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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF WHITMAN

NICHOLAS ROLOVICH,  
  
Plaintiff,  
  
v.  
  
WASHINGTON STATE UNIVERSITY,  
an agency of the State of Washington;  
PATRICK CHUN, Director of Athletics for  
Washington State University, in his  
individual capacity; and JAY INSLEE,  
Governor, in his official capacity,  
  
Defendants.

No.  
  
**COMPLAINT**

**I. INTRODUCTION**

1. Plaintiff Nicholas Rolovich brings this action to vindicate his federal and state constitutional, statutory, and contractual rights, which rights were violated by Defendants, causing Mr. Rolovich significant and ongoing damages.

2. This action arises under the laws of the United States, specifically, 42 U.S.C. §§ 1983, 1988, 42 U.S.C. § 2000e, *et seq.*, and the First and Fourteenth Amendments to the United States Constitution. This action also arises under the laws of the State of Washington, including RCW 49.60 *et seq.* (Washington Law Against Discrimination (“WLAD”)), RCW 49.48, *et seq.*, RCW 49.52, *et seq.*, Article I, section 9 of the Washington Constitution, and state contract law.

1 **II. JURISDICTION AND VENUE**

2 3. This Court has subject matter jurisdiction over this action pursuant to RCW  
3 2.08.010.

4 4. Venue is proper in this district pursuant to RCW 4.12.025(1) because  
5 Washington State University’s (“WSU”) principal business is located in Whitman County  
6 and a substantial part of the events or omissions giving rise to this action, including the  
7 unlawful employment practices and constitutional violations alleged herein, occurred in  
8 Whitman County. Additionally, the Employment Agreement between Mr. Rolovich and  
9 WSU requires that any litigation regarding enforcement or construction of the terms of the  
10 Agreement be filed in Whitman County Superior Court.

11 **III. EXHAUSTION OF ADMINISTRATIVE PROCEDURES/REMEDIES**

12 **1. WSU Administrative Process**

13 5. Pursuant to Mr. Rolovich’s employment agreement with WSU, he was  
14 required to appeal his termination, first, to Mr. Chun, and upon Mr. Chun’s denial of the  
15 appeal, to WSU President, Kirk Schulz. Mr. Rolovich timely appealed to Mr. Chun, and then  
16 President Schulz. President Schulz denied Mr. Rolovich’s appeal on December 6, 2021.

17 **2. Equal Employment Opportunity Commission/Washington State Human Rights  
18 Commission**

19 6. On or about February 14, 2022, Mr. Rolovich filed a charge of discrimination  
20 with the Equal Employment Opportunity Commission (“EEOC”) alleging violations of Title  
21 VII of the Civil Rights Act 1964, 42 U.S.C. §§ 2000 *et seq.* Because the Washington State  
22 Human Rights Commission (“WHRC”) is a designated Fair Employment Practices Agency  
23 (“FEPA”) in partnership with the EEOC, Mr. Rolovich’s EEOC filing (dual filing) fulfills the  
24 State’s requirement that a 49.60.030, *et seq.*, claim be filed with the State prior to any court  
25 filing. The State and federal claims arise out of the same facts alleged herein.

1           7.       On or about August 16, 2022, Mr. Rolovich received, from the Department of  
2 Justice, Civil Rights Division (“DOJ”), a Notice of Right to Sue Within 90 Days in response  
3 to his previously filed charge of discrimination with the EEOC. This complaint has been filed  
4 within 90 days of Mr. Rolovich’s receipt of the DOJ Notice of Right to Sue.

5 **3.       Department of Enterprise Services—Office of Risk Management (Tort Claim)**

6           8.       On or about April 27, 2022, Mr. Rolovich filed a tort claim with the State of  
7 Washington Department of Enterprise Services, Office of Risk Management.

8           9.       More than 60 days has elapsed from the date of filing Mr. Rolovich’s tort  
9 claim. RCW 4.92.110.

10          10.       Any and all prerequisites to the filing of this lawsuit have been met.

11 **IV. PARTIES**

12          11.       Plaintiff Nicholas Rolovich was Head Football Coach for WSU from  
13 January 14, 2020, until he was terminated on December 6, 2021. He currently resides in  
14 Northern California.

15          12.       Washington State University is an agency of the State of Washington, with a  
16 principal place of business located at Pullman, Washington. WSU has approximately 7,000  
17 employees.

18          13.       Defendant Patrick Chun is Athletics Director for WSU. He is sued in his  
19 individual capacity only. At all times relevant to this complaint, Patrick Chun was acting as  
20 an agent of WSU.

21          14.       Defendant Jay Inslee is the governor of the State of Washington. He is sued in  
22 his official capacity.

23 **V. STATEMENT OF FACTS**

24          15.       Washington State University (“WSU) terminated head football coach  
25 Nicholas Rolovich after he had refused to be vaccinated because of his religious and personal  
26 beliefs. WSU claimed that Mr. Rolovich’s refusal to be vaccinated gave the University “just

1 cause” to terminate him. By claiming that it had just cause to terminate Mr. Rolovich, WSU  
2 did not have to pay him liquidated damages as provided for in the employment agreement.  
3 The liquidation clause required WSU to pay Mr. Rolovich sixty percent of his \$2,000,000+  
4 base salary for the approximately three and one-half years remaining on his approximately  
5 five-year contract.

6 **A. The Employment Agreement Between WSU and Mr. Rolovich**

7 16. On January 14, 2020, Mr. Rolovich entered into an employment agreement  
8 with Washington State University to serve as its head football coach. (A true and correct  
9 copy of the employment agreement is attached hereto as EXHIBIT A, and incorporated  
10 herein.) The Agreement was to expire on June 30, 2025. WSU’s termination of Mr. Rolovich  
11 became final on December 6, 2021, when President Schulz denied Mr. Rolovich’s final  
12 appeal.

13 17. The agreement provides that WSU could terminate Mr. Rolovich “without  
14 cause” at any time, but if WSU terminated him without cause, it would be required to pay  
15 “liquidated damages in an amount equal to sixty percent (60%) of the remaining base salary  
16 due under the terms of [the] Agreement.” At the time of his termination, Mr. Rolovich had  
17 approximately three and one-half more years to serve as WSU’s head football coach.

18 18. The agreement also provides that WSU could terminate Mr. Rolovich for “just  
19 cause” if he was found to be in violation of the just cause provisions set forth in the contract.  
20 If WSU terminated Mr. Rolovich for just cause, “all obligations of the University to make  
21 further payments under th[e] Agreement and/or to provide any other consideration . . .  
22 [would] cease.”

