

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

GERALD E. GROFF,	:	
Plaintiff,	:	
	:	No. 19-CV-1879
v.	:	
	:	
MEGAN J. BRENNAN,	:	
POSTMASTER GENERAL, UNITED	:	
STATES POSTAL SERVICE,	:	
Defendant,	:	
	:	

**BRIEF IN SUPPORT OF PLAINTIFF GERALD E. GROFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

CHURCH STATE COUNCIL

Alan J. Reinach, Esq. of counsel, *pro hac vice*
2686 Townsgate Rd
Westlake Village, CA 91361
P (805) 413-7398
F (805) 497-7099
ajreinach@churchstate.org

CORNERSTONE LAW FIRM, LLC

David W. Crossett, Esquire
8500 Allentown Pike, Ste 3
Blandon, PA 19510
P (610) 926-7875
F (484) 930-0054
david@cornerstonelaw.us

INDEPENDENCE LAW CENTER

Randall L. Wenger, Esq.
Jeremy Samek, Esq.
23 North Front Street
2nd Floor
Harrisburg, PA 17101
P (717) 657-4990
F (717) 545-8107
rwenger@indlawcenter.org
jsamek@indlawcenter.org

Counsel for Plaintiff

TABLE OF CONTENTS

INTRODUCTION..... 1

STATEMENT OF RELEVANT FACTS..... 2

I. Sunday Deliveries for Amazon.com, Inc. Created a Religious Conflict for Groff..... 2

II. USPS Provided Groff a Religious Accommodation but Later Revoked It..... 4

III. USPS Disciplined Gerald Groff and Constructively Discharged Him..... 4

A. *The Discipline Begins.* 5

B. *USPS Subjects Groff to Eight (8) Pre-Disciplinary Interviews within a Short Amount of Time.*..... 6

C. *USPS Progressively Disciplined Groff to “Correct” His Conduct, i.e., His Religious Practice as a Sunday Sabbatarian.* 8

D. *USPS Labor Relations Finally Reviews Groff’s Request and Revokes His Religious Accommodation.* 8

E. *Groff is Constructively Discharged.* 11

IV. Groff’s Religious Accommodation Posed No Legitimate Hardship..... 12

A. *The Non-Peak Season.* 12

B. *The Peak Season.* 15

STANDARD OF REVIEW 16

ARGUMENT..... 16

I. Groff is Entitled to Summary Judgment on His Claim for Failure to Accommodate..... 16

A. *Applicable Title VII Prima Face Case.*..... 16

B. *Application to the Instant Case.*..... 17

1. Groff Has a Sincerely-Held Sabbatarian Observance..... 17

2. Groff Informed the Employer of the Conflict..... 17

3. Groff was Disciplined and Constructively Discharged for Failing to Comply with the Conflicting Requirement..... 17

II. Groff is Entitled to Summary Dismissal of Affirmative Defenses under 42 U.S.C. § 2000e(j) for Failing to Produce Sufficient Evidence to Raise Any Triable Issue of Fact..... 19

A. *Applicable Standard.*..... 19

B. *Application to the Instant Case.*..... 19

1. Defendant Did Not Offer a Reasonable Accommodation.	19
2. Reasonable Accommodation is Not Groff’s Burden.	20
3. Accommodating Groff was Not an Undue Hardship.....	21
CONCLUSION	25

INTRODUCTION

Partial summary judgment under Civil Rule 56(a) is due to Gerald E. Groff as to liability for Count II, but reserving trial on damages, and as to the dismissal of Defendant’s Eighth, Ninth, and Tenth Affirmative Defenses.

Groff is an Evangelical Christian who observes Sunday as the Sabbath. From the Bible, he specifically believes that he cannot carry a burden on the Sabbath, such as delivering mail. For seven years, Groff diligently worked for the U.S. Postal Service (“USPS”) in Lancaster County. Ultimately, USPS rolled-out Sunday deliveries under a contract with Amazon.com, Inc. (“Amazon”), which created a religious conflict for Groff. Despite being informed of his Sabbatarian practice, Defendant progressively disciplined him just short of termination, in an effort to correct his behavior of not working on Sunday. Within the USPS, discipline is not designed to punish, but to be “corrective.” The only behavior Defendant sought to correct was Groff’s exercise of religion — his Sabbath observance. In 2018, Defendant had an accommodation in place, which worked effectively, but revoked it.

Defendant, a large government agency, ostensibly follows strict equal treatment of all employees, which precludes religious accommodation for Sabbatarians. Defendant’s labor relations manager testified that Defendant disciplines all attendance lapses the same, even if religion based. Defendant regards any religious rationale for the conduct as irrelevant.

This practice clearly violates the Supreme Court’s ruling on religious accommodation under Title VII. In EEOC v. Abercrombie & Fitch Stores, Inc., ___ U.S. ___, 135 S. Ct. 2028, 2034 (2015), the Court held: “Title VII does not demand mere neutrality with regard to religious practices” — as Defendant here claims — but that religious accommodation needs are entitled to “favored treatment.” Id. at 2034. In the absence of an undue hardship, “Title VII requires otherwise-neutral policies to give way to the need for an accommodation.” Id. The undisputed

facts conclusively establish Defendant's violation of its Title VII duty to provide "favored" and individualized treatment to Groff's Sabbatarian practice. Neither can Defendant shoulder its affirmative defenses under 42 U.S.C. § 2000e(j), requiring summary dismissal.

STATEMENT OF RELEVANT FACTS

I. Sunday Deliveries for Amazon.com, Inc. Created a Religious Conflict for Groff.

Groff was employed by the USPS for nearly seven (7) years in Lancaster County, which is part of USPS' Central Pennsylvania District. [J.S. Fact No. 7].¹ On or about April 7, 2012, Groff was hired as a Temporary Relief Carrier ("TRC") at the Quarryville Post Office. [J.S. Fact No. 3]. On or about July 14, 2012, he was hired as a Rural Carrier Associate ("RCA") at the Paradise Post Office. [J.S. Fact No. 4]. By March 8, 2014, he transferred as an RCA back to the Quarryville Post Office to be closer to his home. [App. 5, 7 (Groff Dep. 100:1-23, 102:2-5)].²

As an RCA, Groff was classified as a "non-career" employee, i.e., an entry-level position lacking important benefits enjoyed by a "career" employee. [J.S. Fact Nos. 5, 6]. As an RCA, Groff was responsible to cover for the work of any Rural Route Carrier, which is a "career" position responsible for the delivery of mails and parcels. [Id.].

