

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION**

Case No. 5:23-cv-663

TYRONE LUMLEY,)

Plaintiff,)

v.)

TOWN OF KNIGHTDALE,)
NORTH CAROLINA,)

Defendant.)

)

COMPLAINT

Plaintiff Tyrone Lumley hereby files this complaint against his former employer, the Town of Knightdale, North Carolina, and alleges, upon information and belief, violations of state and federal statutory and constitutional law as follows:

PARTIES

1. Plaintiff **Tyrone Lumley** is a citizen and resident of Johnston County, North Carolina (“Plaintiff” or “Mr. Lumley”). He is a trained professional firefighter. From 2020 to December 2021, he was employed by the Town of Knightdale in its Fire Department. He had been employed by the Town of Knightdale since the merger of the East Wake and Town of Knightdale Fire Departments in June 2020. At the time he was forced from the Town’s employ in 2021, Mr. Lumley had compiled an exemplary record of service and held the rank of Lieutenant.

2. Defendant **Town of Knightdale** (“Town”), North Carolina, is a municipal corporation created under North Carolina law. Located east of Raleigh in Wake County, the Town’s population according to the 2020 census was just under

20,000 people. It is an entity capable of being sued under both federal and North Carolina law and is a “person” within the meaning of 42 U.S.C. § 1983. The Town enjoys no immunity from suit for the claims asserted herein; any immunity that might have otherwise existed has either been abrogated or waived.

3. The Town is also a “person” (within the meaning of 42 U.S.C. § 2000e(a)) “engaged in an industry affecting commerce” with fifteen or more employees; it constitutes an “employer” under 42 U.S.C. § 2000e(b).

4. Though generally governed by a Mayor and Town Council, the day-to-day operations of the Town are supervised, managed, and controlled by a Town Manager, who is an employee and agent of the Town, appointed by the Mayor and Council. The Town Manager is the Town’s chief executive officer and is a policy maker for the Town. The Town Manager was personally responsible for the development, implementation, and enforcement of the Town policies at issue in this case that caused Mr. Lumley’s separation from employment, all of which constituted the official policies of the Defendant Town of Knightdale.

5. The Town and its officials are responsible for creating, adopting, approving, ratifying, and enforcing the rules, regulations, ordinances, laws, policies, practices, procedures, and/or customs of the Town, including the policies, practices, and procedures of its personnel as set forth in this complaint. These rules, regulations, ordinances, laws, policies, practices, procedures, and/or customs are the moving force behind actions that deprived and are depriving Plaintiff of his fundamental constitutional rights as set forth in this complaint.

6. The Town has approved of and ratified the acts, policies, practices, customs, and/or procedures of its personnel (including the Town Manager and Assistant Town Manager), that deprived and are depriving the Plaintiff of his fundamental federal constitutional rights as set forth in this complaint. More specifically, the Town has fully ratified, adopted, and approved, as the official policies and decisions of the Town, the discriminatory employment actions taken against Mr. Lumley described herein.

JURISDICTION AND VENUE

7. This action arises under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* (“Title VII”). This action also arises under the First and Fourteenth Amendments to the United States Constitution and is brought pursuant to 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201-02.

8. This Court has federal question jurisdiction over this case pursuant to 28 U.S.C. §§ 1331, 1337 & 1343.

9. Additionally and more specifically, this Court has jurisdiction over Plaintiff’s Title VII claims under 42 U.S.C. § 2000e-5(f)(3) because the Town’s unlawful employment practices are alleged to have been committed in this judicial district, the employment records relevant to such practices are maintained and administered in this judicial district, and Plaintiff would have worked in this judicial district but for the alleged unlawful employment practices; moreover, this is the judicial district in which defendant Town maintains its “principal office,” as defined by law.

