17 2. Defendant’s policy did not infringe upon Plaintiff’s bodily integrity

18 Plaintiff also predicates his claim on a right to bodily integrity and freedom from
19 unwanted medical treatment as a condition of employment. As discussed, Plaintiff’s union
20 agreed to Defendant’s vaccine policy on behalf of its members. (Declaration of Sean Quinn,
21 ¶ 7 & Exh. A.) A union is empowered to bargain collectively with the employer on behalf of
22 all employees in the bargaining unit over the conditions of employment. (See *Communications*
23 *Workers of America v. Beck*, 487 U.S. 735, 739 (1988), citing 29 U.S.C. § 159, subd. (a).)
24 Regardless, Defendant’s policy did not violate Plaintiff’s constitutional rights. The California
25 Constitution provides that all individuals have a right to privacy, which “protects a larger zone
26 in the area of financial and personal affairs than the federal right.” (*Wilson v. California*
27 *Health Facilities Com.* (1980) 110 Cal.App.3d 317, 324.) “[T]he right to retain personal
28 control over the integrity of one’s body is protected under the right to privacy.” (*Love*, *supra*,

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1 29 Cal.App.5th at p. 993, citations omitted.) This is not an absolute right. (*Ibid.*) It must be
2 balanced against other important interests and may be outweighed by supervening public
3 concerns. (*Ibid.*)

4 Because employment with a private sector employer does not implicate a fundamental
5 right, Defendant need only demonstrate that there was a rational basis for its policy. (See
6 *Coshov v. City of Escondido* (2005) 132 Cal.App.4th 687, 711-712; see also *Sheehan v. San*
7 *Francisco 49ers, Ltd.* (2009) 45 Cal.4th 992, 1002; *Burcham v. City of Los Angeles*, 562
8 F.Supp.3d 694, 706 (C.D. Cal. 2022).) Defendant advances sufficient evidence that during the
9 relevant time period, unvaccinated workers who could not wear masks or maintain social
10 distancing threatened the health and safety of others. (Defendant's Separate Statement, ¶¶ 30,
11 33-44, 92-94.) Defendant also advances sufficient evidence that testing itself was not
12 sufficient to address the health and safety concerns associated with the global pandemic during
13 the relevant time period. (*Id.*, ¶ 43.)

14 The court has considered Plaintiff's remaining arguments and finds that none has merit.
15 Therefore, the court grants Defendant's motion for summary adjudication of the first cause of
16 action. The court's decision is limited to employees like Plaintiff, who could not wear a mask
17 or maintain social distancing from others, given his role as an actor, during the relevant time
18 period. The court expresses no opinion whether there is a rational basis for Defendant's policy
19 as applied to employees who could perform their jobs while wearing masks and maintaining
20 social distancing from others¹

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24 ¹ At the hearing, Plaintiff's counsel suggested that the court defer a decision on this
25 issue until the District Court of Appeal, Second District, Division Seven, decides the case
26 *Firefighters4Freedom v. City of Los Angeles*, Case Number B320569. The court does not
27 believe it is necessary because Plaintiff had different job duties and different working
28 conditions firefighters, resulting in a different analysis. Plaintiff may file a motion for
reconsideration based upon the District Court of Appeal's opinion if appropriate under Code of
Civil Procedure section 1008.

1 B. Second Cause of Action

2 Plaintiff's second cause of action alleges that Defendant discriminated against him on
3 the basis of religion in violation of FEHA. The elements of this cause of action are as follows:

4 (1) Plaintiff had a bona fide religious belief; (2) The employer was aware of that belief; and

5 (3) The belief conflicted with an employment requirement. (See *Friedman v. Southern Cal.*

6 *Permanente Medical Group* (2002) 102 Cal.App.4th 39, 45.) Once the employee establishes a

7 prima facie case, the burden shifts to the employer to establish that "it initiated good faith

8 efforts to accommodate or no accommodation was possible without producing undue

9 hardship." (*Soldinger v. Northwest Airlines, Inc.* (1996) 51 Cal.App.4th 345, 370.) Defendant

10 argues that Plaintiff did not have a bona fide religious belief, which Plaintiff disputes. The

11 court need not resolve this issue and grants summary adjudication on two alternative grounds.

