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MILLER MICHAEL- JOHN
WHARTENBY

Plaintiff,

v.

ROWAN COLLEGE AT BURLINGTON
COUNTY, KAREN MONTALTO,
DANIELLE GARCIA,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BURLINGTON
COUNTY
DOCKET NO: BUR-L-

CIVIL ACTION

COMPLAINT WITH JURY DEMAND

1. This action seeks redress for Defendants' willful and flagrant contempt for the civil rights of Plaintiff in violation of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to -49 ("NJLAD").
2. In its simplest form, The NJLAD protects a student who asserts a sincerely held religious belief in opposition to a school's vaccination requirement.
3. As applied to colleges in New Jersey, they are required to provide students with the opportunity to submit a request for a religious exemption from any vaccination requirement.
4. Defendant Rowan College at Burlington County ("Rowan") is fully aware of this requirement because they follow the law with respect to the general student body.
5. However, Defendant Rowan has implemented a policy by and through Defendant Karen Montalto that "We do not recognize religious exemptions just for the COVID vaccines."
6. By Doing so, Defendants are knowingly and willfully disregarding their legal obligations to discriminate against those students who seek religious exemptions.

7. This is open and willful disparate treatment and discrimination in violation of the NJLAD.

PARTIES AND JURISDICTION

8. Plaintiff Miller Michael-John Whartenby (“Miller”) is a resident of Lumberton, New Jersey, in the County of Burlington.

9. Defendant Rowan is a public community college with a principal place of business located at 900 College Drive, Mount Laurel Township, NJ 08054 in the County of Burlington.

10. Defendant Dr. Karen Montalto, PhD is the Dean of Health Sciences for Rowan. She personally applied Rowan’s discriminatory policies to Miller. Her listed primary office is located in Mount Laurel, New Jersey, in the County of Burlington.

11. Defendant Danielle Garcia is the Health Science Department Coordinator for Rowan, with her principal place of business in Mount Laurel Township, in the County of Burlington.

12. Miller is a student enrolled at Rowan.

13. The discrimination alleged in this Complaint occurred at the Rowan campus located in Burlington County, and at and through Defendant Montalto and Defendant Danielle Garcia, who work in Burlington County.

14. Inasmuch as Defendant Rowan is a resident of the County of Burlington, Defendants work in the County of Burlington, and the discrimination at issue occurred in the County of Burlington, this Court has jurisdiction over the parties here and this complaint is properly venued in this County.

FACTS COMMON TO ALL COUNTS

15. Plaintiff Miller is a 19-year-old student seeking to pursue his dream of caring for those in need through a vocation as a nurse.

Plaintiff's Enrollment at Rowan

16. Miller is currently enrolled at Rowan in the general education program.
17. On October 28, 2022, he met with Defendant Garcia to discuss the classes he would need to take in the Spring 2023 semester in order to attend the nursing program at Rowan.
18. Miller enrolled in, and completed, the classes Defendant Garcia required him to complete.
19. In or around the end of April 2023, Miller again met with Defendant Garcia to discuss his enrollment in the nursing program now that he had completed the required classes.
20. Defendant Garcia told Miller that Rowan allows students to seek religious exemptions “only if they can prove that the student has never had a vaccine in their entire life.”
21. This standard is in violation of the legal standards for religious exemptions established in every level of Court: from the United States Supreme Court through the Circuit Courts of Appeals to the state and federal courts in new Jersey.
22. On or about May 17, 2023, Miller was accepted into the nursing program at Rowan.

Plaintiff Seeks a Religious Exemption as Provided by Law

23. On June 26, 2023, Miller submitted a request for a religious exemption from the Rowan COVID-19 vaccine requirement. As required by Rowan, he submitted his request to Defendant Montalto and to Defendant Garcia.
24. Miller checked off the religious exemption box and wrote a lengthy background letter to explain how receiving the COVID-19 vaccine would violate his sincerely held religious beliefs.
25. As set forth in the submission, requiring Miller to receive the COVID-19 vaccine would violate his sincerely held religious beliefs. As he set forth in his submission:
 - a. As a Christian, there are a number of convictions that collectively serve as the

foundation for my request for a religious exemption from compliance with the mandate for the shot.