10. Plaintiff's state law claims are properly before this Court pursuant to 28 U.S.C. § 1367(a) because they are so related to the claims in the action that are within the Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

11. Venue may be laid in this Court pursuant to 28 U.S.C. § 1391(b)(1) & (b)(2) because defendant Town "resides" in this district and because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this district. Venue is likewise proper for the same reasons that jurisdiction under 42 U.S.C. § 2000e-5(f)(3) over Plaintiff's Title VII claims lies in this District.

12. This case is properly assigned to this Court's Western (Raleigh) Division under Local Rule 40.1(c)(1) because Plaintiff resides in Johnston County.

13. Accordingly, jurisdiction and venue are proper in the Western Division of the United States District Court for the Eastern District of North Carolina.

14. This Court is authorized to grant declaratory judgment relief under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, implemented through Rule 57 of the Federal Rules of Civil Procedure.

15. This Court is authorized to grant Plaintiff's prayers for injunctive relief pursuant to Fed. R. Civ. P. 65, 42 U.S.C. § 2000e-5, and state law.

16. This Court is authorized to grant Plaintiff's prayer for compensatory damages pursuant to 42 U.S.C. § 2000e-5, 42 U.S.C. 1981a, and state law.

17. This Court is authorized to grant Plaintiff's prayer for relief regarding costs, including a reasonable attorneys' fees, pursuant to 42 U.S.C. § 2000e-5, 42 U.S.C. § 1988, and state law.

18. Plaintiff has administratively exhausted the claims asserted herein for which administrative exhaustion is a prerequisite to suit, and this action is brought within the applicable statutes of limitations and repose.

19. Any and all conditions precedent to the bringing of this suit have been satisfied, and Plaintiff's claims are ripe for review and decision.

20. The Town's prior unlawful actions, as described by this complaint, are likely to be repeated through future illegal employment practices.

FACTS

21. This case results from the Town of Knightdale's inflexible and frequently reiterated goal of having a workforce that is 100% vaccinated against COVID-19, notwithstanding its legal obligations under Title VII and other laws.

22. The Town announced its COVID-19 vaccine mandate in late summer 2021. The mandate applied to *all employees* of the Town.

23. From the rollout of the COVID-19 vaccines, the message from the Town was that *all employees* should be vaccinated, irrespective of the nature of the employee's position and duties or level of interaction with the public or others. Those who would not (or could not) be vaccinated were told they were not welcome and told they should begin immediately searching for alternative employment.

24. The Town also implemented a program giving each employee a bonus for being vaccinated against COVID-19. This incentive was calculated to be between \$1300 to \$1400 per employee so as to ensure a net payment to the employee of \$1,000. This incentive scheme followed the Town's first (unsuccessful) plan for inducing vaccination, which was a grant of 24 to 48 hours of additional vacation time to vaccinated employees.

25. Moreover, the Town imposed a *penalty* for unvaccinated employees during this period, revoking "COVID relief time" for those who were not vaccinated, regardless of the reason the employee was unvaccinated. Thus, for example, when Mr. Lumley contracted COVID, he was required to use his own comp time and sick leave, whereas vaccinated employees would not have been required to use their personal leave hours for COVID illness and quarantining.

26. Though the Town announced formal procedures for making religious and medical/ADA accommodation requests for relief from its COVID vaccination mandate, time would show this entire process was a sham.

27. The Town's process for making a religious accommodation request under Title VII was plainly designed by the Town to be unduly invasive, asking questions and making requests for information and documentation that far exceeded what may be demanded by an employer for consideration of a Title VII accommodation. Employees were also given a very brief window of time (roughly a month) to respond to the Town's highly detailed inquiries, which included acquiring and submitting information from third parties.

28. The imposition of the mandate and the process for seeking an exemption caused Mr. Lumley great concern, stress, anxiety, and worry, not only for himself but also for his fellow employees for a protracted period of time.

29. Through its design and adoption of the religious accommodation questionnaire, the Town intended to discourage, dissuade, and even frighten employees from engaging in the exercise of their federally protected civil rights.