During the Christmas season of 2015, Groff became informed that USPS would begin delivery of packages for Amazon.com, Inc. ("Amazon") on Sundays and holidays in the Central Pennsylvania District. [App. 12-13 (Groff Dep. 108:25 to 109:1-21)]. USPS entered into a Memorandum of Understanding ("MOU") with its labor union, the National Rural Letter Carriers Association ("NRLC" or "Union") concerning Amazon deliveries. [J.S. Fact No. 8]. Under the MOU, non-career employees would be responsible for Sunday Amazon deliveries, exempting career employees by omission. [See App.136 (USPS264) (omitting rural route

¹ Let "J.S." refer to the Joint-Stipulation of Undisputed Facts for Purposes of Summary Judgment.

² Let "App." refer to Plaintiff's Motion Appendix.

carriers from listing for Amazon deliveries)]. Prior to that contract, RCAs did not have to work on Sundays. [App. 64 (Gaines Dep. 54:22-25 to 55:1); App. 75 (Hess Dep. 74:1-14); App. 88 (Evans Dep. 14:15-22)]. Under the MOU, RCAs were scheduled for Amazon deliveries without regard to their seniority. [J.S. Fact No. 47; App. 136 (USPS264)]. But the MOU authorized USPS managers to bypass a non-career employee from being scheduled for Amazon deliveries if that person had “approved leave.” [App. 137 (USPS265)]. The MOU did not define that term, much less to the exclusion of Title VII accommodations. [See *id.*].

Sunday deliveries created a conflict with Groff’s religious practice as an Evangelical Christian within the Protestant tradition, namely, observance of the Sunday Sabbath. [App. 2 (Groff Dep. 27:3)]. Groff sincerely believes he is obligated to obey the Ten Commandments, including the Fourth Commandment to “remember the Sabbath and keep it holy” (*Exodus* 20:8-11 (ESV)). [App. 123-24 (Plaintiff’s Answer to Defendant’s First Set of Interrogatory No. 4, at 7-8)]. Groff therefore refrains from all secular work on the Sunday Sabbath, including his USPS work responsibilities. [App. 2-3 (Groff Dep. 27:8-25 to 28:1-10)]. His biblical authority includes *Jeremiah* 17:19-27 and *Nehemiah* 13:19, which specifically condemn the transporting of “loads” or the carrying of “burdens” on the Sabbath. [App. 123-24 (Plaintiff’s Answers to Defendant’s First Set of Interrogatories, No. 4, at 7-8)].

Lyle Gaines, the District Manager for Labor Relations [App. 55 (Gaines Dep. 4:17-22)], never doubted the sincerity of Groff’s religious convictions; “I actually admired his convictions.” [App. 68 (Gaines Dep. 86:14-17)]. Groff’s postmaster, Brian Hess, also never doubted the sincerity of Groff’s religious belief. [App. 70 (Hess Dep. 15:19-22)]. When Groff sought to transfer to Holtwood from Quarryville [App. 21 (Groff Dep. 142:15-25)], Hess understood Groff sought that transfer so he would not have to deliver packages on Sunday on account of his

religion. [J.S. Fact No. 14]. As shown in Part III, *infra*, Groff's sincerity of religious belief is shown where he was constructively discharged rather than violate his conscience.

II. USPS Provided Groff a Religious Accommodation but Later Revoked It.

In 2015, while at the Quarryville Post Office, Groff promptly requested a religious accommodation after learning about the Sunday Amazon deliveries. Postmaster Patricia Wright granted his request on condition he provide additional shifts or auxiliary routes, whenever necessary, on other days of the week. [App. 11-12 (Groff Dep. 107:3-6, 107:25 to 108:1-24)]. Groff accepted her condition. [App. 14 (Groff Dep. 111:8-12)]. The arrangement worked well for him. [App. 53 (Groff Dep. 331:17-22)].

During the summer of 2016, Postmaster Patricia Wright told Groff she did not intend to continue his religious accommodation and gave an ultimatum: Either work on Sundays or find employment somewhere else. [App. 14-16 (Groff Dep. 111:16-25 to 112:1-5, 113:1-4); App. 52 (Groff Dep. 325:13-19)]. She gave no explanation for her decision not to continue his religious accommodation except to say, "I'm not going to put up with this shit again this year." [App. 50-51 (Groff Dep. 324:19-25 to 325:1-2); see also, App. 14 (Groff Dep. 111:16-25 to 112:1-2 (same))]. Groff then sought and obtained a transfer to the Holtwood Post Office, in August of 2016, because it was not participating in Sunday Amazon deliveries. [J.S. Fact No. 15]. That transfer came at the loss of all seniority he accrued at Quarryville since 2014. [App. 9-10 (Groff Dep. 104:6-25 to 105:1-7)]. For RCAs, like Groff, seniority is based on time in service at a particular post office, not for work within USPS as an organization. [J.S. Fact No. 12]. Groff's willingness to forfeit his seniority is another indication of the sincerity of his religious belief.

III. USPS Disciplined Gerald Groff and Constructively Discharged Him.

Brian Hess was Groff's postmaster at Holtwood. [J.S. Fact No. 13]. By March of 2017,

USPS required all RCA positions in Lancaster County to participate in Amazon Sunday deliveries, including Groff. [J.S. Fact Nos. 16, 18]. Groff promptly asked Hess for a religious accommodation. [App. 28-29 (Groff Dep. 185:2-25 to 186:1-22)]. USPS began scheduling Groff for Sunday deliveries which he consistently refused, which resulted in progressive discipline. [App. 30 (Groff Dep. 189:11-22), App. 39-40 (244:3-25 to 245:1)]. Groff was willing and did, in fact, make Amazon deliveries for holidays that were not Sundays. [J.S. Fact No. 21].

In 2017, 2018, and 2019, Groff's was the only religious accommodation request in the Central Pennsylvania District for Sunday Sabbath observance. [App. 104 (Civil Rule 30(b)(6) Corp. Rep. Dep. 22:12-19); J.S. Fact No. 41]. Notwithstanding his requested religious accommodation, Groff was required by USPS to follow the rules and, contrary to his religious conscience, work on Sundays as scheduled — his religious conviction was irrelevant and had no bearing on whether discipline would issue. [App. 60-61 (Gaines Dep. 38:1 to 40:1-5)]. As explained by Lyle Gaines, the District Manager for Labor Relations, “regardless of the reason” for any absence by employees, “they still can face corrective action for not being regular in attendance.” [App. 61 (Gaines Dep. 41:8-25 to 42:1-9)].

Discipline is intended to be “corrective,” not punitive. [J.S. Fact No. 27]. Yet, prior to any discipline being imposed, Labor Relations knew that Groff's refusal to work for work on Sundays was on account of his Sabbatarian practice. [App. 73 (Hess Dep. 25:18-25 to 26:1-6)].