12 1. Plaintiff refused to cooperate with the interactive process

13 First, the court grants summary adjudication based upon the fifth issue in the notice of

14 motion: "Rademacher refused to permit ABC to reasonably inquire into the basis of his

15 assertion that he was entitled to a religious exemption from the vaccination policy" When

16 considering a request for accommodation, both the employer and employee have the obligation

17 "to keep communications open" and neither has "a right to obstruct the process." (*Scotch v.*

18 *Art Institute of Cal.* (2009) 173 Cal.App.4th 986, 1014, citing *Jensen v. Wells Fargo Bank*

19 (2002) 85 Cal.App.4th 245, 266.) "Each party must participate in good faith, undertake

20 reasonable efforts to communicate its concerns, and make available to the other information

21 which is available, or more accessible, to one party. Liability hinges on the objective

22 circumstances surrounding the parties' breakdown in communication, and responsibility for the

23 breakdown lies with the party who fails to participate in good faith." (*Ibid.*, citing *Gelfo v.*

24 *Lockheed Martin Corp.* (2006) 140 Cal.App.4th 34, 62, fn. 22.)

25 Plaintiff takes the position that Defendant was not entitled to inquire into the basis of

26 his religious beliefs. Plaintiff is incorrect. An employee seeking a religious accommodation

27 must provide information to support the religious nature and sincerity of the belief. (See

28 *Adeyeye v. Heartland Sweeteners, LLC*, 721 F.3d 444, 451 (7th Cir. 2013) ("If the managers

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1 who considered the request: had questions about whether the request was religious, nothing
2 would have prevented them from asking [the employee about] . . . the nature of his request[.]”);
3 see also *EEOC v. Papin Enterprises, Inc.*, 2009 WL 2256023, at *4 fn. 11 (M.D. Fla. July 28,
4 2009) (“[A]s a matter of common sense an employer must be permitted some inquiry into the
5 purported beliefs of an employee before the duty to accommodate arises.”); *Bushouse v. Local*
6 *Union 2209, United Automobile, Aerospace & Agricultural Implement Workers of America*,
7 164 F.Supp.2d 1066, 1075-76 (N.D. Ind. 2001) (same).) The law on FEHA recognizes that an
8 employer is entitled to inquire about the need for accommodation when the basis is not
9 obvious. For example, “[w]hen a disability is not obvious, the employee must submit
10 reasonable medical documentation confirm[ing] [its] existence.” (*Kao v. University of San*
11 *Francisco* (2014) 229 Cal.App.4th 437, 450, internal quotations omitted; see also *King v.*
12 *United Parcel Service, Inc.* (2007) 152 Cal.App.4th 426, 444.) Based upon the foregoing, the
13 court finds that Defendant was entitled to inquire about Plaintiff’s religious beliefs and how
14 they relate to his request for an exemption under the policy.

15 Plaintiff did not cooperate sufficiently with this process. (See Plaintiff’s Response to
16 Defendant’s Separate Statement, ¶¶ 45-72.) Plaintiff requested an exemption via email on
17 October 11, 2021. (*Id.*, ¶ 47.) On October 12, 2021, Erin Nguyen responded and asked
18 Plaintiff if he was available to “discuss” the issue the next day. (*Id.*, ¶ 48.) Plaintiff requested
19 that the conversation occur in writing. (*Id.*, ¶ 49.) Nguyen explained that “[t]he
20 accommodation review involves an interactive process/dialogue to allow for a two-way
21 exchange of information, questions, etc.” (*Id.*, ¶ 52.) Nguyen explained that “[w]e are not able
22 to engage in a truly interactive conversation via email.” (*Ibid.*) On October 18, 2021, Plaintiff
23 sent an email stating “there is no basis to question” his beliefs, and that “[e]ven asking
24 questions to test the sincerity of [his] belief violates [his] right and constitutes an invasion of
25 privacy.” (*Id.*, ¶ 53.) Plaintiff stated: “Engaging in a debate over my sectarian principals is a
26 violation of the civil rights act [sic] of 1964 and discrimination on the basis of religion.”
27 (*Ibid.*) Plaintiff requested that any questions be sent in writing. (*Id.*, ¶ 54.) On October 19,
28 2021, Plaintiff reiterated his view that “the mere act of questioning the sincerity of [his]

1 religious beliefs violates [his] rights.” (*Id.*, ¶ 55.) Plaintiff further stated: “If you are insisting
2 to have a two-way conversation, I’d like it to occur in person and with my attorney present.”
3 (*Ibid.*) Nguyen denied the request for counsel to participate in the interactive process. (*Id.*,
4 ¶ 56.) Plaintiff again asked Nguyen to provide the questions in writing. (*Id.*, ¶ 57.) Finally,
5 Plaintiff agreed to speak with Nguyen. (*Id.*, ¶ 58.)