30. While the questionnaire is overly invasive and burdensome in multiple respects, among its most egregious aspects is its representation that a request for accommodation is required to be supported by copies of religious texts substantiating the nature of the employee's religious beliefs and letters from third parties, *viz.*, religious leaders.

31. The Town's questionnaire far exceeds the requirements established by law for a legitimate Title VII religious accommodation request.

32. Employees, however, were misled *en masse* by the Town and its questionnaire into believing that they were required submit to the Town's far-reaching inquiry into their religious beliefs and practices merely to have their requests even considered, let alone granted.

33. Nevertheless, under the law, the Town was required to accept and fairly evaluate employee requests for religious accommodation regarding the vaccine mandate regardless of whether its extensive questionnaire was fully completed.

34. The motive behind these burdensome and invasive requirements was to dissuade Town employees from exercising their rights under Title VII.

35. Due to the apparent need for employees to prepare extensive written answers to the Town's questions, the burdensome effects of completing the questionnaire would fall especially hard on Town employees who might have less formal education or lack strength in reading or writing English.

36. Mr. Lumley was particularly concerned for these employees, as they could very well feel overwhelmed by the Town's requirements and thus be pressured to surrender their religious convictions, especially given the Town's incessant vaccination campaign.

37. Upon information and belief, the Town knew that its questionnaire sought more than was necessary for consideration of a religious accommodation request under Title VII, but the Town still proceeded with making these unlawful demands of its employees because doing so would drive down the number of requests made, as employees abandoned pursuit of their rights.

38. Additionally, the Town made accommodation seekers sign a statement that appeared to condition their accommodation on agreeing to certain misleading and blatantly false factual assertions about COVID-19.

39. In point of fact, when Mr. Lumley submitted his request without signing the page containing his assent to these assertions, the Town contacted him, stating that his signature on this page was a *required* part of the accommodation request.

40. It is unlawful to condition a Title VII accommodation request on agreement to certain contentions by the employer. Such a requirement, which was wholly irrelevant to the employee's request, was yet further evidence that the Town

desired to frighten and discourage employees from availing themselves of their rights under Title VII.

41. Second, said assertions appear to place on the employee an assumption of the risk for contracting COVID-19, thereby misleadingly suggesting a reversal of the allocation of liabilities between an employer and an employee, in violation of the North Carolina Workers' Compensation Act, N.C. Gen. Stat. § 97-1 *et seq.*

42. The accommodation questionnaires required by the Town were an abusive exercise of the Town's unequal bargaining power as both a governmental entity and an employer, used to exploit its employees and pressure them into not making requests for religious accommodation under Title VII.

43. Mr. Lumley has sincere Christian religious beliefs that prevent him from receiving the COVID-19 vaccine.

44. Because of his sincerely held religious beliefs in conflict with the COVID-19 vaccine, Mr. Lumley specifically requested a religious accommodation to the vaccine mandate instituted by the Town in 2021. Mr. Lumley provided a detailed religious exemption request to the Town describing the religious conflict.

45. The Town has never disputed the sincerity of Mr. Lumley's Christian beliefs or the fact that receiving the COVID-19 vaccines would violate his sincerely held religious beliefs.

46. Mr. Lumley submitted all information necessary for the Town's consideration of his request for accommodation under Title VII.

47. Additionally, it is of note that Mr. Lumley also submitted with his accommodation proof of his prior COVID infection and thus his natural immunity.

48. After Mr. Lumley submitted a religious exemption request outlining his objection to the mandate, including the specifically religious nature of his objection and need for an accommodation, the Town—without denying the sincerity of his beliefs—denied his accommodation request.

49. The Town Manager (Bill Summers) was personally involved in and ratified and approved the denial of Mr. Lumley’s accommodation request as an official act of the Town.