- b. The first of these convictions is a claim that is central to Christian identity; namely, that Jesus is Lord (Romans 10:9; Philippians 2:9-11 – NASB). In the light of the Holy Scriptures, this means, at a minimum, that Jesus is one possessing supreme authority over people and nations. He has said that all authority has been given to Him on heaven and on earth (Matthew 28:18 – NASB).
- c. He is head over all rule and authority (Colossians 2:10 – NASB). He is the ruler of the kings of the earth (Revelation 1:5 – NASB). As one possessing such authority, every nation and person is ultimately accountable to Him and has the duty to submit to Him (Psalm 2:10-12; John 5:21-30 – NASB) in everything. This obviously includes issues related to health and the body.
- d. The Holy Scriptures also teach that all things were made through and for Jesus. John 1:3 states that, “All things came into being through Him, and apart from Him nothing came into being that has come into being” (NASB). Colossians 1:16 states that, “...by Him all things were created, both in the heavens and on earth, visible and invisible, whether thrones or dominions or rulers or authorities – all things have been created through Him and for Him” (NASB).
- e. The category “all things” occurring in the earlier statements obviously includes human beings, whom the Scriptures indicate are created in the image of God (Gen. 1:26, 27). Thus, as rational and moral creatures (i.e. created things) of Jesus who have been made for Jesus, the one identified earlier as both Lord and Creator,

we have a duty to live in this world in a way that is consistent with the ends for which we have been brought into being. This duty includes the use of our bodies. Properly, this duty may be described as “responsible stewardship”. This is the second one of my convictions.

- f. While the revelation of Jesus as both Lord and Creator is an important foundation for the duty of responsible stewardship, another important foundation is the role of the eternal moral law of God in the Christian life as a basis for moral reasoning.
- g. In addition to the Scriptures, my church adheres to a confessional document called, “The 1689 2nd London Baptist Confession of Faith” which underscores the role of the moral law of God in the life of the Christian. Due to constraints upon space and time, it will simply be noted here that an aspect of that law is expressed in the sixth of the Ten Commandments, which states, “You shall not murder” (Exodus 20:13).
- h. This commandment is part of the basis for the church’s teaching about the sanctity of human life and includes the duty to seek to give and preserve life. This teaching is expressed in another document called “The Shorter Catechism – A Modest Revision for Baptists Today”.
- i. “Catechesis” is the process of instruction in the fundamentals of a particular faith tradition and a “catechism” is a term that can be used to refer to a document used for such instruction. This catechism is in a “Question-and-Answer” format and so the following is a summary of the answers to Questions 71-72 pertaining to the sixth commandment: “The sixth commandment requires all lawful endeavors to preserve our own life, and the life of others,” and it “...forbids the taking away

of our own life, or the life of our neighbor unjustly, or whatsoever tends thereunto”.

- j. The teaching contained in my church’s catechism and confession of faith, in addition to the Scriptures, make clear my duty of responsible stewardship in submission to Jesus as Creator and Lord. It is this duty of responsible stewardship, which entails the necessity of judiciously taking measures to preserve life, that is a Christian foundation for the principle in medical ethics of bodily autonomy (or bodily authority).

Rowan Declares that the Law Against Discrimination Applies Only to Certain Programs

26. Exactly 23 minutes after sending his request, Miller received an email from Defendant Montaldo stating:

Miller,

We do not recognize religious exemptions just for the Covid Vaccine and students cannot write their own letter for exemption, of course

Our clinical agencies require this vaccine as well as all others.

The only students considered for a religious exemption are those who can prove they have never had a vaccine in their lives and provide letters from the head of their church.