6 During the interactive process, Plaintiff answered only certain questions. (*Id.*, ¶¶ 61-
7 69.) According to Nguyen, Plaintiff “refus[ed] to engage with [her] on the substance of his
8 claimed religious/spiritual believes [sic]” (Declaration of Erin Nguyen, ¶ 16.) Plaintiff
9 admits that Nguyen’s notes were an “accurate summary” of their conversation. (See Plaintiff’s
10 Response to Defendant’s Separate Statement, ¶ 60.) Plaintiff also concedes that he did not
11 provide all requested information to Nguyen:

12 Q: You didn’t withhold any information relating to your religious beliefs from ABC
13 in connection with your application for a religious exemption; right?

14 A: I believe that certain questions were a violation of my civil rights.

15 Q: So, the answer is, yes, you did hold back some information?

16 A: I believe that some of the questions were a violation of my civil rights.

17 Q: All right. And, therefore, you didn’t answer them?

18 A: Yeah. That would be correct.

19 Q: All right. So there was information that you thought related to your religious
20 exemption that you didn’t provide to them.

21 A: Violation of my civil rights. Again, that’s what -- I provided the information that
22 I thought would be enough without violating my civil rights.

23 Q: Okay. So there was information that you didn’t provide to them and you didn’t
24 provide it to them because you thought providing that information would violate
25 your civil rights.

26 A: Yes.

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1 Q: And, therefore, there was information that you didn't provide to them. But the
2 reason you didn't provide it was your belief that it violated your civil rights to do
so; is that right?

3 A: Yes.

4 (Defendant's Appendix of Evidence in Support of Defendant's Motion for Summary Judgment,
5 Exh. #11, pp. 130:23-132:13.)

6 Based upon this record, the court finds that Plaintiff did not cooperate sufficiently with
7 the interactive process, which entitles Defendant to summary adjudication of this cause of
8 action. An employee cannot refuse to provide information that is necessary to evaluate a
9 request for accommodation and then sue when the request is denied. (See, e.g., *Stewart v.*
10 *Happy Herman's Cheshire Bridge, Inc.*, 117 F.3d 1278, 1287 (11th Cir. 1997).) Also, because
11 Plaintiff refused to provide necessary information, he cannot establish a triable issue on the
12 second cause of action, that Defendant was aware he held a bona fide religious belief. Simply,
13 if an employee refuses to answer questions during the interactive process, the employer cannot
14 know whether the employee had a genuine religious belief.

15 In an effort to create a triable issue and prevail on his own motion for summary
16 adjudication, Plaintiff argues that Erin Nguyen testified that she had no reason to question the
17 sincerity of Plaintiff's religious beliefs. Plaintiff takes this testimony out-of-context, omitting
18 the relevant date. Nguyen testified only that she had no reason to question Plaintiff's beliefs
19 based upon his initial email to her:

20 Q: Did you have any reason to doubt the sincerity of [Plaintiff's] beliefs as of the
21 date you sent this e-mail October 12, 2021?

22 A: No.

23 (Plaintiff's Appendix of Evidence in Opposition to Defendant's Motion for Summary Judgment,
24 pp. 1079-1080) Plaintiff's argument ignores all of the evidence after October 12, 2021, that he
25 refused to participate in the interactive process and answer Nguyen's questions in a candid and
26 forthright manner, causing her to deny his request.

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1 2. No reasonable accommodation was possible given Plaintiff's job duties