23 19. The employment agreement sets forth the following grounds for “just cause”  
24 termination of Mr. Rolovich:

25 **4.1 Termination by University for just cause.** The University shall have the  
26 right to terminate this Agreement for just cause (Just Cause) prior to its  
normal expiration. The term Just Cause shall include, in addition to and as

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examples of its normally understood meaning in employment contracts, any of the following:

**4.1.1** Deliberate and serious violations of the duties outlined in Section 1.2 of this Agreement or refusal or unwillingness to perform such duties in good faith and to the best of Employee’s abilities;

**4.1.2** Deliberate and serious violations by Employee of any of the other terms and conditions of this Agreement not remedied after fourteen (14) days’ written notice to Employee or, if the violation cannot reasonably be remedied within that period, Employee’s failure to make reasonable efforts to cure such violation;

**4.1.3** Any act of misconduct by Employee including, but not limited to, acts of criminal conduct (excluding minor traffic offenses, that don’t impede Employee’s ability to perform duties), an act of dishonesty, theft or misappropriation of University property, moral turpitude, insubordination, or act injuring, abusing, or endangering others, including physical, psychological, or sexual abuse, misconduct or violence, or acts that constitute use of excessive exercise or training for punitive purposes, or repeated acts of insubordination or a single act of insubordination of significant magnitude;

**4.1.4** An intentional or major violation or repeated instances of secondary violations by Employee, or by any person under Employee’s supervision where Employee had knowledge of the intended violation and failed to intervene, or by student-athletes in the Football Program where Employee had knowledge of the intended violation and failed to intervene, of any law, rule, regulation, constitutional provision, bylaw or interpretation of the University, the NCAA, or the Pac-12 which may in the reasonable judgment of the University reflect adversely upon the University or its athletic program including, but not limited to, any such violation which may result in the University being placed on probation by the Pac-12 or the NCAA and including any such violation which may have occurred during prior employment of Employee at another NCAA member institution;

**4.1.5** Conduct of Employee seriously prejudicial to the best interests of the University or its athletic program; or

**4.1.6** Prolonged absence from duty without the consent of Employee’s supervisor.

1           20.     Nothing in Mr. Rolovich’s employment agreement with WSU contemplates a  
2 scenario where WSU could claim “just cause” to terminate him because he refused to violate  
3 his religious faith, conscience, or bodily integrity.

4           **B.     Unlike Other WSU Football Coaches, Mr. Rolovich’s Agreement Did Not**  
5           **Include Provisions Requiring Him to Follow State and Federal Health**  
6           **and Safety Guidelines**

7           21.     Less than two months after Mr. Rolovich entered into his employment  
8 contract with WSU, on February 29, 2020, Governor Inslee issued the first of nearly 500  
9 proclamations related to COVID-19, declaring a State of Emergency in the State of  
10 Washington.

11           22.     On or about July 2021, WSU induced some of its football coaches to sign new  
12 employment agreements with provisions requiring them to “follow all federal, state, and local  
13 health directives, as well as university policies related to health and safety.”

14           23.     Mr. Rolovich never signed an amendment to his employment agreement  
15 requiring him to follow health directives or university policies related to health and safety.  
16 His contract with WSU contains no such provisions.

17           **C.     WSU Willfully and Improperly Withheld Wages from Mr. Rolovich**

18           24.     In or around the summer of 2020, WSU approached Mr. Rolovich and asked  
19 him whether he would, in light of the effect of the COVID-19 pandemic on WSU’s finances,  
20 agree to allow WSU to take out and keep ten percent of his wages.

21           25.     Mr. Rolovich orally agreed to WSU’s proposed ten percent withholding, but  
22 only on the condition that WSU not withhold ten percent from his assistant coaches.

23           26.     Nevertheless, WSU did withhold ten percent from the salaries of its assistant  
24 football coaches, who were induced to sign new agreements reflecting the ten percent  
25 withholding from their salaries. Despite having violated the conditions set by Mr. Rolovich,  
26 WSU withheld ten percent from Mr. Rolovich’s salary from May 15, 2020 through July 30,  
2020.

1           **D.     Mr. Chun’s/WSU’s Hostility Toward Mr. Rolovich**

2           27.     As set forth below, Mr. Chun made a number of statements to Mr. Rolovich  
3 that demonstrated his hostility toward Mr. Rolovich’s expressed religious, personal, and  
4 scientific reasons for refusing to receive a COVID vaccine. Even before Governor Inslee  
5 issued his vaccine Mandate, Mr. Chun told Mr. Rolovich that his request for a religious  
6 exemption would be denied and he would be fired with cause unless he agreed to comply  
7 with the vaccine mandate.

8           28.     On or around May 24, 2021, Mr. Chun, after Mr. Rolovich said that he was  
9 not planning on getting a COVID-19 vaccine, claimed that he was worried about  
10 Mr. Rolovich’s mental health and accused him of having extreme views regarding many  
11 issues.

12          29.     On or about May 27, 2021, Mr. Rolovich was called to a 3 p.m. meeting at  
13 Mr. Chun’s office. Mr. Chun told Mr. Rolovich that his beliefs were making him incapable  
14 of leading his players. Mr. Chun also tried to get Mr. Rolovich into counseling because he  
15 believed that the Mr. Rolovich had mental health issues. Mr. Chun suggested that  
16 Mr. Rolovich should talk to Mr. Chun’s wife because she had been in a couple different  
17 religions he referred to as “cults”.

18          30.     In August 2020, before Governor Inslee’s issued a vaccine mandate for state  
19 employees, WSU had its employees check boxes on a computer form to designate their  
20 reason for not wanting to be vaccinated. The form provided for a medical exemption and a  
21 personal/religious exemption. Mr. Rolovich checked the personal/religious box.

22          31.     On August 16, 2021, Mr. Rolovich was called to an urgent meeting with  
23 Mr. Chun and Deputy Director of Athletics, Bryan Blair. At this meeting, Mr. Chun told  
24 Mr. Rolovich that Governor Inslee was intending to issue a vaccine mandate that would  
25 eliminate the “personal exemption” from the coaching staff’s declaration of vaccination  
26 status. Mr. Chun warned Mr. Rolovich that any religious exemption request he submitted

1 would be scrutinized to no end, and that Inslee’s mandate would have a “high threshold” for  
2 religious exemptions moving forward.

3 32. At that same meeting, Mr. Chun confidently told Mr. Rolovich that if he did  
4 not get the vaccine, he could be expected to be fired with cause on October 19, 2021.

5 33. Mr. Chun’s predictions about how WSU would treat requests for religious  
6 exemptions are consistent with the State’s vaccine mandate policy as set forth in an August 3,  
7 2021 email from Kathryn Leathers, Governor’s Office General Counsel, to staff with the  
8 Attorney General’s Office.<sup>1</sup> In that email she explained: “Of possible exemptions [to the  
9 vaccine mandate]: medical for sure; and religious (if we have to; if yes, as narrow as  
10 possible).”

11 34. WSU’s statistics on vaccination exemptions reflect the Governor’s policy, as  
12 well as WSU’s bias against religious exemptions: By early October 2021, WSU had  
13 approved requests for medical exemptions at almost twice the rate of religious exemption  
14 requests (“437 employees have requested religious exemptions. Only 98 have been granted  
15 so far. Just over 100 employees have requested medical exemptions of which 41 have been  
16 granted so far.”)<sup>2</sup>

17 35. On August 19, 2021, Mr. Rolovich was summoned to a meeting with  
18 Mr. Chun. Assistant Athletics Director Bryan Blair also was present at the meeting.  
19 Mr. Chun told Mr. Rolovich that he had four choices: 1. Get the vaccine; 2. Don’t get the  
20 vaccine and get fired; 3. Claim an exemption; or 4. Resign right now. Mr. Rolovich told  
21 Mr. Chun that he was not resigning and that he wanted to coach the team. Mr. Chun said,  
22 “but you say you don’t care about the money” and “why don’t you just resign?” Mr. Chun  
23 then accused Mr. Rolovich of having situational integrity. Mr. Chun also called Mr. Rolovich

24 <sup>1</sup> Brandi Kruse, Emails: State sought to make religious vaccine exemption ‘as narrow as possible,’ FOX 13  
25 Seattle, Aug. 24, 2021, <https://www.q13fox.com/news/emails-state-sought-to-make-religious-vaccine-exemption-as-narrow-as-possible>.

26 <sup>2</sup> Erin Robinson, WSU granting fewer religious exemptions than the state as a whole, KXLY Spokane (Oct. 13,  
2021), <https://www.kxly.com/wsugrants-fewer-religious-exemptions-than-the-state-as-a-whole/>.