A. The Discipline Begins.

On or about April 5, 2017, Groff was summoned for his first Pre-Disciplinary Interview (“PDI”) due to his refusal to work on Sundays, with Station Manager Aaron Zehring. [J.S. Fact No. 30]. A PDI must be held before an employee can be disciplined. [App. 98 (French Dep. 39:7-8); App. 59 (Gaines Dep. 32:22-25 to 33:1-19); App. 32 (Groff Dep. 209:4-6)]. Zehring

suggested Groff pick a different day of the week to observe his Sabbath. [J.S. Fact No. 31]. Groff could not entertain such an idea: “I felt he was asking me to change my religious beliefs in order to keep working for USPS” [App. 128 (Plaintiff’s Answers to Defendant’s First Set of Interrogatories, No. 5, at 12)], because “Sunday is the accepted day of worship and rest in the Christian faith, as I know it, and has been that way since the time of Christ 2,000 years ago.” [App. 33 (Groff Dep. 211:1-3)]. Groff told Zehring why he could not change his day of worship. [App. 52 (Groff Dep. 327:16-22)].

USPS also offered Groff a “modified schedule,” where he could attend Sunday-morning church services, if reporting to work afterwards by 12 p.m. [J.S. Fact No. 22; App. 38 (Groff Dep. 237:6-17)]. He declined the offer because it still required him to violate his religious belief against working for the entirety of Sunday. [*Id.*]. Lyle Gaines and Brian Hess admitted the modified schedule did not remove the conflict with Groff’s religious beliefs. [App. 74 (Hess Dep. 32:3-11); App. 59 (Gaines Dep. 32:3-11)].

By e-mail dated April 13, 2017, Brian Hess informed Douglas French, “Gerald Groff was notified but will not be reporting due to religious objections.” [App. 139a (USPS 1634)]. French told Hess, “we’re going to keep him on this schedule, and if he’s not willing to the flexible start time, we’ll have to pursue discipline.” [App. 80 (Hess Dep. 108:15-25 to 109:1-12)]. Hess notified Groff that USPS can progressively impose discipline for refusing to work Sundays, beginning with a letter of warning, to a 7-day suspension, to a 14-day suspension, and then termination. [J.S. Fact No. 25].

B. USPS Subjects Groff to Eight (8) Pre-Disciplinary Interviews within a Short Amount of Time.

USPS haled Groff in for no less than eight Pre-Disciplinary Interviews (PDIs) by virtue of his refusal to work on Sundays. [J.S. Fact No. 28].

On May 10, 2017 — scarcely a month after the first PDI — Groff was summoned for a second PDI with Diane Evans, the Lancaster County Annex Supervisor for Amazon deliveries. Groff again explained his request for religious accommodation. After the meeting, Evans issued Groff a Letter of Warning, dated January 9, 2017. It reads, “Unsatisfactory Attendance—Failure to be regular in Attendance,” and cites the failure to work on the Sundays of April 16th, April 23rd, and May 7th of 2017. [App. 139 (USPS1682)].

Groff continued to refuse to work on Sunday and, less than six months later, was summonsed for a third PDI on July 3, 2017 with Treva Morris, a Supervisor in the Lancaster County Annex. [App. 35 (Groff Dep. 228:9-16)]. Groff explained to Morris his request for religious accommodation and believed Title VII protected his conduct. [App. 140-41 (USPS1699-1700)]. Morris informed Groff, “I am considering discipline for your failure to work as scheduled / absent without official leave / failure to follow instructions. The corrective action may be up to and including a removal from the Postal Service.” [App. 140 (USPS1699)]. Groff was informed that USPS could continue to issue corrective actions if he continued to be scheduled on Sundays and not show up, “When you are going to a pre-disciplinary interview, it’s safe to assume that discipline could potentially happen.” [App. 36 (Groff Dep. 230:10-19)].

On August 9, 2017, Groff was summoned for a fourth PDI, again with Diane Evans. [USPS1709]. She asked Groff to report his Sunday absences on Saturday mornings, even though she knew of his refusal to work on Sundays. Groff honored her request. [App. 130-31 (Plaintiff’s Answers to Defendant’s First Set of Interrogatories, No. 5, at 14-15)]. A fifth PDI with Evans was held on October 3, 2017. [Id. (Answer No. 5 at 15)]. No discipline issued from the fourth or fifth PDI. [Id. (Answer No. 5 at 14-15)]. On December 20, 2017, Hess held a sixth PDI with Groff, and issued a 7-Day Paper Suspension for “Improper Conduct.” [App. 142-43 (USPS1927-

28); App. 132 (Plaintiff's Answers to Defendant's First Set of Interrogatories, No. 5, at 16)]. Hess wrote, "You have stated that you are aware of the requirement to work Sundays and you refuse because you are a Christian and it should be respected that no work should be done on a Sunday." [App. 142 (USPS1927)].

C. USPS Progressively Disciplined Groff to "Correct" His Conduct, i.e., His Religious Practice as a Sunday Sabbatarian.

USPS issued Groff the following formal progressive discipline: A Letter of Warning on June 9, 2017; 7-Day Paper Suspension on January 2, 2018; and a 14-Day Paper Suspension on October 5, 2018. [J.S. Fact No. 28]. Within the USPS, discipline was intended to "correct" behavior, not to punish it. The discipline issued to Groff, by definition, was to correct his "not reporting to work as scheduled" for Sundays. [*Id.*]. Groff was never disciplined by USPS for any other cause than his Sunday Sabbath observance. [J.S. Fact No. 29]. His performance in all other respects was excellent, and he was seen as a good and efficient employee. [*Id.*].

By June 21, 2017, Groff contacted an Equal Employment Opportunity counselor at USPS to seek help obtaining a religious accommodation (the "EEO Request"). [J.S. Fact No. 32]. Groff asked that his request be kept anonymous fearing reprisal at the workplace. [App. 34-35 (Groff Dep. 227:21-25 to 228:1-3)]. Under USPS policy, the disciplinary process is not suspended while an EEO is pending. [App. 58 (Gaines Dep. 28:4-18)].

D. USPS Labor Relations Finally Reviews Groff's Request and Revokes His Religious Accommodation.

Lyle Gaines, the District Manager for Labor Relations, finally held a teleconference with Groff and Hess in March of 2018, concerning Groff's request for religious accommodation. [App. 143 (USPS 2093); App. 58 (Gaines Dep. 29:10-14)]. During that teleconference, Gaines confirmed his understanding of Groff's Sabbatarian practice, and testified that he "admired"

Groff's "commitment to his faith." [App. 62 (Gaines Dep. 45:1-5)]. Gaines understood Groff's religious practice entailed the entirety of Sunday, not merely attendance of church services. [App. 64a (Gaines Dep. 58:4-12)].

