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7
8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

10 SUNIL KUMAR, Ph. D., PRAVEEN
11 SINHA, Ph. D.,

12 Plaintiffs,

13 v.

14 DR. JOLENE KOESTER, in her official
15 capacity as Chancellor of California State
16 University, LARRY L. ADAMSON,
17 DIANA AGUILAR-CRUZ, DIEGO
18 ARAMBULA, JACK B. CLARKE JR.,
19 ADAM DAY, DOUGLAS FAIGIN,
20 JEAN P. FIRSTENBERG, WENDA
21 FONG, LESLIE GILBERT-LURIE,
22 LILLIAN KIMBELL, MARIA
23 LINARES, JULIA I. LOPEZ, JACK
24 MCGRORY, ANNA ORTIZ-MORFIT,
25 YAMMILETTE RODRIGUEZ, ROMÉY
26 SABALIUS, LATEEFAH SIMON,
27 CHRISTOPHER STEIN HAUSER, and
28 JOSE ANTONIO VARGAS, in their
official capacities as trustees of
California State University,

Defendants.

Case No. _____

COMPLAINT

DEMAND FOR JURY TRIAL

COMPLAINT

1 **COMPLAINT**

2 Plaintiffs, California State University professors Sunil Kumar, Ph.D
3 (“Professor Kumar”) and Praveen Sinha, Ph.D (“Professor Sinha”) (collectively
4 “Plaintiffs”), by and through their attorneys, Fox Rothschild LLP, hereby assert the
5 following causes of action against Defendants, Dr. Jolene Koester, in her official
6 capacity as Chancellor of California State University, and Larry L. Adamson, Diana
7 Aguilar-Cruz, Diego Arambula, Jack B. Clarke, Jr., Adam Day, Douglas Faigin, Jean
8 P. Firstenberg, Wenda Fong, Leslie Gilbert-Lurie, Lillian Kimbell, Maria Linares,
9 Julia I. Lopez, Jack McGrory, Anna Ortiz-Morfit, Yammilette Rodriguez, Romey
10 Sabalius, Lateefah Simon, Christopher Stein Hauser and Jose Antonio Vargas, in
11 their official capacities as Trustees of California State University, (collectively
12 “Defendants”), as follows:

13 **INTRODUCTION**

14 1. On January 1, 2022, California State University (“CSU”) instituted an
15 interim anti-discrimination policy that prohibits “[d]iscrimination based on any
16 Protected Status: i.e., Age, Disability (physical and mental), Gender (or sex,
17 including sex stereotyping), Gender Identity (including transgender), Gender
18 Expression, Genetic Information, Marital Status, Medical Condition, Nationality,
19 Race or Ethnicity (including color, *caste*, or ancestry), Religion (or religious creed),
20 Sexual Orientation, and Veteran or Military Status.” Ex. A, Interim CSU Policy
21 Prohibiting Discrimination, Harassment, Sexual Exploitation, Dating Violence,
22 Domestic Violence, Stalking and Retaliation (“Interim Policy”), at p. 1, Art. II (A)
23 (emphasis added).

24 2. Among the changes to the Interim Policy was the addition of “caste” to
25 discrimination based on Ethnicity.

26 3. Unfortunately, it appears that Defendants either intentionally or
27 implicitly intended to wrongly and unfairly target members of the Indian/South Asian

1 community and adherents of the Hindu religion for disparate treatment under the
2 Interim Policy. For example, the State of California, under which CSU operates,
3 takes the position that “caste” is inextricably intertwined with the Hindu religion and
4 India/South Asia.

5 4. As detailed below, it seems that the intent was not the laudable goal of
6 broadly protecting individuals from discrimination based on, for example, social or
7 economic status in all of its forms, but, instead is directed to persons of Indian/South
8 Asian origin and in particular those who identify as, or are perceived to be,
9 practitioners of the Hindu religion.

10 5. Consequently, the Interim Policy seeks to define the Hindu religion as
11 including “caste” and an alleged oppressive and discriminatory caste system as
12 foundational religious tenets. That not only is an inaccurate depiction of the Hindu
13 religion, but the First Amendment to the United State Constitution prohibits
14 California and CSU from defining the contours of Hinduism (or any religion). *See,*
15 *e.g., Our Lady of Guadalupe Sch. v. Morrissey-Berru*, 140 S.Ct. 2049, 2060 (2020)
16 (“the Religion Clauses protect the right of churches and other religious institutions to
17 decide matters of faith and doctrine without government intrusion.”); *Commack Self-*
18 *Serv. Kosher Meats, Inc. v. Weiss*, 294 F.3d 415, 427 (2d. Cir. 2002) (Establishment
19 Clause violated where law “require[s] New York to adopt an official State position
20 on a point of religious doctrine”).