1 a “con-man” and accused him of being selfish. Mr. Chun then stated that Mr. Rolovich’s  
2 objections to receiving the vaccine were causing Mr. Chun and President Schulz reputational  
3 damage. Mr. Chun then stated that all Mr. Rolovich had to do is get vaccinated.

4 36. At the same meeting, Mr. Chun admitted his efforts to get Mr. Rolovich to  
5 take the vaccination in the past had been coercive, and Mr. Rolovich responded that the  
6 present meeting was much more coercive than earlier meetings. Mr. Chun pressed  
7 Mr. Rolovich again about the vaccine, and Mr. Rolovich said that he believed he had privacy  
8 rights and did not feel comfortable telling Mr. Chun about his reasons for declining to receive  
9 a COVID-19 vaccine. Mr. Chun then demanded that Mr. Rolovich tell him what his answer  
10 would be.

11 37. Mr. Chun then stated that Governor Inslee “did this” just to come after  
12 Mr. Rolovich and WSU. Based on the context of Mr. Chun’s statement, Mr. Rolovich  
13 understood “did this” to mean that Governor Inslee was trying to force Mr. Rolovich’s hand  
14 with his new mandate because he was angry that the highest paid and one of the highest  
15 profile State employees had asserted personal or religious objections to his vaccine mandate.  
16 Mr. Chun also admitted to Mr. Rolovich that the Board of Regents wanted him fired. At this  
17 point in their heated exchange, Mr. Chun modified his earlier statement: he now said that  
18 Mr. Rolovich only had two options: get vaccinated or resign.

19 38. Up to this point, Mr. Rolovich had refrained from bringing his religious  
20 beliefs into his conversations with Mr. Chun about COVID vaccines. Mr. Rolovich did not  
21 feel comfortable talking about his faith because it is a very personal matter to him and he was  
22 uncomfortable talking about his religious beliefs with his supervisor.

23 39. Mr. Rolovich also was uncomfortable because he did not know how WSU  
24 would react to him sharing his religious opposition to medical research based on aborted fetal  
25 tissue, given that WSU professors have in the past publicly defended such research.  
26 However, after Mr. Chun made it clear that WSU intended to terminate him, Mr. Rolovich

1 asked Mr. Chun and Mr. Blair about the University's process for requesting a religious  
2 exemption from a vaccine mandate. Mr. Chun and Mr. Blair said they did not know details  
3 about the University's process. They said they had been on the phone with WSU's Human  
4 Resource Services ("HRS") about that topic earlier in the day. Mr. Rolovich also had emailed  
5 HRS about the process by this time, but no one had any answers because the Governor had  
6 not yet made his proclamation.

7 40. Mr. Chun then told Mr. Rolovich that he needed to have his religious  
8 exemption approved by August 29, the Sunday before the Utah State game. Mr. Rolovich  
9 asked who at WSU would review and approve religious exemption requests. Mr. Chun and  
10 Mr. Blair said they did not know. Mr. Rolovich asked them when the religious exemption  
11 application would be available. They said they did not know. Mr. Rolovich then responded  
12 that he feared the University would not be able to approve his exemption by Mr. Chun's  
13 August 29 deadline, given that the University's policy had not even been made public, let  
14 alone made available to him.

15 41. Mr. Chun and Mr. Blair told Mr. Rolovich that they were in a time crunch and  
16 had to make a decision if he was going to coach that season. They said they did not want to  
17 start a season with Mr. Rolovich if they thought they may have to fire him on Oct 18th,  
18 pursuant to the Governor's mandate.

19 42. Mr. Rolovich responded that he would seek a religious exemption right then if  
20 one was available. Mr. Chun and Mr. Blair then got even more heated and started to question  
21 Mr. Rolovich's character. Mr. Chun said if Mr. Rolovich got the religious exemption, he  
22 would forever question his character. Mr. Chun and Mr. Blair both talked about the early  
23 days of the pandemic, and that Mr. Rolovich had not mentioned his faith. Mr. Rolovich said  
24 that he did not see the point, as he does not see faith and science as exclusive.

25 43. Mr. Chun and Mr. Blair then stressed that the University's religious  
26 exemption would be hard to get and that there was no guarantee that Mr. Rolovich's request

1 would be approved. Mr. Rolovich again asked what the criteria was going to be. They said  
2 they did not know.

3 44. Mr. Rolovich did not feel comfortable talking about his faith because his faith  
4 is a very personal matter to him and because he was uncomfortable talking about his  
5 religious beliefs with his supervisor.

6 45. On August 20, 2021, Governor Inslee issued Proclamation 21-14.1, which  
7 required all state employees to be fully vaccinated by October 18, 2021.

8 46. Governor Inslee’s Proclamation mandated vaccination for state employees  
9 “even when the only vaccines available are those authorized under U.S. Food and Drug  
10 Administration Emergency Use Authorizations.”

11 **E. Governor Inslee and WSU Mandated That Coach Rolovich and All State**  
12 **Employees Accept an Experimental Vaccine**

13 47. At all times relevant to this Complaint, the only vaccines available to  
14 Washington State employees were vaccines authorized under U.S. Food and Drug  
15 Administration Emergency Use Authorizations. According to DailyMed, a publication of the  
16 National Institute of Medicine, the only FDA-approved vaccine—Comirnaty—was not  
17 available to the American public:

18 SEPTEMBER 13, 2021

Pfizer received FDA BLA license for its COVID-19 vaccine

19 Pfizer received FDA BLA license on 8/23/2021 for its COVID-19 vaccine for  
20 use in individuals 16 and older (COMIRNATY). At that time, the FDA  
21 published a BLA package insert that included the approved new COVID-19  
22 vaccine tradename COMIRNATY and listed 2 new NDCs (0069-1000-03,  
0069-1000-02) and images of labels with the new tradename.

23 At present, Pfizer does not plan to produce any product with these new NDCs  
24 and labels over the next few months while EUA authorized product is still  
25 available and being made available for U.S. distribution. As such, the CDC,  
AMA, and drug compendia may not publish these new codes until Pfizer has  
determined when the product will be produced with the BLA labels.<sup>3</sup>

26 <sup>3</sup> Pfizer received FDA BLA license for its COVID-19 vaccine, DailyMed (Sept. 13, 2021),  
<https://dailymed.nlm.nih.gov/dailymed/dailymed-announcements-details.cfm?date=2021-09-13> (Last visited

1           48.     On August 23, 2021, the United States Food and Drug Administration  
2 (“FDA”) issued two separate letters pertaining to two separate COVID-19 vaccines. One  
3 letter, addressed to Pfizer Inc., concerned the Pfizer-BioNTech COVID-19 Vaccine. Letter,  
4 United States Food and Drug Administration to Pfizer, Inc. (Aug. 23, 2021), (“Pfizer Letter”)  
5 (A true and correct copy of the Pfizer Letter is attached hereto as EXHIBIT B and  
6 incorporated herein). The other letter, addressed to BioNTech Manufacturing GmbH,  
7 concerned the COMIRNATY vaccine. Letter, United States Food and Drug Administration  
8 to BioNTech Manufacturing GmbH (Aug. 23, 2021), (“BioNTech Letter”) (A true and  
9 correct copy of the BioNTech Letter is attached hereto as EXHIBIT C and incorporated  
10 herein).

11           49.     In the Pfizer Letter, the FDA confirms that, on December 11, 2020, it granted  
12 Emergency Use Authorization (EUA) for the Pfizer-BioNTech COVID-19 Vaccine. (Pfizer  
13 Letter at 1.) It also notes that the EUA was continued on December 23, 2020, February 25,  
14 2020, May 10, 2021, June 25, 2021, and August 12, 2021. (Pfizer Letter at 1-2).