50. The Town wholly refused to undertake the interactive process required by federal law, despite multiple attempts by Mr. Lumley to engage the Town in a dialogue as to how his request could be accommodated.

51. A Lieutenant in the Town’s Fire Department, Mr. Lumley recognized problems with the Town’s policy and attempted—on behalf of himself and others, including those in his command—to communicate concerns to the Town Manager (Bill Summers) about whether the Town’s vaccine mandate (including its “no exemptions” approach) complied with the law.

52. These concerns fell on deaf ears. In one meeting between Mr. Lumley and the Town Manager, the Town Manager even commented that he (the Town Manager) had no way of understanding the scientific evidence surrounding COVID-19 and the COVID vaccines, even though he was tasked by the Town with managing key aspects of its response.

53. Despite openly confessing his scientific ignorance, the Town Manager decided he, as the official decisionmaker for the Town on this matter, would continue to insist that *all Town employees be vaccinated*.

54. The Town Manager also commented on more than one occasion that members of the public were purportedly lobbying to ensure the Town's employees were 100% vaccinated and that they did not want unvaccinated Town employees.

55. Upon information and belief, the Town Manager made good on his promise and denied *all* requests for accommodation, including religious and medical accommodation, from the Town's vaccine mandate.

56. The Town engaged in this blunderbuss denial despite its lengthy application for employees to make religious accommodation requests, thereby underscoring that the questionnaire was merely a tool to dissuade employees from the exercise of their civil rights by subjecting them to onerous and personally invasive requests and that the Town never had any intention of actually considering the information supplied to determine if a request could be granted.

57. Although the number of properly supported medical/ADA accommodation requests made to, and then denied by, the Town is not known by Plaintiff, upon information and belief, the number of legitimate medical requests is believed to be small and it is believed that the Town's blanket denials of medical/ADA requests was made to camouflage the Town's denial of properly supported religious accommodation requests under Title VII through a strategy of across-the-board denial of *all* accommodation requests.

58. In fact, upon information and belief, all employees denied an accommodation received the same form letter denying their requests.

59. Therefore, despite contending that it complied with its obligations under Title VII and the ADA, the Town could not find room to grant a single accommodation to its vaccine mandate. In so doing, it managed to attain the policy of 100% employee vaccination that it had repeatedly stated it would achieve in written pronouncements to employees. Of course, this was no accident, but the product of intentional design by the Town and Town Manager.

60. Mr. Lumley sent the Town emails attempting to ascertain the exact reasons for his request being denied, but he received no response.

61. Mr. Lumley's request was denied effective December 7, 2021.

62. The Town informed Mr. Lumley that he was being placed on leave immediately and that he had until December 14, 2021, to become vaccinated or his employment would be terminated with December 14, 2021, being his last day of work for the Town.

63. Because the Town stated that employees terminated due to noncompliance with its vaccine mandate would not receive a payout of their accrued vacation time and would further be forever ineligible for future rehire, Mr. Lumley submitted a resignation under duress prior to the December 14 deadline.

64. The Town in effect terminated Mr. Lumley's employment due to the fact that his resignation was coerced and involuntary, extracted by ultimatum after the final and conclusive denial of his accommodation request.

65. By conditioning his continued employment on the violation of his fundamental religious beliefs, the Town constructively discharged Mr. Lumley.

66. In a subsequent letter, the Town itself confirmed that it considered Mr. Lumley to have been terminated.

67. Mr. Lumley was terminated (or constructively discharged) because of his Christian religious beliefs, including his religious practices, which precluded his receiving any of the COVID-19 vaccinations.

68. The Town's termination (or constructive discharge) of Mr. Lumley violated Title VII, as well as other laws.

69. The Town could have accommodated Mr. Lumley's religious beliefs and practices without undue hardship.

70. First, if it would have preserved his career with the Town, Mr. Lumley would have personally incurred any costs related to regular COVID testing and provision of PPE, and he communicated these offers to the Town, all to no avail.