It took Gaines four (4) months to issue a written determination, informing Groff by letter dated July 17, 2018 of USPS' response to Groff's request for a religious accommodation. [App. 146 (P001)]. "Other than attempting to find volunteers," Gaines writes, "the only other alternative is to allow you to have a modified schedule the same as other employees equally situated to you." [*Id.*]. The "modified schedule" meant "to accommodate you during the hours of scheduled [religious] worship on Sundays." [*Id.* (alteration added)]. Gaines instructed Hess to e-mail other post offices, asking for volunteers to cover Groff's Sunday shifts at the Lancaster County Annex. Hess did so. [App. 83 (Hess Dep. 122:16-25 to 123:1-19)]. In these e-mails, it was not Hess' practice to identify Groff by name. [App. 84 (Hess Dep. 126:25 to 127:1-13)].

As shown in Part V.A, *infra*, the Lancaster County Annex had been accommodating Groff by scheduling an extra RCA to cover Groff's Sunday shifts, effectively skipping over his name in the rotation. The corporate representative for USPS admitted there was no hardship to USPS when, under the rotating schedule, an extra RCA was scheduled in lieu of Groff. [App. 111-12 (Civil Rule 30(b)(6) Corp. Rep. Dep. 50:11-25 to 51:1-4, 52:16-25 to 53:1-10)].

Hess was apparently confused by Gaines' instructions to solicit volunteers for Groff, since the Lancaster County Annex had accommodated him, and requested clarification. On July 31, 2018, Hess sent an e-mail to Gaines and, among others, Diane Evans and Aaron Zehring from the Lancaster County Annex. [App. 144 (USPS3324)]. With a startling admission and remarkable candor, Hess writes, "It is my understanding that when the Lancaster County Annex Amazon Sunday Hub schedule is created[,] the weeks that Gerald Groff is scheduled that an

extra RCA is automatically scheduled to cover his parcel route. *This satisfies his religious accommodation request for Sundays and no disciplinary action is needed.*” [Id. (emphasis and alteration added)]. It was unnecessary for Hess to solicit volunteers, and therefore, a solution would be either “discontinue prescheduling the extra RCA or I continue to seek an RCA volunteer [for] the weeks Gerald Groff is scheduled . . . Any feedback is welcome.” [Id. (alteration added)]. Hess’ e-mail demonstrates that Groff was successfully accommodated.

Gaines replied to Hess that same day, “We only have an obligation to solicit for volunteers. If there are none then he has to work. *You are not required to overschedule non volunteers to accommodate.*” [App. 144 (USPS3324 (emphasis added))]. In effect, Gaines was directing managers and staff in charge of scheduling to discontinue the practice of skipping over Groff for the rotating Sunday Amazon schedule. They followed that direction. Groff’s religious accommodation had been revoked, *see* Part V.A, *infra*, and progressive discipline resumed. Hess held an eighth PDI with Groff on September 6, 2018 [J.S. Fact No. 35], and then issued a 14-Day Paper Suspension on October 5, 2018. [J.S. Fact No. 36]. The same was issued because Groff did not work for the Sundays of July 17, 2018, August 12, 2018, and August 26, 2018. [Id.]. The selection of dates was arbitrary, because there were additional Sundays between June and August of 2018 that Groff did not work, “So I had no way of knowing how many Sundays were being included before I got another discipline.” [App. 43 (Groff Dep. 274:8-16)].

Significantly, however, Groff had accumulated additional Sunday absences in-between the PDI on September 6, 2018 and his receipt of the 14-Day Paper Suspension. [J.S. Fact No. 39]. Gaines explained that Brian Hess, or the Lancaster County Annex manager, had to decide whether to terminate Groff after the 14-Day Suspension: “I can’t tell you how many absences that would take or how long it would take,” but “the rules have to be consistently and equitably

enforced for individuals that are equally situated to Mr. Groff.” [App. 65 (Gaines Dep. 62:6-22)]. Any additional Sunday absence by Groff was “not protected from corrective action.” [App. 66 (Gaines Dep. 64:3-8)]. Managers had no discretion in the matter; their failure to follow the rules by *not* terminating Groff would be contrary to the policies of USPS and would, in turn, subject them to possible discipline. [App. 66 (Gaines Dep. 65:19-25 to 66:1-22)]. It was also futile for Groff to have transferred to any other post office, because all RCAs have to be available for Sunday Amazon deliveries. [J.S. Fact No. 40]. Lyle Gaines agreed that, because Groff was an RCA, “the chances of him working on Sundays would be 99.9 percent” because that’s “just the nature of the non-career position in the Postal Service.” [App. 63 (Gaines App. 49:1-13)].

Postmaster Hess also agreed that if any of his employees missed a shift for Sunday had to be disciplined. [App. 78 (Hess Dep. 97:24-25 to 98:1-7)].

E. Groff is Constructively Discharged.

Progressive discipline placed Groff “under a cloud of misery, or anxiety, stress, fear” because any day Hess “could come to me and say, they decided to terminate you.” [App. 44-45 (Groff Dep. 311:8-25 to 312:1-9)]. As a result, “Every day was stressful, from March 2017 all the way to” his resignation. [Id.]. Regardless of who imposed written discipline, Hess was the one who served it on Groff and “so he was the face of the discipline” and a representative of “the postal management to me.” [App. 37 (Groff Dep. 236:1-16)]. From the stress, Groff gained body weight, from 215 to 240 pounds. [App. 46-47 (Groff Dep. 314:6-25 to 315:1-2)].

Groff tendered his resignation on January 18, 2019. [J.S. Fact No. 38]. He believes that he was constructively discharged under the totality of the circumstances, because forced out where continually disciplined on account of observing the Sabbath on Sunday. [App. 10 (Groff Dep. 105:13-20); App. Dep. 18-19 (127:10-17, 128:4-9)]. He knew he would receive further

discipline for not working on Sunday. [App. 31 (Groff Dep. 205:8-11)]. Groff desired to remain a postal employee until retirement and to obtain all pension and benefits which the U.S. Government accorded to career employees with USPS. [App. 17 (Groff Dep. 114:6-11)]. By then, Groff had invested seven years of his life with USPS: “I had expectations that I could be a career that would provide for me. I just didn’t want to lose my job.” [App. 46 (Groff Dep. 314:1-5)]. He had no plans to quit in order to pursue other callings. [App. 50 (Groff Dep. 324:9-11)].