15           50.     The FDA stated in the Pfizer Letter that, although it had granted the  
16 COMIRNATY vaccine full approval “for certain uses,” the Pfizer-BioNTech COVID-19  
17 Vaccine was still only authorized under an EUA. (Pfizer Letter at 2).

18           51.     At all times relevant to this Complaint, the Pfizer-BioNTech COVID-19  
19 Vaccine remained available only under the authorization of an EUA. (Pfizer Letter).

20           52.     The Federal Food, Drug, And Cosmetic Act provides that subject to the  
21 limitations referenced and described in U.S.C. § 360bbb-3, the Secretary of Health and  
22 Human Services “may authorize the introduction into interstate commerce, during the  
23 effective period of a declaration [of emergency or threat justifying emergency authorized

24 Nov. 8, 2022); *see also*, Summary Basis of Regulatory Action – Comirnaty, FDA (Nov. 8, 2021) (“November 8  
25 Comirnaty SBRA”) at 5, available at: <https://www.fda.gov/media/151733/download> (last visited November 8,  
26 2022 (“In the U.S., there are no licensed vaccines or anti-viral drugs for the prevention of COVID-19.”),  
available at: <https://www.fda.gov/media/151733/download> (last visited November 8, 2022)).

1 use] under subsection (b), of a drug, device, or biological product intended for use in an  
2 actual or potential emergency (referred to in this section as an ‘emergency use.’” 21 U.S.C.  
3 § 360bbb-3(a)(1). As an essential part of the explicit statutory conditions for EUA, the EUA  
4 Statute mandates that all individuals to whom the EUA product may be administered be  
5 given the option to accept or refuse administration of the product:

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

12 (ii) Appropriate conditions designed to ensure that individuals to whom the  
13 product is administered are informed—

14 (I) that the Secretary has authorized the emergency use of the product;

15 (II) of the significant known and potential benefits and risks of such use, and  
16 of the extent to which such benefits and risks are unknown; and

17 (III) of the option to accept or refuse administration of the product, of the  
18 consequences, if any, of refusing administration of the product, and of the  
19 alternatives to the product that are available and of their benefits and risks.

20 21 U.S.C. § 360bbb-3(e)(1)(A).

21 53. The statutorily required Fact Sheets for each of the EUA COVID-19 vaccines  
22 acknowledge that individuals cannot be compelled to accept or receive the vaccine. *See, e.g.,*  
23 Pfizer-BioNTech, Fact Sheet for Recipients and Caregivers (June 25, 2021),  
24 <https://www.fda.gov/media/144414/download> (“It is your choice to receive or not to receive  
25 the Pfizer-BioNTech COVID-19 Vaccine. Should you decide not to receive it, it will not  
26 change your standard medical care.”).

54. WSU never explained to Mr. Rolovich the potential risks of taking the  
experimental vaccine.

1 55. WSU never gave Mr. Rolovich the option to accept or decline the  
2 experimental vaccine, telling him only that he would be fired for just cause if he refused.

3 **F. WSU Established a Blind Review Process for Exemption Requests**

4 56. In the weeks that followed Governor Inslee's August 20, 2021, proclamation  
5 creating a COVID-19 vaccine mandate for State employees, WSU established procedures as  
6 to how employees could request, and how the University would consider and approve or  
7 deny requests for religious and/or medical exemptions from the vaccine mandate.

8 57. WSU published its procedures for evaluating requests for religious  
9 exemptions from the vaccine mandate on the University's website.<sup>4</sup> Part of this policy is  
10 expressed in the form of FAQs. In that context, the University represented that HRS would  
11 not share the details of an employee's request for an exemption with the employee's  
12 supervisor or manager:

13 **I am requesting a medical or religious exemption, what will my  
14 supervisor/manager see as my exemption reason?**

15 The Workday process will show as 'in-process' when an exemption is  
16 requested and will be updated to 'complete' once reviewed and accepted. HRS  
17 will work directly with employees regarding their requested exemption as  
18 needed.

19 58. The University described its process in more detail in an October 8, 2021,  
20 statement posted on its website:

21 The requests for religious exemptions are evaluated in a 'blind' review  
22 process, meaning the identities of the individuals requesting exemptions are  
23 unknown to the members of the review committee except in instances when  
24 additional information is needed through follow-up contact. Separate review  
25 committees were created for students and employees. . . .

26 For employees, the exemption requests go through a two-step process. The  
first is the blind review. Then, if an exemption is approved, the request moves  
to a separate accommodation review step where a determination is made

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<sup>4</sup> WSU, Human Resource Services, COVID-19 Vaccination Verification (Oct. 12, 2021), available at <https://web.archive.org/web/20211103092159/https://hrs.wsu.edu/covid-19/vax-verification> (last visited Nov. 10, 2022).

1 whether the unvaccinated employee will be able to perform their duties  
2 without risking the health and safety of the community.<sup>5</sup>

3 59. Phil Weiler, WSU vice president for communications, reiterated the process  
4 WSU would use to handle exemption requests:

5 If the blind review results in the approval of Rolovich’s exemption request,  
6 the process would enter a second phase. . . . An approved request would be  
7 sent to the human resources department, which would identify the employee  
8 in question and send an email to his/her supervisor indicating the exemption  
9 had been approved.<sup>6</sup>

9 At that point, according to Weiler, the supervisor would determine if the unvaccinated  
10 employee would be capable of “keeping the public safe” and perform his/her job effectively.

11 *Id.*

12 **G. WSU’s Blind Review Process Determined that Mr. Rolovich’s Religious**  
13 **Beliefs Were Sincere and Granted his Request for a Religious Exemption**

14 60. On September 28, 2021, Mr. Rolovich completed his application for a  
15 religious exemption and submitted it to HRS.

16 61. On October 6, 2021, HRS notified Mr. Chun that the University had  
17 completed its “good faith review” process and had determined that Mr. Rolovich was entitled  
18 to a religious exemption from the COVID-19 vaccine requirement because it found that he  
19 had articulated a “sincerely held religious belief” that prevented him from complying with  
20 the Governor’s mandate.

21 62. HRS then informed Mr. Chun that it was “considering approving the  
22 employee’s request (for accommodation) subject to the following terms and conditions,”

23 <sup>5</sup> Nearly 90% of WSU Employees are Vaccinated, WSU, Oct. 8, 2021, <https://everett.wsu.edu/nearly-90-of-wsu-employees-are-vaccinated/> (last visited Nov. 10, 2022).

24 <sup>6</sup> Jon Wilner, Would WSU actually fire Nick Rolovich? Examining the exemption review process with the  
25 vaccine mandate deadline approaching, Mercury News, Oct. 7, 2021,  
26 <https://www.mercurynews.com/2021/10/07/would-wsu-actually-fire-nick-rolovich-examining-the-exemption-review-process-as-vaccine-mandate-deadline-approaches/> (last visited Nov. 10, 2022).

1 summarizing a proposed list of accommodations, including mask wearing, social distancing,  
2 and testing requirements. HRS said the next step would be for the Athletics Department to  
3 decide whether it was “able to accommodate this request with the above recommendations.”  
4 HRS stated in that email that it would not reach out to Mr. Rolovich until the University’s  
5 “decision on the Religious Accommodation is finalized.” HRS requested that the Athletics  
6 Department respond to its proposed accommodations by October 8.