21 6. The Interim Policy also singles out only CSU’s Hindu employees,
22 professors and students, as well as those of Indian/South Asian origin. No other
23 Protected Status in the Interim Policy addresses any specific ethnicity, ancestry,
24 religion or alleged religious practice “[A]ny official action that treats a person
25 differently on account of his race or ethnic origin is inherently suspect.” *Fisher v.*
26 *Univ. of Tex.*, 570 U.S. 297, 310 (2013) (quoting *Fullilove v. Klutznick*, 448 U.S. 448,
27 523 (1980) (Stewart, J., dissenting) (internal quotation marks omitted)). That is the

1 case “even for so-called ‘benign’ racial classifications” *Johnson v. Calif.*, 543
2 U.S. 499, 505 (2005) (citations omitted). As a result, the Interim Policy violates the
3 Equal Protection Clause of the Fourteenth Amendment.

4 7. Further, the Interim Policy does not define “caste” among its 44
5 specifically defined terms. “Caste” is not a term understood by people of ordinary
6 intelligence; indeed, many of the CSU employees, professors and students who will
7 be governed by the Interim Policy are unfamiliar with the term or its meaning or
8 contexts. Therefore, the Interim Policy is unconstitutionally vague in violation of the
9 Due Process Clause of the Fourteenth Amendment.

10 8. Plaintiffs are Hindu professors at CSU who are of Indian descent. They
11 bring this action to prevent Defendants from enforcing the Interim Policy and to
12 safeguard their constitutional rights, as well as the rights of other CSU employees,
13 professors and students who are similarly situated.

14 9. While Plaintiffs applaud CSU’s effort to take a firm stance in favor of
15 inclusion and against discrimination – something on which they are in complete
16 agreement – the addition of “caste” as a form of “Ethnicity” in the Interim Policy’s
17 Protected Statuses unfairly singles out and targets them as persons of Indian/South
18 Asian origin and members of the Hindu religion.

19 10. By this lawsuit, Plaintiffs seek a determination that the term “caste” as
20 used in the Interim Policy is unconstitutionally vague, and the Interim Policy as
21 drafted violates the rights of Plaintiffs (and similarly situated individuals) under the
22 First and Fourteenth Amendments to the United States Constitution, as well as their
23 rights under the California Constitution.

24 11. CSU does not need to include the pejorative and demeaning term “caste”
25 to protect persons of Indian/South Asian descent or those who identify with, or are
26 perceived to be, practitioners of the Hindu religion since its policy already precludes
27 discrimination specifically based on ethnicity and religion.

1 honor the divine in everyone, which is directly contrary to a discriminatory caste
2 system.

3 19. In addition, Plaintiffs do not identify as being members of any caste and
4 fear that CSU will ascribe a caste to them under the Interim Policy. Indeed, how else
5 will CSU be able to determine if discrimination based on caste occurred unless they
6 ascribe a caste not only to the allegedly discriminating actor but to the alleged victim
7 as well?

8 20. By linking the Hindu religion with a caste system and caste
9 discrimination, California and CSU have infringed the constitutional rights of
10 Plaintiffs by singling out their religious beliefs for ridicule, by seeking to define the
11 Hindu religion's practices and customs as including a caste system, and by
12 improperly ascribing to it an oppressive and discriminatory intent.

13 21. Further, the use of caste in the Interim Policy singles out Plaintiffs and
14 others from India/South Asia.

15 22. Plaintiffs fully support efforts to end all discrimination on CSU
16 campuses, and elsewhere, that are consistent with the United States and California
17 Constitutions, and which do not single out any religion, alleged religious practice or
18 group of individuals (like Indians and South Asians or Hindus).¹

19 23. California State University, which is not a Party to this action, is a public
20 university operated by the State of California with 23 campuses across the State. *See*
21 *Steshenko v. Gayrard*, 44 F. Supp. 3d 941, 949 (N.D. Cal. 2014) (citing *Stanley v.*
22 *Trs. Of the Cal. State. Univ.*, 433 F.3d 1129, 1133 (9th Cir. 2006)); The California
23

24 _____
25 ¹ Had the Interim Policy used neutral and generally applicable terms to broadly
26 protect individuals from discrimination based on, for example, social or economic
27 status in all of its forms, Plaintiffs would not have filed this action. Instead, the
Interim Policy uses a term that California associates only to Hinduism and that also
is directly targeted to people of Indian/South Asian descent.