71. After Mr. Lumley's separation from employment, the Town asserted that Mr. Lumley refused to undergo regular COVID testing. This is a false assertion, knowingly made, indicative of pretext on the part of the Town.

72. Furthermore, despite the Town's purported need for 100% of its first responders (just like all other employees) to be vaccinated against COVID-19, the Town long has maintained—and has never ceased—a practice of working with first responders and other emergency services personnel from surrounding municipalities as well from the Wake County government itself to respond to emergencies in

Knightdale. These municipalities did not have a vaccination policy that precluded granting religious and other vaccination exemptions to first responders. Thus, even after terminating its unvaccinated workers (including its first responders), the Town had to rely on likely unvaccinated first responders from neighboring municipalities on a regular basis.

73. The fact that these municipal employers (many of which are similar in character to Knightdale) in the very same geographic area found no need to enforce the same inflexible vaccination policy for their first responders wholly undermines the Town's contention that it could not grant Mr. Lumley an accommodation.

74. Upon information and belief, after Mr. Lumley left the Town's employ, the Town did in fact continue to rely regularly on assistance from first responders employed by jurisdictions that were either without an inflexible vaccine mandate for all such emergency personnel or without a mandate at all, and in so doing the Town did not exclude unvaccinated first responders from those jurisdictions from so assisting.

75. Such favored treatment of secular conduct fundamentally undermines the undue hardship asserted by the Town for denying Mr. Lumley's accommodation request.

76. Mr. Lumley even became employed with a nearby municipal fire department shortly after his separation from employment from the Town of Knightdale, and his unvaccinated status provided no impediment for his new employer.

77. The North Carolina General Assembly has since passed legislation prohibiting municipalities, including the Town of Knightdale, from requiring their employees to be vaccinated for COVID-19, except in limited circumstances. *See* S.L. 2023-134 (HB 253) (N.C.) (adding N.C. Gen. Stat. § 143-162.10 to prohibit “[d]iscrimination against persons based on refusal of COVID-19 vaccination and exemption”).

78. Upon information and belief, the Town itself has since rescinded its COVID-19 vaccine requirements, even for first responders like Mr. Lumley. Nevertheless, the Town has not contacted Mr. Lumley to offer him reemployment since rescinding its mandate.

79. Perhaps most indicative of why the Town would have faced no undue hardship from granting Mr. Lumley an accommodation is that, as the data indisputably now shows, Mr. Lumley would have been just as likely to contract and spread COVID-19 if he had been vaccinated as if he had not, if not more so.

80. For these, and other reasons to be established in discovery and by proof at trial, the Town would have incurred no undue hardship from granting Mr. Lumley his requested accommodation.

81. As a direct and proximate result of the violation of Mr. Lumley’s rights by the Town, he has suffered damages, including monetary damages and nonpecuniary damages, including emotional distress.

82. As to specific financial injuries, in addition to loss of pay and bonuses and fringe benefits, Mr. Lumley has suffered the loss of future retirement income and

benefits. He has also suffered injury to his professional standing, loss of promotional opportunities, and harm to his reputation.

83. The violation of Mr. Lumley's rights by the Town was willful and wanton and undertaken with a conscious disregard for his rights under the law.

84. Absent judicial intervention, the Town is likely to repeat its violations of law, particularly in light of the Town's cavalier conduct, including (1) its blatant failure to engage in individualized evaluation of each employee's request; (2) its willful disregard of scientific data (as admitted by the Town Manager himself); (3) its desire to discourage employees from availing themselves of their rights under the law through a burdensome and overly invasive questionnaires into private information of Town employees; and (4) its multiple pretextual justifications for its discrimination.

85. Mr. Lumley timely filed a charge with the EEOC.

86. Mr. Lumley has properly exhausted his administrative remedies for the claims alleged herein requiring administrative exhaustion.