Before the Amazon contract, never in Groff’s experience with USPS did he observe an employee work on Sundays. [App. 20 (Groff Dep. 141:6-12)]. In his view, “I felt that I should be reasonably accommodated and allowed to keep my job.” [App. 48 (Groff Dep. 318:1-7)].

IV. Groff’s Religious Accommodation Posed No Legitimate Hardship.

USPS separately implemented Amazon deliveries during the “peak” and “non-peak” seasons; the “peak” season was generally the Sunday before Thanksgiving until the first or second week of the new year. [J.S. Fact No. 42]. During the non-peak season, Amazon deliveries were handled through the Lancaster County Annex, located at Lancaster City. [J.S. Fact No. 43]. Conversely, during the peak season, all Amazon deliveries were handled by each Post Office, respectively, using its own staff. [J.S. Fact No. 44]. RCAs had no contractual right to specific days off. [J.S. Fact No. 45]. All RCAs were paid overtime wages for Amazon deliveries on Sundays and holidays as a matter of course. [App. 90 (Evans Dep. 25:16-18); J.S. Fact No. 46].

A. The Non-Peak Season.

At the Lancaster County Annex, Diane Evans was the Supervisor in charge of assigning RCAs for Amazon deliveries on Sundays and holidays. [J.S. Fact No. 49]. She had no responsibility for the balance of the RCAs’ workweek. [*Id.*]. Once she created a list of Sunday assignments, it would then be reviewed and finalized by Lancaster City Postmaster Douglas

French, who then circulated it to other postmasters and verified with them that their employees were notified. [Id.].

Any RCA who wanted to volunteer to work for Sunday delivery could do so. [J.S. Fact No. 47]. Otherwise, Sunday delivery was a rotating schedule for all other RCAs, without regard to seniority. [Id.]. Once scheduled for work, all RCAs were drawn from the entirety of Lancaster County and reported to the Lancaster County Annex for an assigned route that could be anywhere in Lancaster County, including outside of that RCA's regular workplace. [J.S. Fact No. 50]. Sometimes, the Amazon delivery trucks did not arrive on time. [Id.]. These factors caused RCAs to experience delays, sometimes causing them to work eight hours to complete an otherwise six-hour route. [Id.]. However, "penalty" overtime pay is not triggered unless an employee works 10 or more hours in one day. [App. 97 (Sheddy Dep. 29:13-23)].

The volume of Sunday deliveries varied throughout the year, and so there were instances where RCAs only had to report once a month and other times where it could be two or three times a month, for Sunday and holiday deliveries. [Dep. 89 (Evans Dep. 23:2-11)]. If an RCA called-out sick, then Evans had to contact other RCAs to step in. [Id. (Evans Dep. 23:18-25 to 24:1)]. RCAs did not have any accrued sick leave. [App. 91 (Evans Dep. 29:4-8, 30:4-7)].

To avoid burnout as a result of the Amazon contract, RCAs in Lancaster County were intended to be given every 10th consecutive day off, but that did not always happen. [App. 96 (Sheddy Dep. 22:10-25 to 23:1-7)]. In 2016, Quarryville Postmaster Patricia Wright regularly contacted Groff, even though he worked at Holtwood, and requested him to cover her RCAs who had off. [App. 22-24 (Groff Dep. 150:2-25 to 152:1-10); App. 27 (Groff Dep. 155:10-16)]. Groff did so, and Postmaster Brian Hess did not object to this arrangement and could recall Groff if necessary. [App. 24-27 (Groff Dep. 152:11-25 to 154:1, 155:17-22); App. 86 (Hess Dep. 205:14-

25)]. Postmaster Roger A. Shetty also observed that, based on the efficiency in Groff's work during the other six days of the week, USPS "was more than getting their money's worth" as opposed to the value of the Sunday delivery. [App. 98 (Shetty Dep. 37:8-20)].

Hess agreed that Groff was a good and efficient employee. [J.S. Fact No. 29]. While considering Groff's request for religious accommodation, Lyle Gaines could not recall whether he ever considered the ability of Groff to pick-up additional shifts during the workweek in lieu of Sunday deliveries. [App. 67 (Gaines Dep. 74:10-14)]. Groff continuously provided these services until he received the 7-Day Suspension; about that time, Patricia Wright stopped contacting him. [App. 41-42 (Groff Dep. 251:17-25 to 252:1-4)].

When Groff became assigned to Amazon deliveries, beginning in March of 2017, Diane Evans initially scheduled him, but had to find a last-minute replacement when he called out. [App. 90 (Evans Dep. 26:15-25 to 27:1-8)]. After Evans learned Groff had requested a religious accommodation, she regularly anticipated that he would not come to work and scheduled an extra RCA to work that shift in advance. [App. 90 (Evans Dep. 27:9-15)]. As mentioned in Part III, *supra*, Hess sent an e-mail on July 31, 2018 to Gaines and others, concerning the practice of scheduling an extra RCA for Groff's shift. And Gaines replied, "You are not required to overschedule non volunteers to accommodate." [App. 144 (USPS3324)]. As a result, the process of automatically scheduling an extra RCA stopped [App. 85 (Hess Dep. 194:8-22)], and Diane Evans, likewise, was instructed by labor relations to keep scheduling Groff. [App. 92 (Evans Dep. 41:20-23)]. As a result, she encountered problems, by constantly having to call-in additional RCAs at the last minute whenever Groff failed to report for work on Sunday. [App. 92 (Evans Dep. 42:19-25 to 43:1-13)]. "Other employees were a little upset about it," but she could not recall the name of any such employee. [App. 91a (Evans Dep. 35:1-9)]. Sometimes, she had

to split Groff's route with other RCA's "which they were very unhappy with." [App. 92 (Evans Dep. 43:8-13)].

B. The Peak Season.

During the peak season, the Holtwood Post Office was classified as a "non-promised site by Amazon," which means that Amazon customers were never promised that delivery would, in fact, occur on Sunday. [App. 80 (Hess Dep. 109:1 to 110:1-15)]. Hess, therefore, had discretion whether to curtail delivery to Monday, in whole or in part. [Id.].

Hess located another RCA at Holtwood who volunteered to cover Groff's Sunday shifts. [J.S. Fact No. 51]. In the absence of unforeseeable issues where someone called out at the last minute, Hess had volunteers for Groff's Sunday shifts at Holtwood. [J.S. Fact No. 52]. On account of Groff's refusal to work Sundays, Hess did not have to double-up routes "just because the volume we received" did not require such. [J.S. Fact No. 53]. Accommodating Groff required Hess to regularly solicit volunteers, but this was not a "hardship" since it was the process USPS instructed him to follow. [App. 76 (Hess Dep. 83:11-15); App. 84 (Hess Dep. 124:10-18)].