1 State University, The CSU System, About the CSU, [https://www.calstate.edu/csu-](https://www.calstate.edu/csu-system/about-the-csu/Pages/default.aspx)
2 [system/about-the-csu/Pages/default.aspx](https://www.calstate.edu/csu-system/about-the-csu/Pages/default.aspx) (last visited Sept. 16, 2022).

3 24. Defendants, the individual trustees of CSU and the Chancellor of CSU,
4 are responsible for adopting and/or enforcing the Interim Policy. They are named as
5 Defendants in this lawsuit in their official capacities only.

6 25. Defendants are considered to be an arm of the State of California.
7 However, because Defendants are being sued in their official capacities for
8 prospective injunctive relief, the sovereign immunity provisions of the Eleventh
9 Amendment do not apply to them.

10 **JURISDICTION AND VENUE**

11 26. Plaintiffs hereby incorporate by reference the foregoing paragraphs as
12 though fully set forth herein.

13 27. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331
14 because this case arises under the laws and Constitution of the United States;
15 specifically, 42 U.S.C. § 1983 *et seq.*

16 28. This Court should exercise supplemental jurisdiction over any state law
17 claims pursuant to 28 U.S.C. § 1367 because the state law claims arise from the same
18 case or controversy that give rise to jurisdiction under 28 U.S.C. § 1331.

19 29. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because
20 all of the claims asserted by Plaintiffs arose within this District.

21 **FACTUAL BACKGROUND**

22 30. Plaintiffs hereby incorporate by reference the foregoing paragraphs as
23 though fully set forth herein.

24 **The Interim Policy**

25 31. The Interim Policy, effective as of January 1, 2022, applies to CSU
26 employees, professors (like Plaintiffs here) and students. Ex. A, Interim Policy at p.
27 1. It prohibits, among other things, discrimination and harassment for a number of

1 Protected Statuses, which consist of: Age, Disability, Gender, Gender Identity,
2 Gender Expression, Genetic Information, Marital Status, Medical Condition,
3 Nationality, “*Race or Ethnicity (including color, caste, or ancestry)*,” Religion (or
4 religious creed), Sexual Orientation, and Veteran or Military Status. *Id.* at p. 1, Art.
5 II (emphasis added).

6 32. The Interim Policy further provides that “[e]mployees who are found to
7 have violated [it] will be subject to discipline that is appropriate for the violation and
8 in accordance with state and federal requirements and other CSU policies.” *Id.* at p.
9 42, Interim Procedures, Art. I(A).

10 33. In addition to prohibiting discrimination and harassment based on
11 Ethnicity, which now specifically includes caste, CSU employees (like Plaintiffs)
12 have an affirmative duty to “promptly report” any discriminatory or harassing
13 incidents. *Id.* at p. 3, Art. V(A).

14 34. Significantly, however, “caste” is not among the 44 specifically defined
15 terms in the Interim Policy nor does it provide any explication of how caste equates
16 in any way with ethnicity. *Id.* at pp. 6–16, Art. VII(A)(B).

17 35. Caste is not a term that is familiar to the vast majority of CSU
18 employees, professors or students. *See* Ex. B, Jan. 18, 2022 Equality Labs Press
19 Release at p. 2 (quoting Prof. Dr. Sarah Taylor, Chair, Dept. of Social Work, CSU
20 East Bay that, “[f]or many of us, caste is not yet part of our regular lexicon, but it
21 needs to be.”).

22 36. Thus, employees are left to guess – at their peril – what constitutes
23 reportable conduct. Similarly, an employee or student who is unfamiliar with “caste”
24 could be accused of violating the Interim Policy despite the lack of definition.