87. A copy of the right to sue letter issued by the EEOC to Mr. Lumley is attached hereto as **Exhibit A**.

88. Upon information and belief, the Town has waived immunity from suit for the claims asserted herein through the purchase of insurance and/or participation in a government risk pool, including (but not necessarily limited to) the Interlocal Risk Financing Fund of North Carolina ("IRFFNC").

89. Mr. Lumley has timely filed this civil action in the United States District Court for the Eastern District of North Carolina.

COUNT I:
Violation of Title VII – Invidious Religious Discrimination
Due to Failure to Accommodate
(42 U.S.C. § 2000e *et seq.*)

90. The preceding allegations of paragraphs 1 through 89 are hereby realleged and incorporated herein by reference.

91. At all times relevant to this complaint, the Town was an employer covered by Title VII of the Civil Rights Act of 1964.

92. Prior to his separation from employment with the Town, Mr. Lumley was an employee of the Town and was protected by Title VII.

93. Mr. Lumley is a Christian with sincerely held religious beliefs that prevent him from receiving any of the available COVID-19 vaccines.

94. In 2021, the Town imposed a COVID-19 vaccine mandate.

95. The Town's COVID-19 vaccine mandate conflicted with Mr. Lumley's sincere religious beliefs and/or practices.

96. Mr. Lumley was qualified for his position and made a properly supported request for a religious accommodation under Title VII.

97. Mr. Lumley's has bona fide religious beliefs that conflict with an employment requirement of the Town, and he informed the Town of this belief, making a request for accommodation of his supervisors.

98. The Town knew of Mr. Lumley's religious beliefs and practices as well as the conflict presented by its mandate with his religious beliefs and/or practices.

99. The Town denied Mr. Lumley's request for religious accommodation under Title VII.

100. The Town did not engage in any meaningful interactive process with Mr. Lumley to determine if his request could be granted.

101. The Town, however, imposed on Mr. Lumley and other employees seeking a religious accommodation to the mandate a requirement that they subject themselves to an invasive and burdensome questionnaire that far exceeded the requirements for an accommodation request under Title VII.

102. Granting Mr. Lumley's accommodation request would not have caused an undue hardship for the Town.

103. Therefore, the Town wrongfully denied Mr. Lumley's request for a religious accommodation under Title VII.

104. The denial of Mr. Lumley's request violated Title VII.

105. As a result of the Town's violation of Mr. Lumley's rights under Title VII, he has been injured financially and otherwise. Mr. Lumley is therefore entitled to compensatory damages and other appropriate legal and equitable relief provided by federal law.

COUNT II:
Violation of Title VII – Wrongful Termination/Constructive Discharge
(42 U.S.C. § 2000e *et seq.*)

106. The preceding allegations of paragraphs 1 through 105 are hereby realleged and incorporated herein by reference.

107. After denying Mr. Lumley's request for religious accommodation, the Town stated it would terminate Mr. Lumley's employment due to his not being vaccinated.

108. Mr. Lumley should have, but did not, receive an exemption to the Town's vaccine mandate pursuant to Title VII.

109. Therefore, the Town's threat to terminate Mr. Lumley was unlawful.

110. Mr. Lumley's technical "resignation" was involuntary and against his will and the result of a constructive discharge following the denial of his accommodation request and an ultimatum from the Town that, *inter alia*, he be vaccinated in violation of his religious beliefs or face imminent termination and loss of certain benefits and opportunities by a date certain, the result of which made the conditions of his employment so intolerable that a reasonable person would feel compelled to resign.

111. As a result of the Town's violation of Mr. Lumley's rights under Title VII, he has been injured financially and otherwise. Mr. Lumley is therefore entitled to compensatory damages and other appropriate legal and equitable relief provided by federal law.