7 **H. Chun Improperly Inserted Himself Into the Process and Compelled the**  
8 **WSU to Overturn Its Determination that Mr. Rolovich’s Religious Beliefs**  
9 **Were Sincere**

10 63. Mr. Chun, writing on behalf of the WSU Athletics Department, responded to  
11 HRS on October 13 with two memoranda. The first memorandum told HRS that it had  
12 rejected HRS’ proposed accommodations and had determined that “the department is not  
13 able to accommodate this request.”

14 64. Mr. Chun’s and the Athletics Department’s second memorandum challenged  
15 HRS’ conclusion that “Rolovich met the requirements for a religious exemption to the  
16 vaccination requirement by demonstrating a sincerely held religious belief against being  
17 vaccinated for COVID-19.” That challenge was based on the Athletics Department’s  
18 assertion that “Rolovich had made several statements that cast doubt on his claimed sincerely  
19 held religious belief.” The memorandum stated that the fact that Rolovich had articulated  
20 other reasons for refusing a COVID vaccination before he had told Mr. Chun about his  
21 religious objections to the available COVID vaccines “support[ed] re-evaluation of the  
22 claimed sincerely-held religious belief.”

23 65. On October 14, 2021, Department of Environmental Health and Safety  
24 (“EH&S”) issued a memorandum to Mr. Chun with extensive detail about how it had used its  
25 “expertise in environmental and occupational health and safety” to make an “individualized  
26 assessment” of Mr. Rolovich’s working environment and formulate a list of “reasonable and



1 necessary interventions and countermeasures to ensure the safety of the employee and others  
2 the employee may be in contact with.”

3 66. Mr. Chun, writing on behalf of the Athletics Department, subsequently wrote  
4 HRS a memorandum, copying EH&S, that rejected EH&S’ recommendations.  
5 Mr. Chun/Athletics Department rejected EH&S’ assessment that its recommendations would  
6 “ensure the safety of the employee and others the employee may be in contact with.”

7 67. The Mr. Chun and the Athletics Department also rejected EHS’s proposed  
8 accommodations on the basis that having an unvaccinated head coach “would create an  
9 undue hardship for WSU Athletics given his assigned duties and responsibilities.” The  
10 memorandum states, in part:

- 11 • “WSU has already lost significant donor commitments who have withdrawn or  
12 withheld donations based on the vaccination decisions of the football staff.”
- 13 • “[B]ecause employees are not vaccinated, attendance at conference media day was  
14 done remotely, (which became a major story and embarrassment to WSU), the  
15 weekly Coach’s show is now done remotely and has significant decline in attendance,  
and many media stories concerning the Football Program revolve around the  
unvaccinated status of the head coach (and assistant coaches).”
- 16 • “The damage to the mission and reputation of the University posed by this situation  
17 cannot be understated [*sic*], nor can it be resolved by accommodation.”

18 **I. Mr. Rolovich’s Compliance with WSU Protocols, and Mr. Chun’s**  
19 **Violation of WSU Protocols, Undermine Mr. Chun’s Given Reasons for**  
20 **Not Accommodating Mr. Rolovich’s Religious Convictions**

21 68. During the pandemic, WSU imposed protocols it hoped would mitigate the  
22 transmission of Covid among its employees and students. Mr. Rolovich was required to  
23 follow specific protocols developed for him because he was unvaccinated. Days before  
24 Mr. Rolovich informed Mr. Chun that he intended to seek a religious exemption from the  
25 vaccine Mandate, Mr. Chun said that he was confident that Mr. Rolovich could safely coach  
26 WSU’s football team.

1           69.     The Seattle Times reported that Mr. Rolovich was “undergoing daily COVID-  
2 19 testing and wears a mask. Chun said the coach is adhering to all protocols.”<sup>7</sup> “WSU  
3 athletic director Pat Chun, who is vaccinated, made it clear Wednesday that he backs his  
4 coach, saying Rolovich is the right person for the job despite the two being diverged on the  
5 vaccine decision.” *Id.*

6           70.     Mr. Chun, however, did not follow WSU’s Covid protocols. Four days after  
7 he fired Mr. Rolovich for allegedly “undermin[ing] the University’s efforts to promote  
8 student safety,” Mr. Chun was caught violating masking regulations at a donor event,<sup>8</sup> days  
9 later Mr. Chun was caught violating masking regulations while in the locker room with WSU  
10 football players.<sup>9</sup>

11          71.     When a local politician pointed out Mr. Chun’s double-standard, Mr. Chun  
12 went to the City Councilor’s place of business, launched a vulgar tirade, and threatened  
13 violence in front of the City Councilor’s teenage daughter. Mr. Chun became so angry that  
14 the police got involved and decided that Mr. Chun would be “permanently trespassed” from  
15 the City Councilor’s businesses.<sup>10</sup>

17 <sup>7</sup> Scott Hanson, WSU in ‘strict COVID management’ after football coach Nick Rolovich’s decision to not get  
18 vaccinated, Spokesman Review, Aug. 13, 2021, <https://www.spokesman.com/stories/2021/aug/13/wsui-strict-covid-management-after-football-coac/> (last visited Nov. 10, 2022).

19 <sup>8</sup> Jason Rantz, Rantz: Photo shows WSU’s Pat Chun violating COVID policy after Rolovich firing, 770 KTTH,  
20 Oct. 25, 2021, <https://mynorthwest.com/3203295/rantz-wsu-photo-pat-chun-covid-rolovich-fired/> (last visited  
21 Nov. 10, 2022).

22 <sup>9</sup> Washington State Football (@WSUCougarFB), Twitter (Oct. 30, 2021, 5:20 p.m.),  
23 <https://twitter.com/wsucougarfb/status/1454589044147441664> (last visited Nov. 10, 2022). Mr. Chun’s conduct  
24 violated both the University’s and host Arizona State University’s masking policies. *See* Arizona State  
25 University, Implementation of ASU Face Cover Policy, <https://www.asu.edu/about/fall-2021> (last visited Nov.  
26 2, 2021) (“face coverings will be required in certain indoor settings, i.e., where distancing may not be  
possible”).

27 <sup>10</sup> Report: Chun, wife trespassed from businesses: Pullman City Councilor Al Sorensen tells police that WSU  
28 AD and wife came to his business and threatened him, The Lewiston Tribune, Nov. 2, 2021,  
29 [https://lmtribune.com/sports/report-chun-wife-trespassed-from-businesses/article\\_f5b69a55-5fce-52c6-a99c-  
30 d0f411ab5086.html](https://lmtribune.com/sports/report-chun-wife-trespassed-from-businesses/article_f5b69a55-5fce-52c6-a99c-d0f411ab5086.html) (last visited Nov. 10, 2022); Simon Gibbs, Washington State athletic director Pat Chun  
31 issued trespass order after alleged profanity-ridden tirade, On3, Nov. 2, 2021,  
32 [https://www.on3.com/college/washington-state-cougars/news/pat-chun-washington-state-cougars-cited-police-  
33 report-harrasment-tresspassing-civil-issue/](https://www.on3.com/college/washington-state-cougars/news/pat-chun-washington-state-cougars-cited-police-report-harrasment-tresspassing-civil-issue/) (last visited Nov. 10, 2022).

1           72.     On November 19, 2021, a local reporter noted that Mr. Chun was disregarding  
2 masking rules at a WSU basketball game in Idaho.<sup>11</sup>

3           **J.       Stanford Public Health and Infectious Disease Expert States that WSU**  
4           **Could Have Safely Accommodated Mr. Rolovich**

5           73.     Dr. Bhattacharya, a former Professor of Medicine (20+ years) and current  
6 Professor of Health Policy at Stanford University School of Medicine submitted a 29 page  
7 declaration to Mr. Chun and President Schulz on behalf of Mr. Rolovich. The Declaration  
8 provided scientific evidence in support of his conclusion that WSU could keep its employees  
9 safe while granting exemptions for those whose medical conditions and religious convictions  
10 prevent them from receiving a COVID vaccine.