2 Second, in the alternative, Defendant establishes that it could not reasonably
3 accommodate Plaintiff's status as an unvaccinated actor on "General Hospital." Plaintiff
4 concedes the following facts: (1) Plaintiff interacts with other actors on stage when performing
5 the story line; (2) Acting requires Plaintiff to "get very close to other actors;" (3) ABC did not
6 write masking into the storyline of General Hospital; (4) Plaintiff could not have acted on
7 General Hospital while wearing a mask; and (5) Plaintiff would be in close proximity to others
8 between the ages of 12 and 65 while acting on General Hospital. (Plaintiff's Response to
9 Defendant's Separate Statement, ¶ 92.) This is consistent with Defendant's evidence that
10 "masking was not possible for actors." (Declaration of Rachel Hutter, ¶ 14(b).) Defendant
11 advances sufficient evidence that unvaccinated workers who could not wear masks or maintain
12 social distancing threatened the health and safety of others during the relevant time period.
13 (Defendant's Separate Statement, ¶¶ 30, 33-44, 92-94.) Defendant also advances sufficient
14 evidence that testing by itself was not sufficient to address the health and safety concerns
15 associated with the global pandemic during the relevant time period. (*Id.*, ¶ 43.) Based upon
16 the foregoing, the court finds that Plaintiff's request for accommodation could not have been
17 accommodated, given his working conditions, which prevented masking and social distancing.

18 Plaintiff argues that Defendant did not consider "reasonable alternative options" for
19 accommodating his beliefs. The record is unclear whether Plaintiff suggested any alternative
20 accommodations when he requested an exemption from the COVID-19 policy. (See Plaintiff's
21 Separate Statement in Support of Plaintiff's Motion for Summary Adjudication,
22 ¶¶ 7-13.) Regardless, as discussed, Defendant could not have accommodated Plaintiff during
23 the relevant time period, given his role and working conditions. Plaintiff argues to the contrary,
24 because "ABC/Disney accommodated some people who expressed religious objections to the
25 Covid vaccine policy." (Plaintiff's Memorandum of Points & Authorities in Opposition to
26 Defendant's Motion for Summary Judgment, p. 18:1-2.) Plaintiff cites the deposition of Erin
27 Nguyen, in which she testified that Disney had granted between 100 and 150 exemptions for
28 religious reasons in total. (See Plaintiff's Appendix of Evidence in Opposition to Defendant's

1 Motion for Summary Judgment, pp. 1028-1029.) However, Plaintiff provides no evidence
2 demonstrating that those employees had similar job duties or working environments. In other
3 words, Plaintiff advances no evidence that Defendant was able to accommodate another actor
4 on a television show. Nor does Plaintiff advance evidence that those who received exemptions
5 were not required to follow other COVID-19 protocols—which he could not have followed
6 given his job—like working in isolation, attending meetings remotely, wearing masks, and
7 social distancing.

8 Plaintiff argues that he was terminated based upon his political beliefs. FEHA prohibits
9 termination of employment based upon “race, religious creed, color, national origin, ancestry,
10 physical disability, mental disability, reproductive health decisionmaking, medical condition,
11 generic information, marital status, sex, gender, gender identity, gender expression, age, sexual
12 orientation, or veteran or military status” (Gov. Code, § 12940, subd. (a).) FEHA does not
13 extend to political beliefs. Rather, Plaintiff’s argument forms the basis of his fifth and sixth
14 causes of action, which the court will address separately. Based upon the foregoing, the court
15 grants Defendant’s motion for summary adjudication of the second cause of action.

16 C. Third Cause of Action

17 Plaintiff’s third cause of action is medical condition discrimination under FEHA. It is
18 unlawful under FEHA to terminate a person’s employment based upon a “physical disability,
19 mental disability, [or] medical condition,” among others. (Gov. Code, § 12940.) Plaintiff
20 predicates his claim upon having “a physical/medical condition,” viz., “being unvaccinated.”
21 (Plaintiff’s Response to Defendant’s Separate Statement, ¶ 95; see also Second Amended
22 Complaint, ¶ 64.) This is not a “medical condition” under FEHA. The term “medical
23 condition” is narrowly defined as follows: (1) “Any health impairment related to or associated
24 with a diagnosis of cancer or a record or history of cancer,” or (2) “Genetic characteristics.”
25 (Gov. Code, § 12926, subd. (i).)

26 Plaintiff attempts to characterize his status of “being unvaccinated” as a disability,
27 arguing that a disability is defined as a “physical or mental impairment,” which includes “an
28 immune condition.” (See Plaintiff’s Memorandum of Points and Authorities in Opposition to

1 Defendant's Motion for Summary Judgment, p. 19:6-7.) Plaintiff is incorrect. In fact, a
2 physical disability is a "physiological disease, disorder, condition, cosmetic disfigurement, or
3 anatomical loss that . . . [a]ffects one or more . . . body systems . . . [and] [l]imits a major life
4 activity." (Gov. Code, § 12926, subds. (m)(1).) Plaintiff's decision not to receive a COVID-19
5 vaccination does not fall within this definition.