If the long term care agency does not agree to let the student attend the clinical, then the student is not in the nursing program

We would have to wait until you reach the fundamentals course next year and then reach out to our clinical agencies for assistance once you submit all required information.

The agency could state that you have to test every day that you attend clinical or they could deny your entry.

We deal with vulnerable populations and protecting patients is our primary initiative.

Please know this is not a requirement of the college, but a requirement of clinical agencies

Once you successfully reach NUR 130 131 132 fundamentals, we will require you to verify immunizations and this is when we will

investigate.

If you have more questions, please reach out to Ms Ruby Murrani, copied on this email.

Sincerely,

Dr Montalto

27. On July 5, 2023 Defendant Garcia, upon information and belief responding to Miller from the email address identified as “Nursing Student” told Miller, “I see that Dr. Montalto has gotten in touch with you while I was out of the office.”

28. Defendant Garcia then stated that “if you are choosing not to get the COVID vaccine then we will have to rescind your spot for Fall 2023.”

29. Counsel for Plaintiff sent a draft of this Complaint to Defendant Montalto in an attempt to prevent her from following through on her *per se* discrimination and disenrollment of Miller.

30. On July 14, 2023, Defendant Montalto emailed Miller to say: “We certainly respect your right to a lawsuit. As you probably know, these can be lengthy. You will be unregistered from courses for the fall semester as of course this will not be settled that soon.”

Defendants Follow-Through on Their Threat

31. On July 19, 2023, Defendant Garcia sent the following email to Miller:

Dear Miller

This is your official notice that our offer of conditional admission to Rowan College at Burlington County Associates of Applied Science Degree of Nursing program for Fall 2023 has been rescinded due to failure to adhere to one or more of the conditional admission criteria.

Your conditional acceptance was conditional based on the following:

1. Completion with a C or better in all Spring 2023 (as registered at the time of your acceptance) courses. If you receive less than a C in any course, your admission is rescinded.

2. Completion of a criminal background check/drug screening or a clear background check and negative drug screen. If your

background check or drug screen was not clear, your admission is rescinded.

3. Satisfying all of the Health Requirements: physical exam, immunizations, titers (all titers must be completed), 2 step PPD (must be done 7-30 days apart), CPR and annual influenza vaccine, by no later than July 15, 2023. If your health requirements were not completed by this date, your admission is rescinded.

32. Then, as per Defendants' threatened discrimination, Miller was unregistered from courses for the fall semester.

COUNT I:

VIOLATION OF NJLAD: RELIGIOUS DISCRIMINATION

33. Plaintiff repeats and realleges the allegations contained in the prior sections as if fully set forth herein.

34. The NJLAD applies to Defendants inasmuch as Rowan is an institute of higher learning.

35. The NJLAD prescribed requirements that the Defendants were required to follow upon receipt of a request for religious exemption from the COVID-19 vaccination policy.

36. Defendant Rowan is a place of public accommodation subject to the NJLAD.

37. The NJLAD provides for individual liability for individuals acting on behalf of a discriminatory entity.

38. Defendants Garcia and Montalto acted in concert with Rowan to implement a facially discriminatory policy that provided for disparate treatment for students who sought a religious exemption from COVID-19 vaccination.

39. Specifically, Defendants implemented a "religious doctrine" test that is explicitly prohibited by the United States Supreme Court.

40. While the controlling legal standard to be applied when evaluating a request for religious exemption requires a determination of whether the beliefs are those of the person seeking an

exemption, Defendant Rowan and Montaldo,

41. Specifically, Defendant Montalto, on behalf of Rowan, stated that a student cannot seek a religious exemption from only one vaccine.

42. Further, Defendant Montalto, on behalf of Rowan, stated that it is not the student's own assertion of their beliefs, but the beliefs submitted by a third-party.

43. Additionally Defendant Montalto, on behalf of Rowan, stated that the submission must be by the "head of the church" in violation of controlling law, including *Frazer v. Ill Dep't of Employment Sec.*, 489 U.S. 829, 835-836 (1989).