11           74.     Dr. Bhattacharya also is a research associate at the National Bureau of  
12 Economic Research, and Director of Stanford’s Center for Demography and Economics of  
13 Health and Aging. Dr. Bhattacharya holds an M.D. and Ph.D. from Stanford University. He  
14 has published 154 scholarly articles in peer-reviewed journals in the fields of medicine,  
15 economics, health policy, epidemiology, statistics, law, and public health, among others.  
16 Dr. Bhattacharya’s research has been cited in the peer-reviewed scientific literature more  
17 than 11,600 times.

18           75.     Dr. Bhattacharya has dedicated his professional career to the analysis of health  
19 policy, including infectious disease epidemiology and policy, and the safety and efficacy of  
20 medical interventions. He has both studied extensively and commented publicly on the  
21 necessity and safety of vaccine requirements for those who have contracted and recovered  
22 from COVID-19 (individuals who have “natural immunity”). Dr. Bhattacharya is intimately  
23 familiar with the emergent scientific and medical literature on this topic and pertinent  
24 government policy responses to the issue both in the United States and abroad.

25 <sup>11</sup> Katie Davis court, WSU athletic director caught violating COVID protocols after firing head football coach  
26 for refusing vaccine, Post Millennial, Nov. 19, 2021, <https://thepostmillennial.com/ws-u-athletic-director-violating-covid-firing-coach> (last visited Nov. 10, 2022).

1           76. Dr. Bhattacharya also is the primary co-author of the Great Barrington  
2 Declaration, which describes an alternate policy of focused protection. His co-authors of the  
3 Declaration include Prof. Martin Kulldorff of Harvard University and Prof. Sunetra Gupta of  
4 Oxford University. Over 12,000 epidemiologists and public health professionals and 35,000  
5 medical professionals had co-signed the Declaration by the time Mr. Rolovich was  
6 terminated.

7           77. WSU produced no evidence, let alone scientific evidence, that the  
8 accommodation plans developed by EH&S would not be effective for Mr. Rolovich.

9           78. In his declaration, Dr. Bhattacharya noted, “According to a meta-analysis by  
10 Dr. John Ioannidis of every seroprevalence study conducted to date of publication with a  
11 supporting scientific paper (74 estimates from 61 studies and 51 different localities  
12 worldwide), the median infection survival rate—the inverse of the infection fatality rate—  
13 from COVID-19 infection is 99.77%. For COVID-19 patients under 70, the meta-analysis  
14 finds an infection survival rate of 99.95%. A separate meta-analysis by other scientists  
15 independent of Dr. Ioannidis’ group reaches qualitatively similar conclusions.

16           79. Dr. Bhattacharya continued, “A study of the seroprevalence of COVID-19 in  
17 Geneva, Switzerland (published in *The Lancet*) provides a detailed age breakdown of the  
18 infection survival rate in a preprint companion paper: 99.9984% for patients 5 to 9 years old;  
19 99.99968% for patients 10 to 19 years old; 99.991% for patients 20 to 49 years old; 99.86%  
20 for patients 50 to 64 years old; and 94.6% for patients above 65.”

21           80. Those numbers are consistent with what the US CDC has reported. A US  
22 CDC report found between 6 and 24 times more SARS-CoV-2 infections than cases reported  
23 between March and May 2020. Correspondingly, the CDC’s estimate of the infection fatality  
24 rate for people ages 0-19 years is 0.003%, meaning infected children have a 99.997%  
25 survivability rate. For people ages 20-49 years, it was 0.02%, meaning that young adults have  
26 a 99.98% survivability rate. For people age 50-69 years, it was 0.5%, meaning this age group

1 has a 99.5% survivability rate. Finally, for people ages 70+ years, it was 5.4%, meaning  
2 seniors have a 94.6% survivability rate.

3 81. Dr. Bhattacharya stated, “It has been found that vaccinated individuals are at  
4 least as likely as unvaccinated individuals to be shedding live virus. Data from studies  
5 indicate that vaccinated and unvaccinated individuals infected with the Delta variant might  
6 transmit infection. Importantly, it has been shown that infectious SARS-CoV-2 is frequently  
7 found even in vaccinated persons.”

8 82. Also, the CDC reported in July 2021 that “new scientific data” indicated that  
9 vaccinated people who experienced breakthrough infections carried similar viral loads to the  
10 unvaccinated, leading the CDC to infer that vaccinated people transmit the virus at  
11 concerning levels.<sup>12</sup>

12 83. Dr. Bhattacharya noted that “[a]symptomatic individuals are an order of  
13 magnitude less likely to infect others than symptomatic individuals, even in intimate settings  
14 such as people living in the same household where people are much less likely to follow  
15 social distancing and masking practices that they follow outside the household. Spread of the  
16 disease in less intimate settings by asymptomatic individuals—including in the context of the  
17 WSU work environment—is likely to be even less likely than in the household.”

18 84. Dr. Bhattacharya concluded that the best empirical evidence shows that the  
19 probability that an asymptomatic individual will spread the disease is very low. And because  
20 the overwhelming majority of WSU employees were vaccinated in the fall of 2021, they  
21 faced even less risk from any of their asymptomatic, unvaccinated coworkers who receive an  
22 accommodation from WSU for religious or medical reasons.<sup>13</sup>

23 <sup>12</sup> See Joel Achenbach, CDC Reversal on Indoor Masking Prompts Experts to Ask, “Where’s the Data?” Wash.  
24 Post, July 28, 2021, [wapo.st/2THpmlQ](https://www.washingtonpost.com/2THpmlQ) (last visited Nov. 10, 2022).

25 <sup>13</sup> President Schulz had said that nearly 90 percent of WSU employees and 97 percent of students were  
26 vaccinated. Chuck Culpepper, Washington State Football Coach Nick Rolovich Fired after Failing to Comply  
with Vaccine Mandate, Washington Post, Oct. 18, 2021, <https://www.washingtonpost.com/sports/2021/10/18/nick-rolovich-washington-state-fired-covid-mandate/>. See  
also Donald G. McNeil, Jr., How Much Herd Immunity Is Enough?, NY Times, Dec. 24, 2020 (updated Sept.  
22, 2021), <https://www.nytimes.com/2020/12/24/health/herd-immunity-covid-coronavirus.html> (“Dr. Fauci

1           85.     When Mr. Rolovich was asymptomatic, he—like all other asymptomatic  
2 individuals—presented an almost 0% chance of infecting others with COVID-19.

3           86.     In Dr. Bhattacharya’s expert opinion, derived from his personal scientific  
4 investigations, and his examination and analysis of a multitude of scientific studies, WSU  
5 could have safely accommodated Mr. Rolovich and other unvaccinated employees.

6           **K.     WSU’s Termination of Mr. Rolovich as Head Coach**

7           87.     Mr. Rolovich arrived at a meeting on October 18, 2021, and one minute  
8 before that meeting, at 4:29, while waiting for Mr. Chun, Mr. Rolovich received an email  
9 from HRS Exemptions notifying him that the University was “unable to approve your request  
10 for an exemption and accommodation based on a sincerely held religious belief, practice, or  
11 observance.”

12          88.     Though the HRS panel had already determined that Mr. Rolovich’s religious  
13 beliefs were sincere and granted him a religious exemption on that basis, HRS allowed  
14 Mr. Chun to improperly influence and interfere with the final decision made in its blind  
15 review process. Mr. Chun notified HRS that he disagreed with HRS’s determination  
16 regarding Mr. Rolovich’s sincerity, and, as a result, HRS reversed its determination, stating,  
17 “[b]ased on your comments, in conjunction with the timing of your request for a religious  
18 accommodation, the University questions the assertion that your sincerely held religious  
19 views conflict with the University’s vaccine requirement.”