Hess recalled three Sunday's where he, personally, had to deliver the Amazon packages because Groff refused to work and the other RCAs were unavailable for unforeseeable reasons, e.g., an employee's car broke-down. [App. 77 (Hess Dep. 95:2-24); App. 82 (Hess Dep. 117:16-25 to 118:1)]. However, "that's my job" and "I didn't have a problem with it." [App. 77-78 (Hess Dep. 95:1 to 96:1-7)]. Hess' position was salaried, without overtime pay. [App. 83 (Hess Dep. 121:11-17)]. Under the CBA, the Union had a right to grieve a Postmaster working outside his craft (as a mail carrier) only if there was an RCA available and willing to perform that work. [App. 82 (Hess Dep. 117:12-25 to 118:1-13)]. No grievances were filed. [Id. (Hess Dep. 119:18-22)].

The timing of Groff's resignation (January 19, 2019) coincided with the end of the "peak" season. For the non-peak season, he would again be scheduled for Sunday deliveries at the Lancaster County Annex. [See App. 73 (Hess Dep. 27:12-21), App. 77 (Hess Dep. 94:9-20); App. 135 (Plaintiff's Answers to Defendant's First Set of Interrogatories, No. 5, at 19)]. In other words, Groff's accommodation at Holtwood during the "peak" season would no longer continue.

STANDARD OF REVIEW

Summary judgment is due, in whole or in part, where there is no genuine issue of material fact. Fed. R. Civ. P. 56(a). The nonmovant cannot avoid summary judgment through "some metaphysical doubt" of the record. Matsushita Elec. Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986).

ARGUMENT

Undisputed facts demonstrate that Groff can readily satisfy all the elements of his prima facie case of failure to accommodate under Title VII. Moreover, as shown in Part II, below, Defendant cannot substantiate their affirmative defenses, including undue hardship.

I. Groff is Entitled to Summary Judgment on His Claim for Failure to Accommodate.

A. Applicable Title VII Prima Face Case.

To establish a prima facie case for failure to accommodate under Title VII, Groff must show the following: (1) he holds a sincere religious belief that conflicts with a job requirement or was so perceived by the employer, EEOC v. Abercrombie & Fitch Stores, Inc., ___ U.S. ___, 135 S. Ct. 2028, 2033 (2015); (2) he informed the employer of the conflict; and (3) he was disciplined for failing to comply with the conflicting requirement. Shelton v. Univ. of Med. & Dentistry, 223 F.3d 220, 224 (3d Cir. 2000).

B. Application to the Instant Case.

1. Groff Has a Sincerely-Held Sabbatarian Observance.

Groff has sincerely-held religious beliefs as an Evangelical Christian who observes the Sabbath on Sunday. Here, USPS substantiated Groff's need for religious accommodation and never doubted the sincerity of his religious beliefs and practices. Lyle V. Gaines, the District Manager for Labor Relations, never doubted the sincerity of Groff's religious convictions, but "I actually admired his convictions." Neither did Groff's postmaster at Holtwood, Brian Hess, at any time doubt the sincerity of Groff's religious beliefs. The record shows that Groff identifies as an Evangelical Christian and believes that he must entirely refrain from secular work on the Sunday Sabbath, which includes the delivery of Amazon packages. Groff believes that *Jeremiah* 17:19-27 and *Nehemiah* 13:19 specifically condemn the transporting of "loads" or the carrying of "burdens" on the Sabbath, such as Amazon deliveries. Groff ultimately lost his job on account of that sincerely-held belief.

2. Groff Informed the Employer of the Conflict.

Groff promptly informed his employer of the religious conflict in March of 2017, when the Holtwood Post Office was required to begin participating in Amazon deliveries. [App. 28-29 (Groff Dep. 185:2-25 to 186:1-22); App. 72 (Hess Dep. 21:4-16)]. Groff also repeatedly discussed the religious basis for his not working Sundays throughout his employment, including but not limited to eight PDIs with managers precisely because he would not work Sundays.

3. Groff was Disciplined and Constructively Discharged for Failing to Comply with the Conflicting Requirement.

Here, Groff "was disciplined for failing to comply with the conflicting requirement." Shelton, 223 F.3d at 224. The record need only show that "the employee was penalized in some way because of the conflict," and, "The *threat* of discharge (or of other adverse employment

practices) is a sufficient penalty.” EEOC v. Townley Engineering & Mfg. Co., 859 F.2d 610, 614 n.5 (9th Cir. 1988) (emphasis in original); see also, Heller v. EBB Auto Co., 8 F.3d 1433, 1438 (9th Cir. 1993) (“[T]he employer threatened him with or subjected him to discriminatory treatment, including discharge, because of his ability to fulfill the job requirements.”). An employee is also constructively discharged where all conditions precedent for termination are met and the employee resigns to avoid “an inevitable termination.” Martin v. Enter. Rent-A-Car, 2003 U.S. Dist. LEXIS 1191, at *27 (E.D. Pa. Jan. 15, 2003) (citations omitted).

In the present case, clearly, Groff was penalized because of his religious conflict for not working on Sundays with eight (8) Pre-Disciplinary Interviews (PDIs), a Letter of Warning, a 7-Day Paper Suspension, and a 14-Day Paper Suspension. Also, his expectation of imminent discharge was not merely a threat, but a near certainty. He had accrued subsequent Sunday absences warranting the final step in the progressive discipline — termination.

After the 14-Day Paper Suspension, a single Sunday absence by Groff was, in the words of Lyle Gaines, “not protected from corrective action.” Hess lacked discretion to *not* request Groff’s termination for additional Sunday absences. Hess agreed that if any of his employees missed a Sunday shift, then that employee had to be disciplined. Under the USPS progressive discipline policy, the 14-Day Paper Suspension was the last sanction before termination. Nothing in the record shows that Defendant would *not* terminate Groff for his additional accrued absences. Plaintiff submitted his resignation with the full expectation that his termination was imminent, and he did so to maintain a federal employment record clear of such a termination.