44. Plaintiff was subjected to disparate treatment and discrimination due to his sincerely held religious beliefs.

45. The NJLAD prohibits Defendants from retaliating against a student who seeks a religious exemption from the COVID-19 vaccination policy.

46. As a result, Plaintiff suffered emotional distress, including suffering embarrassment, humiliation, indignity, and other mental anguish.

47. If Plaintiff is disenrolled from his program of studies, Plaintiff will suffer economic harm and damages.

48. As a result, the Plaintiff was damaged.

WHEREFORE: Plaintiff demand entry of a judgment awarding:

- a. Compensatory damages;
- b. Punitive damages;
- c. Attorneys' fees and costs of suit; and
- d. Such other relief as the Court may deem proper and just.

COUNT II:

VIOLATION OF NJLAD: FAILURE TO ACCOMMODATE

49. Plaintiff repeats and realleges the allegations contained in the prior sections as if fully set forth herein.

50. The NJLAD provides that the Defendants must provide a student with a reasonable accommodation from their mandatory vaccine policy, unless doing so would impose an undue burden on their operations.

51. The NJLAD requires Defendants to make a *bona fide* effort to reach accommodation for students who seek religious exemptions.

52. Defendants did not make a *bona fide* effort to reach accommodation for Plaintiff.

53. By refusing to provide accommodations, Defendants violated the NJLAD.

54. As a result, Plaintiff suffered emotional distress, including suffering embarrassment, humiliation, indignity, and other mental anguish.

55. As a result, the Plaintiff was damaged.

WHEREFORE: Plaintiff demands entry of a judgment awarding:

- a) Compensatory damages;
- b) Punitive damages;
- c) Attorneys' fees and costs of suit; and
- d) Such other relief as the Court may deem proper and just.

COUNT III:

DECLARATORY JUDGMENT

56. Plaintiff repeats and realleges the allegations contained in the prior sections as if fully set forth herein.

57. NJLAD provided injunctive relief to prevent future violations.

58. Plaintiff is legally entitled to a declaratory judgment that Defendants violated the NJLAD and that an injunction should be issued requiring Defendants to comply with the NJLAD regarding religious exemptions and accommodations.

WHEREFORE: Plaintiff demand entry of a judgment awarding:

- a. Injunctive relief as set forth herein;
- b. Attorneys' fees and costs of suit; and
- c. Such other relief as the Court may deem proper and just.

DEMAND FOR ANSWERS TO INTERROGATORIES

Pursuant to Rule 4:17-1, Plaintiff serves the following requests for answers to interrogatories with this Complaint. Responses are due within the time calculated in Rule 4:17-4(b):

- 1 Identify all persons involved in the development of the current or any prior iteration of the COVID-19 vaccination policy for Defendants.
- 2 For each person identified in response to Interrogatory 1, set forth: a) their job title; b) the dates their involvement; c) their responsibilities with respect to the development of the Policy(ies).
- 3 Set forth the basis for Defendant Montalto's statements:
 - a. We do not recognize religious exemptions just for the Covid Vaccine and students cannot write their own letter for exemption, of course
 - b. Our clinical agencies require this vaccine as well as all others.
 - c. The only students considered for a religious exemption are those who can prove they have never had a vaccine in their lives and provide letters from the head of their church.
 - d. If the long term care agency does not agree to let the student attend the clinical, then the student is not in the nursing program