6 Plaintiff argues that he was perceived as having a disability and was terminated as a
7 result of this perception. Plaintiff raised this issue in his complaint to the Department of Fair
8 Employment and Housing ("DFEH"), which is a prerequisite to filing a civil action on this
9 ground. Regardless, there is no evidence that Defendant perceived Plaintiff as having an
10 autoimmune disorder. There is no dispute that Defendant's policy applied widely to all
11 employees, not just Plaintiff. Based upon the foregoing, the court grants Defendant's motion
12 for summary adjudication of the third cause of action.

13 D. Fourth Cause of Action

14 Plaintiff's fourth cause of action is for retaliation in violation of FEHA. This cause of
15 action is derivative of the second cause of action. The court grants Defendant's motion for
16 summary adjudication for the same reasons.

17 E. Fifth Cause of Action

18 Plaintiff's fifth cause of action is for wrongful termination in violation of public policy.
19 Plaintiff alleges that Defendant terminated him for "asserting his constitutional rights, including
20 his right to religious freedom and bodily integrity/autonomy, and his statutory rights, including
21 rights protected by the FEHA." (Second Amended Complaint, ¶ 74.) This theory is derivative
22 of the first, second, and third causes of action. Although Code of Civil Procedure section 437c,
23 subdivision (f) precludes the court from granting summary adjudication unless it resolves an
24 entire cause of action, where separate causes of action are comingled as one, the court may
25 grant summary adjudication of the individual theories. (See *Dominguez v. Washington Mutual*
26 *Bank* (2008) 168 Cal.App.4th 714, 727, citing *Lilienthal & Fowler v. Superior Court* (1993) 12
27 Cal.App.4th 1848, 1854-1855.)

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1 Plaintiff also alleges that “ABC also fired [him] for expressing political and social views
2 that it disagreed with and that it wanted to discourage its employees from taking.” (*Id.*, ¶ 74.)
3 Plaintiff predicates this theory on having disclosed on social media that he voted for Donald
4 Trump; he believed Donald Trump had performed well as President; and he opposed vaccine
5 mandates. The elements of a claim for wrongful termination in violation of public policy are as
6 follows: (1) There was an employer-employee relationship; (2) The employer terminated the
7 plaintiff’s employment; (3) The termination was substantially motivated by a violation of public
8 policy; and (4) The discharge caused the plaintiff harm. (*Haney v. Aramark Uniform Services,*
9 *Inc.* (2004) 121 Cal.App.4th 623, 641.)

10 In order to assert a cause of action for wrongful termination in violation of public policy,
11 Plaintiff must identify a violation of “constitutional, statutory, or regulatory provisions.”
12 (*Jersey v. John Muir Medical Center* (2002) 97 Cal.App.4th 814, 821, citations omitted).
13 Plaintiff predicates this cause of action upon alleged violations of Labor Code sections 1101 and
14 1102. Labor Code section 1101 prohibits employers from making, adopting, or enforcing any
15 “rule, regulation, or policy” that prohibits or prevents employees from engaging or participating
16 in political activity, or controlling or directing employees’ political activities or affiliations.
17 (Lab. Code, § 1101.) There is no evidence that Defendant implemented its COVID-19 policy in
18 order to curtail employees’ political activities, and Plaintiff identifies no other rule, regulation,
19 or policy at issue.

20 To the extent Plaintiff relies on Labor Code section 1102, there is no triable issue.
21 Labor Code section 1102 prohibits an employer from coercing or influencing employees’
22 political activities through threat of discharge or loss of employment. (Lab. Code, § 1102.) In
23 evaluating claims for termination in violation of public policy, the court follows the burden
24 shifting analysis of *McDonnell Douglas Corporation v. Green*. (See *Loggins v. Kaiser*
25 *Permanente Internat.* (2007) 151 Cal.App.4th 1102, 1108-1109.) First, Plaintiff must show that
26 he engaged in protected activity; Defendant terminated him; and there was a causal link
27 between the protected activity and the employer’s action. (*Id.*, p. 1109.) Then, the burden shifts
28 to Defendant to provide evidence that there was “a legitimate, nonretaliatory reason” for the

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1 termination. (*Ibid.*) Then, Plaintiff must provide “substantial responsive evidence” that
2 Defendant’s reasons were untrue or pretextual. (*Ibid.*)