20          89.     HRS also reversed its position that Mr. Rolovich’s sincere religious beliefs  
21 could be accommodated by WSU, adopting Mr. Chun and the Athletics Department’s  
22 position that Mr. Rolovich could not “safely and effectively do [his] job without undue  
23 hardship to the University.”

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25  
26 noted, a herd-immunity figure at 90 percent or above is in the range of the infectiousness of measles. ‘I’d bet  
by my house that Covid isn’t as contagious as measles,’ he said.”).

1 90. At the October 18 meeting, Mr. Chun served Mr. Rolovich with Written  
2 Notice of Intent to Terminate with Just Cause.

3 91. Mr. Chun had a security officer, who was present during the meeting, escort  
4 Mr. Rolovich from the building and to Mr. Rolovich's truck.

5 92. Mr. Chun did not permit Mr. Rolovich to return to his office to retrieve his  
6 private property.

7 93. Mr. Chun did not permit Mr. Rolovich to speak with his WSU football players  
8 after the meeting.

9 94. As a direct and proximate result of WSU's, Governor Inslee's, and  
10 Mr. Chun's actions, Mr. Rolovich has suffered, and continues to suffer monetary and/or  
11 economic damages, including, but not limited to, loss of past and future income, and  
12 compensation and benefits for which he is entitled to an award of monetary damages.

13 **COUNT I**  
14 **BREACH OF CONTRACT**  
15 **BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

16 95. Mr. Rolovich hereby repeats and realleges each and every above-made  
17 allegation as if fully set forth herein.

18 96. Pursuant to the terms of WSU's employment contract with Mr. Rolovich,  
19 WSU could terminate him with just cause (as defined in the contract), or without cause, but if  
20 it terminated Mr. Rolovich without cause, WSU was required to pay liquidated damages in  
21 an amount equal to sixty percent of his remaining base salary. When he was terminated,  
22 Mr. Rolovich had approximately three and one-half years remaining on his contract.

23 97. WSU terminated Mr. Rolovich in December 2021, claiming that it had just  
24 cause to do so, and on that basis denied that it owed Mr. Rolovich any further compensation  
25 under Mr. Rolovich's employment agreement.

26 98. WSU breached its contract with Mr. Rolovich because it did not have just  
cause to terminate Mr. Rolovich.

1            99.     WSU violated its own policies by allowing HRS to be improperly and  
2 unlawfully influenced by Mr. Chun, who persuaded HRS to reverse its determination that  
3 Mr. Rolovich’s religious beliefs regarding Covid vaccines were sincere.

4            100.    Mr. Rolovich reasonably relied upon WSU’s representation that it would  
5 follow a blind review process in determining whether a request for a religious exemption  
6 from the vaccine mandate was grounded in a sincere religious belief.

7            101.    Mr. Rolovich’s determination that he could not receive a COVID-19 vaccine  
8 without violating his religious convictions was not a deliberate and serious violation of his  
9 contractual duties, it was not an act of misconduct, or an intentional or major violation or  
10 repeated instance of secondary violations, nor was it prejudicial to the best interests of the  
11 University or its athletic program. It was an act of faith, of conscience.

12           102.    By taking punitive action against Mr. Rolovich for raising a religious  
13 objection that the University’s own process deemed sincere, WSU breached its employment  
14 agreement with Mr. Rolovich.

15           103.    After HRS determined that Mr. Rolovich’s religious beliefs were sincere, both  
16 HRS and EH&S determined that Mr. Rolovich’s sincere religious beliefs could be  
17 accommodated by requiring countermeasures to ensure his safety and others he may be in  
18 contact with.

19           104.    For approximately a year prior to his termination, Mr. Rolovich had  
20 successfully performed his job as head coach while following countermeasures required of  
21 him by WSU because of his vaccination status.

22           105.    Mr. Chun rejected the HRS and EH&S accommodation protocols developed  
23 for Mr. Rolovich, without ever seeking input from Mr. Rolovich.

24           106.    Mr. Rolovich’s sincere religious beliefs could have been accommodated as  
25 was clearly demonstrated by HRS, and especially EH&S, whose expertise in environmental  
26 and occupational health and safety” made an “individualized assessment” of Mr. Rolovich’s



1 working environment and formulated a list of “reasonable and necessary interventions and  
2 countermeasures to ensure the safety of the employee and others the employee may be in  
3 contact with.”

4 107. WSU’s refusal to seek input from Mr. Rolovich on his religious  
5 accommodation, a duty imposed by law, was a breach of its employment agreement with  
6 Mr. Rolovich, as was Mr. Chun’s predetermination before Governor Inslee’s vaccine  
7 mandate that Mr. Rolovich would be fired with cause if he did not get vaccinated.

8 108. WSU’s decision and actions in terminating Mr. Rolovich, and asserting that it  
9 had just cause to do so, also constituted a breach of the implied warranty of good faith and  
10 fair dealing.

11 WHEREFORE, Plaintiff prays for damages against Defendants as provided for by  
12 law.

13 **COUNT II**  
14 **WASHINGTON LAW AGAINST DISCRIMINATION**  
15 **RCW 49.60 *et seq.***

16 109. Mr. Rolovich hereby repeats and realleges each and every above-made  
17 allegation as if fully set forth herein.

18 110. A substantial factor in WSU’s decision to terminate Mr. Rolovich “for just  
19 cause” was his religious beliefs (creed) as expressed by him in seeking a religious exemption  
20 from Governor Inslee’s vaccine mandate.

21 111. An individual’s exercise of religious beliefs in a decision not to be vaccinated,  
22 or take medicine, cannot lawfully serve as the basis for a just cause termination.

23 WHEREFORE, Plaintiff prays for damages against Defendants as provided for by  
24 law.

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**COUNT III**  
**WASHINGTON CONSTITUTION, ARTICLE 1, SECTION 11**  
**DISCRIMINATION AGAINST RELIGION/CONSCIENCE**

112. Mr. Rolovich hereby repeats and realleges each and every above-made allegation as if fully set forth herein.

113. The Washington State Constitution guarantees Mr. Rolovich “[a]bsolute freedom of conscience in all matters of religious sentiment, belief, and worship.” The same constitutional provision states that “no one shall be molested or disturbed in person or property on account of religion.”

114. Defendants, by their conduct and words, discriminated against Mr. Rolovich because he acted according to his conscience, guided by his religion, in refusing to be vaccinated.

115. Defendants’ threat to fire Mr. Rolovich with “just cause” if he did not take an experimental vaccine was a disturbing and unlawful assault upon Mr. Rolovich’s conscience, bodily integrity, and religious faith.

WHEREFORE, Plaintiff prays for damages against Defendants as provided for by law.

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**COUNT IV**  
**WRONGFUL WITHHOLDING OF WAGES**  
**RCW 49.52, et. seq., and RCW 49.48.010, et seq.**

116. Mr. Rolovich hereby repeats and realleges each and every above-made allegation as if fully set forth herein.

117. From May 15, 2020 to July 15, 2020, WSU improperly and unlawfully withheld approximately ten percent of Mr. Rolovich’s wages.

118. WSU had a pre-existing duty under contract to pay Mr. Rolovich the specific compensation as set forth in the employment contract.

1 WHEREFORE, Plaintiff prays for damages against Defendants as provided for by  
2 law.

3 **COUNT V**  
4 **VIOLATION OF TITLE VII, 42 U.S.C. § 2000e, et seq.**

5 119. Mr. Rolovich hereby repeats and realleges each and every above-made  
6 allegation as if fully set forth herein.