Additionally, Defendant materially changed a term, condition, or privilege of employment for Groff, 42 U.S.C. § 2000e-2(a)(1), by revoking an accommodation, during the non-peak season, where the Lancaster County Annex scheduled an extra RCA for Groff’s

Sunday Amazon deliveries. As Postmaster Brian Hess admitted by e-mail dated July 31, 2018, “This satisfies his religious accommodation request for Sundays and no disciplinary action is needed.” But the District Manager for Labor Relations instructed managers that only soliciting volunteers was required. As a result, the accommodation was revoked and the progressive discipline resumed, hence Groff received the 14-Day Paper Suspension on October 5, 2018. As a matter of law, “Title VII does not demand mere neutrality with regard to religious practices,” but requires such to have “favored treatment.” EEOC v. Abercrombie & Fitch Stores, Inc., ___ U.S. ___, 135 S. Ct. 2028, 2034 (2015). Groff was successfully accommodated during the non-peak season, such that his accommodation should be understood as constituting a term, condition, or privilege of employment, the revocation of which was an adverse employment action.

Accordingly, Groff has established all the elements for summary adjudication of liability for failure to accommodate, reserving trial only for damages.

II. Groff is Entitled to Summary Dismissal of Affirmative Defenses under 42 U.S.C. § 2000e(j) for Failing to Produce Sufficient Evidence to Raise Any Triable Issue of Fact.

A. Applicable Standard.

For failure to accommodate a religious practice under Title VII, if the employee establishes a prima facie case, then “the burden shifts to the employer to show that it made good faith efforts to accommodate, or that the requested accommodation would work an undue hardship.” Shelton, 223 F.3d at 224; 42 U.S.C. § 2000e(j).

B. Application to the Instant Case.

1. Defendant Did Not Offer a Reasonable Accommodation.

The Eighth Affirmative Defense is cognizable under 42 U.S.C. § 2000e(j) where Defendant alleges that its actions “constitute lawful accommodation of a request for religious accommodation.” [Answer, Affirmative Defenses ¶ 8]. An employer’s lawful accommodation

must be “reasonable.” 42 U.S.C. § 2000e(j). A reasonable accommodation is one that “eliminates the conflict between employment requirements and religious practices” for the employee.

Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, 70 (1986); accord. EEOC v. Geo Group, Inc., 616 F.3d 265, 291 (3d Cir. 2010) (Tashima, J., dissenting); EEOC v. Aldi, Inc., 2008 U.S. Dist. LEXIS 25206, at *49 n.19 (W.D. Pa. Mar. 28, 2008) (collecting cases following Philbrook).

An employer’s offer for “scheduling [employee’s] Sunday work around religious services” is insufficient as a matter of law for a Sabbatarian, because it “not only fails to eliminate the conflict, but fails to even address or recognize the conflict.” Aldi, Inc., 2008 U.S. Dist. LEXIS 25206, at *49. The instant case is no different. Under his religious conscience, Groff must observe the Sabbath on Sunday, not some other day of the week. His Sabbatarian observance also entails refraining from all secular work for the entirety of Sunday. USPS managers agreed that allowing Groff to attend church services did not remove the conflicting job requirement. Moreover, the record shows and Postmaster Brian Hess admitted against interest, that USPS reasonably accommodated Groff by skipping over him for the rotating Sunday Amazon schedule during the non-peak season. It would undermine the accommodation goals of Title VII to condone a partial accommodation where a complete accommodation had been implemented and then withdrawn. The Eighth Affirmative Defense should be dismissed.

2. Reasonable Accommodation is Not Groff’s Burden.

Defendant’s Ninth Affirmative Defense reads, “Requests for accommodation must be reasonable; the plaintiff’s request was not.” [Answer, Affirmative Defenses ¶ 9]. This is not cognizable under Title VII and it is an improper burden-shifting. Under 42 U.S.C. § 2000e(j), “Once a plaintiff-employee has demonstrated that a religiously motivated practice conflicts with an employment requirement, the employer may defend in one of two ways. First, the employer may demonstrate that *it has offered* a ‘reasonable accommodation.’” United States v. Bd. of

Educ., 911 F.2d 882, 886 (3d Cir. 1990) (emphasis added). Reasonableness relates to the employer's offer for accommodation, not whether the religious practice is reasonable: "The prima facie case does *not* include a showing that the employee made any efforts to compromise his or her religious beliefs or practices before seeking an accommodation from the employer." Heller, 8 F.3d at 1438 (emphasis added). Without a reasonable proposal "by the employer that would eliminate the religious conflict, the employer must either accept the employee's proposal or demonstrate that it would cause undue hardship to do so." Opuku-Boateng v. California, 95 F.3d 1461, 1467 (9th Cir. 1996).

The Ninth Affirmative Defense is also patently frivolous. Ever since Congress amended Title VII in 1972 to provide for the affirmative defense of reasonableness, there have been hundreds, if not thousands, of Sabbatarian requests for accommodation, just like Groff's. No court has held that a Sabbatarian request is unreasonable per se, and the U.S. Constitution assumes the existence of Sunday Sabbath observance because "the Executive shall have ten days (Sunday excepted) within which to determine whether he will approve or veto a bill." Church of the Holy Trinity v. United States, 143 U.S. 457, 470 (1892). The U.S. Supreme Court used a prospective employee's Sabbatarian observance as illustrative of the customary religious practices that Title VII is intended to protect. Abercrombie & Fitch Stores, Inc., 135 St. Ct. at 2033. American law and history have consistently respected Sabbath observance; Defendant, apparently, does not. The Ninth Affirmative Defense should be dismissed.

3. Accommodating Groff was Not an Undue Hardship.

Defendant should not be permitted to raise the undue hardship defense under 42 U.S.C. § 2000e(j) for the grounds stated in Plaintiff's Motion for Sanctions and Brief in Support, which is filed or shortly will be filed. Alternatively, this defense should be dismissed based on the lack of competent evidence of record to create a triable issue of fact.

As with all affirmative defenses, the employer bears the burden to prove actual hardships through the introduction of sufficient evidence. “A claim of undue hardship cannot be supported by merely conceivable or hypothetical hardships,” but must be supported by non-speculative record evidence. Tooley v. Martin-Marietta Corp., 648 F.2d 1239, 1243 (9th Cir. 1981), followed in, Aldi, Inc., 2008 U.S. Dist. LEXIS 25206, at *54; see also, Protos v. Volkswagen of America, Inc., 797 F.2d 129, 134 (3d Cir. 1986) (citing Tooley with favor).

Postmaster Brian Hess, with remarkable candor, e-mailed Lyle Gaines that “a volunteer RCA is not needed since an RCA is already prescheduled and it does not show a hardship/burden to the USPS because it is not necessary to force [a different] RCA to work on their Sunday off.” [App. 144 (USPS3324 (alteration added))]. Skipping over Groff on the rotating Sunday schedule “satisfies his religious accommodation request for Sundays and no disciplinary action is needed.” [Id.]. Defendant’s Civil Rule 30(b)(6) corporate representative agreed that this was not an undue hardship, and otherwise could not identify any costs actually incurred by USPS in respect of Groff not working Sundays. [App. 109 (Civil Rule 30(b)(6) Corp. Rep. Dep. 42:1-4)]. There were no such costs. All RCAs were paid overtime on Sunday as a matter of course. During the peak season, Hess found a volunteer who covered Groff’s Sunday shifts. During the non-peak season, the USPS was drawing upon all non-career employees throughout the County. With a greater pool of available workers, skipping over Groff was not burdensome.