3 Assuming Plaintiff satisfied his initial burden, Defendant advances evidence that he was
4 terminated as a natural consequence of not getting a COVID-19 vaccination. Defendant relies
5 on evidence that Erin Nguyen was the one who made the decision to deny Plaintiff’s request for
6 a religious exemption. In her declaration, Nguyen states: “I was the individual who determined
7 that [Plaintiff] did not qualify for a religious exemption to the Covid-19 Vaccine Mandate”
8 (Declaration of Erin Nguyen, ¶ 18.) Nguyen informed Plaintiff of her decision and “extend[ed]
9 another opportunity and provide[d] additional time (through November 5, 2021) to [Plaintiff] to
10 become vaccinated so that he could satisfy the conditions for continued employment on General
11 Hospital.” (*Id.*, ¶ 17.) Plaintiff refused to do so, stating that he would not get vaccinated “by
12 November 5 or any time after that.” (*Ibid.*) Therefore, termination was automatic under the
13 policy.

14 Defendant relies on evidence that Plaintiff’s political views played no role in Nguyen’s
15 decision, which necessarily led to his termination under the policy. Nguyen states that
16 “[Plaintiff’s] political views did not play any role whatsoever in [her] decision.” (*Id.*, ¶ 18.)
17 Nguyen states that she “was unaware of his political views” and “never had a discussion with
18 [Plaintiff] concerning his political views.” (*Ibid.*) Nguyen states that she “had never viewed or
19 accessed any social media posts made by [Plaintiff] on Instagram, Twitter, or any other social
20 media platform.” (*Id.*, ¶ 19.) Nguyen states that she became aware of Plaintiff’s social media
21 posts only after she denied his request for an exemption. (*Ibid.*)

22 Defendant relies on evidence that Nguyen did not speak to anyone on the creative side
23 of the business in deciding to deny Plaintiff’s request for a religious exemption. At the time of
24 her meeting with Plaintiff, he informed her that he had been written out of the show, and
25 Nguyen had been unaware of that issue. (*Id.*, ¶ 20.) Nguyen states: “The decision by creative
26 executives on General Hospital to write [Plaintiff’s] role out of the show was never
27 communicated to me by anyone responsible for General Hospital prior to the time I made my
28 decision on [Plaintiff’s] religious accommodation request and played no part whatsoever in my

1 decision to deny it.” (*Ibid.*) Nguyen also states: “I never discussed the substance of [Plaintiff’s]
2 religious exemption request with either Mr. Nuzzi or Mr. Valentini or with any other person
3 responsible for the content or casting decision on General Hospital. Aside from providing a few
4 status updates regarding the timing of my decision, I never had any conversation with Mr.
5 Nuzzi or Mr. Valentini regarding [Plaintiff’s] request.” (*Id.*, ¶ 21.)

6 This evidence is sufficient to satisfy Defendant’s burden, shifting the burden to Plaintiff
7 to establish that Defendant’s stated reason for terminating him was false. Plaintiff fails to do so.
8 Some of Plaintiff’s evidence lacks temporal proximity. For example, Plaintiff relies on
9 evidence that on October 31, 2019, Plaintiff told General Hospital’s producer, Frank
10 Valentini—who allegedly is “a liberal and liked Joe Biden”—that he (Plaintiff) “liked Trump
11 over Hilary.” (Declaration of Ingo Rademacher, ¶ 16 & Exh. F.) Plaintiff also expressed his
12 support for President Trump generally in “late 2020 and early 2021.” (*Id.*, ¶ 16.) However,
13 Plaintiff was not terminated until December 2021, and only after the COVID-19 vaccination
14 policy had been implemented.

15 Plaintiff relies on a text message among two executives in which one sent a text message
16 of an image shared by “Ingo” of a “No Vaccine Passport Rally.” (Plaintiff’s Appendix of
17 Evidence in Opposition to Defendant’s Motion for Summary Judgment, p. 840.) The recipient
18 texted: “Ready for a recast!” (*Ibid.*) The sender then texted: “Yup.” (*Ibid.*) Plaintiff also relies
19 on texts in which Defendant’s executives called him an “ignorant racist” and “nuts.” (Plaintiff’s
20 Appendix of Evidence in Opposition to Defendant’s Motion for Summary Judgment, pp. 855,
21 875.) One of Defendant’s executives called him “an idiot.” (See Second Amended Complaint,
22 Exh. C.) There is no evidence that any of the participants played any role in Nguyen’s decision
23 to deny Plaintiff’s request for a religious exemption or the termination that necessarily flowed
24 from his violation of the COVID-19 policy.