- e. We would have to wait until you reach the fundamentals course next year and then reach out to our clinical agencies for assistance once you submit all required information.
 - f. The agency could state that you have to test every day that you attend clinical or they could deny your entry.
 - g. Please know this is not a requirement of the college, but a requirement of clinical agencies.
- 4 Identify all persons who participated in the determination that led to the message being delivered to Plaintiff that is set forth in Interrogatory 3, and sub-parts.
 - 5 For each person identified in response to Interrogatory 4, set forth: a) their job title; b) the dates their involvement; c) their responsibilities with respect to the interactive process.
 - 6 Identify the number of requests for religious exemption from the COVID-19 vaccination requirement that were received by Defendants.
 - 7 Identify the number of requests for religious exemption from the COVID-19 vaccination requirement that were granted by Defendant.
 - 8 Identify the number of requests for medical exemption from the COVID-19 vaccination requirement that were received by Defendant.
 - 9 Identify the number of requests for medical exemption from the COVID-19 vaccination requirement that were granted by Defendant.
 - 10 For each of the requests set forth in response to Interrogatories 6-9, identify the majors and the programs at Rowan for each person seeking a request.
 - 11 Identify all other attorneys who have contacted Defendants regarding requests for religious exemption.
 - 12 Identify all documents and communications in any form, whether paper or electronic, between Defendants and any individuals identified in response to Interrogatory 11.
 - 13 Is it Rowan's policy not to recognize religious exemptions just for the Covid vaccine?

- 14 If the answer to 13 is yes, identify all documents relating to that policy.
- 15 Is it Rowan's policy that students seeking an exemption cannot write their own letter for exemption?
- 16 If the answer to 15 is yes, identify all documents relating to that policy.
- 17 Is it Rowan's policy that the only students considered for a religious exemption are those who can prove they have never had a vaccine in their lives?
- 18 If the answer to 17 is yes, identify all documents relating to that policy.
- 19 Is it Rowan's policy that the only students considered for a religious exemption are those who provide letters from the head of their church?
- 20 If the answer to 19 is yes, identify all documents relating to that policy.

DEMAND FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 4:18-1, Plaintiff serves the following requests for the production of documents with this Complaint. Responses are due within the time calculated in Rule 4:18-1(b)(2):

- 1 Produce a copy of all documents, including but not limited to paper documents, emails, texts, electronic documents, or messages relating or referring to Plaintiff.
- 2 Produce a copy of all documents, including but not limited to paper documents, emails, texts, electronic documents, or messages relating or referring to any policies regarding accepting requests for exemption from the COVID-19 vaccine requirements.
- 3 Produce a copy of all documents identified in your answers to interrogatories.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25, Plaintiff hereby designated John D. Coyle, Esq. as trial counsel.-4, John D. Coyle is hereby designated trial counsel.

JURY DEMAND

Plaintiffs hereby demands a trial by jury of all issues so triable.

RULE 4:5-1 CERTIFICATION

I hereby certify that the claims raised herein are not the subject of any other action or arbitration. Plaintiffs are not aware of any other party who should be joined to this action pursuant to R. 4:28 or who is subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts.

I certify that confidential personal identifiers have been redacted from documents now submitted to the court and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: July 25, 2023

Attorneys for Plaintiff

By: s/ John D. Coyle

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Civil Case Information Statement

Case Details: BURLINGTON | Civil Part Docket# L-001439-23

Case Caption: WHARTENBY MILLER VS ROWAN

COLLEGE AT BUR LINGTON

Case Initiation Date: 07/25/2023

Attorney Name: JOHN D COYLE

Firm Name: COYLE & MORRIS LLP

Address: 201 LITTLETON RD STE 210

MORRIS PLAINS NJ 07950

Phone: 9733700592

Name of Party: PLAINTIFF : Whartenby, Miller

Name of Defendant's Primary Insurance Company

(if known): Unknown

Case Type: CIVIL RIGHTS

Document Type: Complaint with Jury Demand

Jury Demand: YES - 6 JURORS

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

Do you anticipate adding any parties (arising out of same transaction or occurrence)? NO

Does this case involve claims related to COVID-19? NO

Are sexual abuse claims alleged by: Miller Whartenby? NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? YES

If yes, is that relationship: Other(explain) Student/School

Does the statute governing this case provide for payment of fees by the losing party? YES

Use this space to alert the court to any special case characteristics that may warrant individual management or accelerated disposition:

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

07/25/2023

Dated

/s/ JOHN D COYLE

Signed