7 120. Title VII of the Civil Rights Act of 1964 prohibits WSU from discriminating  
8 against its employees on the basis of their sincerely held religious beliefs. *See* 42 U.S.C.  
9 §2000e-2(a).

10 121. Mr. Rolovich holds sincere religious beliefs that precluded him from receiving  
11 any of the COVID-19 vaccines available during the times relevant to this complaint.

12 122. Mr. Rolovich notified WSU of those beliefs by requesting a religious  
13 exemption and reasonable accommodations from the vaccine mandate.

14 123. WSU's HRS panel, pursuant to the University's established policies and  
15 protocol, determined that Mr. Rolovich had sincere religious beliefs that precluded him from  
16 taking the vaccine, thereafter notifying the Athletics Department (Mr. Chun) of its  
17 determination.

18 124. The HRS panel, having concluded that Mr. Rolovich's religious beliefs were  
19 sincere, asked only for Mr. Chun's input on whether Mr. Rolovich's sincere religious beliefs  
20 could be accommodated.

21 125. Both HRS and EHS determined that WSU could accommodate  
22 Mr. Rolovich's sincere religious beliefs.

23 126. WSU failed to engage with Mr. Rolovich in the interactive process set forth in  
24 the EEOC's Compliance Manual on Religious Discrimination before concluding that it  
25 would not accommodate his request for a religious exemption.  
26

1 127. WSU's disapproval of Mr. Rolovich's sincerely-held religious reasons for  
2 refusing to receive a COVID-19 vaccine was one of the University's motives for its  
3 discriminatory treatment of Mr. Rolovich.

4 128. Accommodating Mr. Rolovich's religious beliefs would not have resulted in  
5 an undue hardship on WSU's operations.

6 129. WSU's discriminatory actions were intentional and/or reckless and in  
7 violation of Title VII.

8 WHEREFORE, Plaintiff prays for damages against Defendants as provided for by  
9 law.

10 **COUNT VI**  
11 **42 U.S.C., SECTION 1983**  
12 **First Amendment-Free Exercise of Religion and Fourteenth Amendment-Due Process**  
13 **(Defendant Chun only, in his Individual Capacity)**

14 130. Plaintiff hereby repeats and realleges each and every above-made allegation as  
15 if fully set forth herein.

16 131. All of the acts of Defendant Chun were conducted by him under color and  
17 pretense of the statutes, regulations, customs, policies and/or usages of the State of  
18 Washington and Washington State University.

19 132. The law regarding the free exercise of religion in employment is well  
20 established.

21 133. The law regarding due process in employment is well established.

22 134. Defendant Chun knew the First Amendment prohibits government officials  
23 from discriminating against an employee because of his religious beliefs.

24 135. Defendant Chun knew that the First Amendment prohibits governmental  
25 officials from demonstrating hostility to religion or prohibiting the free exercise thereof.

26 136. Defendant Chun knew the Fourteenth Amendment prohibits government from  
denying an employee due process.

1           137. Defendant Chun knew the Fourteenth Amendment prohibits government  
2 officials from denying an employee his right to due process.

3           138. Defendant Chun acted with willful malice, and/or intentionally and in gross  
4 disregard of Mr. Rolovich’s constitutional rights, and/or in reckless disregard of  
5 Mr. Rolovich’s constitutional rights.

6           139. As a direct and proximate result of Defendant Chun’s actions, Mr. Rolovich  
7 has been deprived of his constitutional right to the free exercise of religion, to be free from  
8 governmental hostility directed at his religion, and his right to due process and equal  
9 protection under the law.

10           WHEREFORE, Plaintiff prays for damages against Defendant Chun as provided for  
11 by law.

12   **COUNT VII**  
13   **42 U.S.C., SECTION 1983**  
14   **(First Amendment-Free Exercise of Religion)**

15           140. Plaintiff hereby repeats and realleges each and every above-made allegation as  
16 if fully set forth herein.

17           141. All of the acts of Defendants, their officers, agents, servants, and employees,  
18 as alleged herein, were conducted by the Defendants under color and pretense of the statutes,  
19 regulations, customs, policies and/or usages of the State of Washington and Washington  
20 State University.

21           142. Defendants granted twice as many medical exemptions as religious  
22 exemptions to WSU employees, reflecting Defendants’ discriminatory policy to grant  
23 religious exemptions as narrowly as possible.

24           143. The creation of a formal mechanism for granting exemptions renders WSU’s  
25 vaccine mandate not generally applicable because it invites the government to decide which  
26 reasons for not complying with the policy are worthy of solicitude.

1 144. Defendants ultimately denied Mr. Rolovich’s religious exemption request,  
2 terminated him, and improperly claimed it had just cause to do so, because Mr. Rolovich had  
3 informed Defendants that religious convictions precluded him from receiving a COVID-19  
4 vaccine.

5 145. Mr. Rolovich’s religious conviction to not be vaccinated cannot be punished  
6 by WSU by terminating him with just cause.

7 146. The actions of Defendants, as alleged herein, are unconstitutional  
8 abridgements of Mr. Rolovich’s rights to the free exercise of religion secured by the First and  
9 Fourteenth Amendments to the United States Constitution.

10 WHEREFORE, Plaintiff prays for damages against Defendants as provided for by  
11 law.

12 **COUNT VIII.**  
13 **FOURTEENTH AMENDMENT-DUE PROCESS (As Applied)**

14 147. Plaintiff hereby repeats and realleges each and every above-made allegation as  
15 if fully set forth herein.

16 148. All of the acts of Defendants, their officers, agents, servants, and employees,  
17 as alleged herein, were conducted by the Defendants under color and pretense of the statutes,  
18 regulations, customs, policies and/or usages of the State of Washington and Washington  
19 State University.

20 149. Defendants’ policies, as administratively construed and applied against  
21 Mr. Rolovich, granted WSU officials unfettered discretion to disregard the process they  
22 created for determining whether a religious exemption would be granted and, therefore,  
23 abridged Mr. Rolovich’s right to due process as guaranteed by the Fourteenth Amendment to  
24 the United States Constitution.

25 WHEREFORE, Plaintiff prays for damages against Defendants as provided for by  
26 law.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff respectfully prays that this Court:

3 a. Assume jurisdiction over this action;

4 b. Award damages in an amount to be determined at trial plus pre and  
5 post-judgment interest, to compensate Plaintiff for all monetary and/or economic damages,  
6 including but not limited to, the loss of past and future income, wages, compensation, job  
7 security and other benefits of employment;

8 c. Award liquidated damages, as provided for in the employment  
9 contract;

10 d. Award punitive damages, as provided for under 42 U.S.C. § 1983,  
11 Title VII, RCW 49.60 *et seq.* and as otherwise provide for under federal and state law;

12 e. Award double damages as provided for in RCW 49.52, *et seq.*;

13 f. Award damages for any and all other monetary and/or non-monetary  
14 losses suffered by Plaintiff in an amount to be determined at trial, plus pre and post-judgment  
15 interest;

16 g. Award an offset for the adverse federal income tax consequences  
17 resulting from damages and award of attorneys' fees;

18 h. Award costs that Plaintiff has incurred in this action, including but not  
19 limited to expert witness fees, as well as reasonable attorneys' fees and costs to the fullest  
20 extent permitted by federal and state law; and

1 i. Award such other and further relief as the Court may deem just and  
2 proper.

3 DATED this 11th day of November, 2022.

4  
5 By /s Brian Fahling

6 Brian Fahling  
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