COUNT III:
Retaliation in Violation of Title VII for
Engaging in Protected Activity
(42 U.S.C. § 2000e *et seq.*)

112. The preceding allegations of paragraphs 1 through 111 are hereby realleged and incorporated herein by reference.

113. Mr. Lumley engaged in protected activity within the meaning of Title VII.

114. Such protected activity included requesting a religious accommodation and complaining about perceived unlawful discrimination suffered by himself and others.

115. The Town, as Mr. Lumley's employer, soon thereafter took adverse employment action, including threatened termination, against Mr. Lumley following his protected activity. Adverse employment action taken by the Town also included the invasive and burdensome questionnaire required of those, including Mr. Lumley, who sought a religious accommodation, as well as the discriminatory incentive programs and penalties for those exercising their rights under Title VII.

116. There was a causal connection between Mr. Lumley's protected activity and the Town's adverse employment actions.

117. As a result of the Town's violation of Mr. Lumley's rights under Title VII, he has been injured financially and otherwise. Mr. Lumley is therefore entitled to compensatory damages and other appropriate legal and equitable relief provided by federal law.

COUNT IV:
**Violation of the First Amendment's Free
Exercise and Equal Protection Clauses
(U.S. Const. amends. I & XIV; 42 U.S.C. § 1983)**

118. The preceding allegations of paragraphs 1 through 89 are hereby realleged and incorporated herein by reference.

119. The First Amendment to the United States Constitution is applicable to the States, including the Town of Knightdale, pursuant to the Fourteenth Amendment.

120. Under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment, government may not disfavor religious beliefs or practices over similarly situated secular beliefs or practices.

121. These constitutional rights are enforceable against the Town pursuant to 42 U.S.C. § 1983.

122. The ostensible justification for the Town's COVID-19 mandate was that first responders, like Mr. Lumley, would contract and spread COVID to the public.

123. Upon information and belief, after Mr. Lumley's separation, the Town relied on unvaccinated first responders from neighboring jurisdictions, and those first responders were unvaccinated for secular reasons, including medical reasons and personal preference.

124. The Town was aware of this disparity, but nevertheless elected to proceed with its policy of discrimination against its own employees.

125. This violation of Mr. Lumley's fundamental constitutional rights was not narrowly tailored to achieve any compelling governmental interest and did not use the least restrictive means of achieving any such interest.

126. By discriminating against Mr. Lumley for failure to obtain one of the COVID-19 vaccines, the Town violated the protections of the United Constitution.

127. Mr. Lumley is therefore entitled to compensatory damages and other appropriate legal and equitable relief provided under federal law.

COUNT V:
Violation of the North Carolina Constitution
(N.C. Const. art. I, §§ 1, 13 & 19)

128. The preceding allegations of paragraphs 1 through 89 and paragraphs 118 through 127 are hereby realleged and incorporated herein by reference.

129. The North Carolina Constitution provides that “all persons are created equal,” N.C. Const. art. I, § 1, and that “[n]o person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, *religion*, or national origin,” N.C. Const. art. I, § 19 (emphasis added).

130. The State’s Constitution also expressly protects religious liberty: “All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and *no human authority shall, in any case whatever, control or interfere with the rights of conscience.*” N.C. Const. art. I, § 13 (emphasis added).

131. Furthermore, the North Carolina Constitution guarantees due process of law by stating that “[n]o person shall be . . . in any manner deprived of his life, liberty, or property, but by the law of the land.” N.C. Const. art. I, § 19.

132. As a municipal government entity, created by the State of North Carolina, the Town is a state actor subject to the constraints on governmental power expressed in N.C. Const. art. I, §§ 1, 13 & 19.

133. Beginning in summer 2021 and continuing through his separation from employment, the Town denied Mr. Lumley, along with similarly situated employees,

equal protection of law, due process, and the right to religious liberty, through employment practices that violated the North Carolina Constitution.

134. By discriminating against Mr. Lumley for failure to obtain one of the COVID-19 vaccines during his employment, the Town impermissibly violated the protections of the North Carolina Constitution, including its provision that “no human authority shall, in any case whatever, control or interfere with [] rights of [religious] conscience.”