25 Plaintiff relies on an email chain in September 2021, suggesting that Defendant was
26 planning to terminate him independent of his refusal to get a COVID-19 vaccination. A senior
27 production manager sent an email on September 2, 2021, discussing the assumptions for the
28 Fiscal Year 2022 budget. (See Plaintiff’s Appendix of Evidence in Opposition to Defendant’s

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1 Motion for Summary Judgment, p. 761.) The email stated that Plaintiff's contract would end on
2 June 19, 2021 (which appears to have been a typographical error, *i.e.*, 2021 instead of 2022).
3 (*Ibid.*) The sender stated that Plaintiff "is not being picked up" after his contract expires.
4 (*Ibid.*) Someone responded that "we have a notice date of 11/5/21 for [Plaintiff]" and inquired
5 "Why can't we drop him then? He may not be able to work if he refuses to get fully vaccinated
6 any way." (Plaintiff's Appendix of Evidence in Opposition to Defendant's Motion for
7 Summary Judgment, p. 761.) The senior production manager responded: "I worry with the
8 #fireIngo we might be sued if we drop him in November but that was my initial intention -to let
9 him go in November." (*Ibid.*)

10 This evidence does not call into question Defendant's reason for terminating Plaintiff.
11 Again, whether those on the creative side had decided not to renew Plaintiff's contract does not
12 give rise to a triable issue—even if their decision was based upon impermissible factors—
13 because there is no evidence those same people played any role in Nguyen's decision to deny
14 Plaintiff's request for a religious exemption. In other words, there is no evidence that Plaintiff's
15 termination was anything other than a necessary consequence of his refusal to get vaccinated
16 under a company-wide policy that applied to all employees. In fact, the email demonstrates that
17 the decision not to renew Plaintiff's contract was separate and apart from termination under the
18 vaccine policy. The email reflects that the creative side was discussing non-renewal of
19 Plaintiff's contract when someone pointed out that he may get terminated anyway by the
20 corporate side for failing to get vaccinated.

21 The court notes that when Nguyen informed Plaintiff of her decision, she "extend[ed]
22 another opportunity and provide[d] additional time (through November 5, 2021) to [Plaintiff] to
23 become vaccinated so that he could satisfy the conditions for continued employment on General
24 Hospital." (Declaration of Erin Nguyen, ¶ 17.) Plaintiff concedes that Defendant "gave him
25 until December 5, 2021, to get the Covid shot." (Plaintiff's Separate Statement in Support of
26 Plaintiff's Motion for Summary Adjudication, ¶ 11.) This offer was made notwithstanding
27 Plaintiff's political beliefs. Plaintiff advances no evidence that this was a false offer, further
28 undermining his claim that he was terminated for reasons other than his refusal to get a COVID-

1 19 vaccine.

2 The court has considered Plaintiff's remaining arguments and finds that none has merit.
3 Therefore, the court grants summary adjudication of the fifth cause of action.

4 F. Sixth Cause of Action

5 Plaintiff's sixth cause of action is for breach of contract. Plaintiff's contract required
6 him to comply with "all policies of ABC" and "operating and corporate policies now in effect
7 and hereafter promulgated or amended" and the "then-current policies and procedures."
8 (Plaintiff's Response to Defendant's Separate Statement, ¶ 127.) There is no dispute that
9 Plaintiff failed to comply with Defendant's COVID-19 policy. Plaintiff argues that there is
10 evidence Defendant violated the implied covenant of good faith and fair dealing. The court
11 rejects the argument for the reasons discussed.

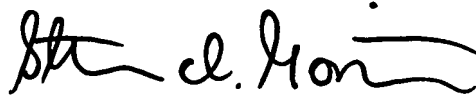
12 IV.

13 CONCLUSION

14 Based upon the foregoing, the court grants Defendant's motion for summary judgment
15 and denies Plaintiff's motion for summary adjudication. The court's clerk shall serve a copy of
16 this order upon the parties.

17
18 IT IS SO ORDERED.

19
20 DATED: June 2, 2023



STEPHEN I. GOORVITCH
SUPERIOR COURT JUDGE

06/07/2023