Neither did accommodating Groff from the rotating Sunday schedule violate the seniority of any other mail carrier. Under the Memorandum of Understanding (“MOU”) between USPS and the Union, the rotating schedule for Amazon deliveries was had regardless of seniority. RCAs in Lancaster County had no more or less of a right to work on Sundays. The MOU also permitted “approved leave” from the rotating Amazon delivery schedule. [J.S. Fact No. 11(a)].

No provision in the MOU precluded religious accommodations. Moreover, such a provision would have been unlawful since the Union cannot “cause or attempt to cause an employer to discriminate against an individual in violation of this section.” 42 U.S.C. § 2000e-2(c)(3); Emporium Capwell Co. v. Western Addition Community Organization, 420 U.S. 50, 70 (1975) (“[A] union cannot lawfully bargain for the establishment or continuation of discriminatory practices”). In regards to contracts, Title VII only exempts “a bona fide seniority or merit system” from the scope of unlawful employment practices, 42 U.S.C. § 2000e-2(h), and that cannot “be given a scope that risks swallowing up Title VII’s otherwise broad” protections. California Brewers Assoc. v. Bryant, 444 U.S. 598, 608 (1980). Under the familiar principle of *expressio unius est exclusio alterius*, an inference is created “that items not mentioned were excluded by deliberate choice, not inadvertence.” Barnhart v. Peabody Coal Co., 537 U.S. 149, 168 (2003). Consequently, in the absence of an express provision, antidiscrimination statutes cannot “be circumvented by private contracts.” Soldinger v. Northwest Airlines, 58 Cal. Rptr. 2d 747, 763 (App. Ct. 1996) (construing State law). The MOU did not and cannot prohibit the use of approved leave for Title VII religious accommodations.

Any hardships or difficulties USPS may have experienced were not the result of providing Groff his accommodation, but on account of revoking it. The Brian Hess e-mail of July 31, 2018 demonstrates that the existing practice of skipping over Groff in the Sunday Amazon rotation (or, stated differently, scheduling an “extra” RCA) was working and eliminated any need for Hess to keep soliciting volunteers during the non-peak season. But Lyle Gaines told managers to stop doing that, and so they did. That resulted in problems caused by the USPS, not Groff. Diane Evans had trouble finding last-minute replacements for the Sunday shifts, and had to split routes with other employees, which made them unhappy.

Courts have held this to be an improper ground for undue hardship. Whether an employer incurred “last-minute scheduling changes” or overtime wages as a result of “one-time failures to report to work,” are nonresponsive to “the permanent scheduling change sought by Plaintiff.” Stone v. West, 133 F. Supp. 2d 972, 984 (E.D. Mich. 2001). In the Sabbatarian case of Jamil v. Sessions, 2017 U.S. Dist. LEXIS 31815 (E.D.N.Y. Mar. 6, 2017), the employer (a federal prison) asserted that it had to pay 56 hours of overtime wages as a result of the Sabbatarian’s failure to report to work. The district court disagreed, “Simply put, the fact that Defendant had to pay overtime when Plaintiff failed to appear for his Saturday shifts does not show that the facility would have had to pay overtime had it accommodated Plaintiff’s request not to work those shifts.” Id. at *44. Undue hardship cannot be valid if resulting from the employer’s failure to plan ahead or to have not granted the requested accommodation: “Having to find coverage for a shift at the last minute because the scheduled employee has not shown up is a very different situation than planning a schedule in advance that excuses one employee from working a particular shift or shifts.” Id. The accommodation requested by the employee is a “*planned* accommodation or shift . . .” Id. at *45 (emphasis in original).

As such, the employee’s “duty to cooperate must ultimately give way to an employee’s conviction and the need to avoid compromise of the beliefs which Title VII was enacted to protect.” EEOC v. IBP, Inc., 824 F. Supp. 147, 154 (C.D. Ill. 1993). To hold otherwise creates a perverse “catch 22”: If Groff had failed to defy the employer’s directive to work Sundays, then Defendant would argue that he has no standing under Title VII. See Stone, 133 F. Supp. 2d at 986 (“Plaintiff’s failure to insist upon strict adherence to these beliefs, even at the cost of negative job consequences, effectively absolved her employer of the responsibility to reasonably accommodate her beliefs.”). On the other hand, where, as here, Groff defied the employer’s

directive to work Sundays and was disciplined as a result, Defendant cannot assert undue hardship resulting from its failure to provide a religious accommodation. The Court cannot uphold a standard that renders Title VII ineffective and uncertain. Undue hardship can only be predicated on whether Groff's requested accommodation had been granted.

The record here is devoid of any competent evidence that accommodating Groff's Sabbatarian practice would have resulted in any hardship. Accordingly, the Court should dismiss with prejudice the Defendant's Tenth Affirmative Defense.

CONCLUSION

WHEREFORE, Plaintiff respectfully requests this Court to grant partial summary judgment to Plaintiff on liability for Count II, but reserving trial on damages; for summary dismissal with prejudice of Defendant's affirmative defenses under 42 U.S.C. § 2000e(j), namely, Defendant's Eighth, Ninth, and Tenth affirmative defenses [Answer, Affirmative Defenses ¶¶ 8-10]; and such other relief as the Court deems necessary, just, or proper.

Dated: February 14, 2020

Respectfully submitted,

CHURCH STATE COUNCIL

By: /s/ Alan J. Reinach
Alan J. Reinach, Esquire, of Counsel, *pro hac vice*
2686 Townsgate Rd.
Westlake Village, CA 91361
P (805) 413-7398
F (805) 497-7099
ajreinach@churchstate.org

INDEPENDENCE LAW CENTER

Randall L. Wenger, Esq.
Jeremy Samek, Esq.
23 North Front Street, 2nd Floor
Harrisburg, PA 17101
P (717) 657-4990
F (717) 545-8107
rwenger@indlawcenter.org
jsamek@indlawcenter.org

CORNERSTONE LAW FIRM, LLC

David W. Crossett, Esquire
8500 Allentown Pike, Ste 3
Blandon, PA 19510
P (610) 926-7875
F (484) 930-0054
david@cornerstonelaw.us

Counsel for Plaintiff