135. Mr. Lumley is therefore entitled to compensatory damages and other appropriate legal and equitable relief provided under North Carolina law.

COUNT VI:
Genetic Information Discrimination
(N.C. Gen. Stat. § 95-28.1A)

136. The preceding allegations of paragraphs 1 through 89 are hereby realleged and incorporated herein by reference.

137. Under N.C. Gen. Stat. § 95-28.1A(a), “[n]o . . . unit of local government, or any public or private entity shall deny or refuse employment to any person or discharge any person from employment . . . on the basis of genetic information obtained concerning the person[.]”

138. “The term ‘genetic information’ means information about genes [and] gene products[.]” N.C. Gen. Stat. § 95-28.1A(b).

139. The COVID-19 vaccines are “gene products” within the meaning of North Carolina law.

140. The Town took illegal adverse employment action and ultimately terminated (or constructively discharged) Mr. Lumley on the basis of genetic information concerning Mr. Lumley, namely his COVID-19 vaccination status.

141. By discriminating against Mr. Lumley for failure to obtain one of the COVID-19 vaccines, the Town violated the protections of N.C. Gen. Stat. § 95-28.1A.

142. Mr. Lumley is therefore entitled to compensatory damages and other appropriate legal and equitable relief provided under North Carolina law.

COUNT VII:
Declaratory Judgment Relief
(28 U.S.C. §§ 2201-02)

143. The preceding allegations of paragraphs 1 through 142 are hereby realleged and incorporated herein by reference.

144. An actual controversy exists between the parties concerning the legality of the Town's vaccine mandate and related employment practices and questions that affect Mr. Lumley's future employment prospects and opportunities.

145. A declaratory judgment is necessary and appropriate as it would serve a useful purpose in clarifying and settling particular legal issues between the parties and thereby afford relief from much of the uncertainty and controversy giving rise to this proceeding.

146. Accordingly, under 28 U.S.C. §§ 2201-02 and Rule 57 of the Federal Rules of Civil Procedure, Mr. Lumley prays for declaratory and related relief declaring and defining the rights among the parties.

CONCLUSION

WHEREFORE, Plaintiff Tyrone Lumley respectfully prays for the following relief:

1. That the Court accept jurisdiction over this matter;
2. Order Defendant to make Mr. Lumley whole for the unlawful employment practices described above, by providing the affirmative relief necessary to eradicate the effects of its unlawful employment practices, including but not limited to reinstatement, reinstatement, front pay in lieu of reinstatement, or otherwise make him whole for the rights denied him because of Defendant's unlawful and invidious employment practices;
3. Enter a declaratory judgment declaring Defendant's actions to be violations of law, including Title VII, the United States and North Carolina constitutions, and N.C. Gen. Stat. § 95-28.1A;
4. Issue a permanent injunction requiring Defendant to expunge the personnel files of Mr. Lumley as to any derogatory, false, or misleading information relating to this matter;
5. Grant appropriate equitable and injunctive relief;
6. Order Defendant to provide training for supervisors and managers at all management levels specific to Title VII and related employment laws;
7. Award back pay (including interest and benefits), reinstatement or front pay, pre-judgment and post-judgment interest, and compensatory

damages (including damages for past and future mental and emotional distress, anguish, stress, anxiety, and humiliation; past and future loss of enjoyment of life; expenses necessary to secure new employment; and past and future injury to reputation);

8. Award attorneys' fees and litigation costs under 42 U.S.C. § 1988, 42 U.S.C. § 2000e-5, N.C. Gen. Stat. § 6-21.5, N.C. Gen. Stat. § 6-21.7, and as otherwise allowed by law; and
9. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted, this 17th day of November, 2023.

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† Notice of special appearance
pursuant to L.R. 83.1(e) to be filed.

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