25 **CSU Equates Caste Only to the Hindu Religion and India/South Asia**

26 37. The State of California, under which CSU operates, takes the position
27 that caste is inextricably intertwined with the Hindu religion and India. Specifically,

1 the California Department of Civil Rights, formerly known as the Department of Fair
2 Employment and Housing (“DFEH”)² describes “**India’s** caste system” as “a strict
3 **Hindu** social and **religious** hierarchy . . . based on [a person’s] **religion, ancestry,**
4 **national origin/ethnicity,** and race/color” that mandates discrimination and
5 segregation of certain castes “by social custom and legal mandate.” Ex. C, Complaint
6 in *Doe v. Cisco* (pending before the Superior Court of California, Santa Clara
7 County) (“Doe Compl.”) at ¶ 1; *Id.* at ¶ 62 (emphasis added) (alleging that the
8 California Fair Employment and Housing Act “prohibits harassment based on the
9 employee’s protected characteristics including, but not limited to, their caste, which
10 includes **religion, ancestry, national origin/ethnicity, and race/color**”); *id.* at ¶¶ 63–
11 64 (same).

12 38. In addition, in promulgating the Interim Policy, CSU had the support of,
13 and upon information and belief relied on, resolutions passed by the California
14 Faculty Association (“CFA”) and California State Student Association (“CSSA”),
15 which equate “caste” to people of only Indian (South Asian) origin and the Hindu
16 religion, and (incorrectly) conclude that “[c]aste is present in the **Hindu religion and**
17 **common in communities in South Asia and in the South Asian Diaspora**” Ex.
18 D, CFA Resolution at p. 1 (emphasis added); *see also* Ex. E, CSSA Resolution.

19 39. Thus, as is clear from the express language of the Interim Policy,
20 California’s position in currently pending litigation, and the CFA and CSSA
21 Resolutions relied on by CSU, “caste” is the only Protected Status in the Interim
22 Policy that targets a specific religion and a specific class of CSU employees,
23 professors and students on the basis of nationality or ethnicity; all of the other
24 categories are neutral and generally applicable.

26 _____
27 ² As of June 30, 2022, DFEH is now known as the Civil Rights Department.

1 **LEGAL FRAMEWORK**

2 40. Plaintiffs hereby incorporate by reference the foregoing paragraphs as
3 though fully set forth herein.

4 **The First Amendment**

5 41. The First Amendment to the United States Constitution provides, in part,
6 that “Congress shall make no law respecting an establishment of religion, or
7 prohibiting the free exercise thereof.” U.S. CONST. amend I (the “Religion Clauses”).

8 42. Those Religion Clauses are the basis of the religious freedoms enjoyed
9 in the United States.

10 43. The Religion Clauses are applicable to the States under the Fourteenth
11 Amendment. *See, e.g., Kennedy v. Bremeton Sch. Dist.*, 142 S. Ct. 2407, 2421
12 (2022).

13 44. The Religion Clauses have “‘complementary’ purposes, not warring
14 ones where one Clause is always sure to prevail over the other” *Id.* at 2426
15 (quoting *Everson v. Bd. of Educ. of Ewing*, 330 U.S. 1, 13 (1947)). As the Supreme
16 Court recently held:

17 Among other things, *the Religion Clauses protect the right of*
18 *churches and other religious institutions to decide matters of faith*
19 *and doctrine without government intrusion.* State interference in that
20 sphere would obviously violate the free exercise of religion, and *any*
21 *attempt by government to dictate or even influence such matters*
would constitute one of the central attributes of an establishment of
religion. The First Amendment outlaws such intrusion.

22 *Our Lady of Guadalupe Sch.*, 140 S.Ct. at 2060 (internal punctuation and citations
23 omitted) (emphasis added).

24 45. As the Supreme Court held long ago, “when . . . presented with a state
25 law granting a denominational preference, [Supreme Court] precedents demand that
26 [courts] treat the law as suspect and that [courts] apply strict scrutiny in adjudging its
27 constitutionality.” *Larson v. Valente*, 456 U.S. 228, 246–48 (1982); *see also Trump*

1 v. *Hawaii*, 138 S. Ct. 2392, 2417 (2018); *Washington v. Trump*, 847 F.3d 1151, 1167
2 (9th Cir. 2017).

3 46. This case now before the Court “pits two competing values that we
4 cherish as a nation: the principle of non-discrimination on the one hand, and the First
5 Amendment’s protection of free exercise of religion on the other hand. . . . ***Under***
6 ***the First Amendment, our government must be scrupulously neutral when it comes***
7 ***to religion: It cannot treat religious groups worse than comparable secular ones.***”
8 *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, No. 22-
9 15827, 2022 WL 3712506, at **2–3 (9th Cir. 2022) (emphasis added).

10 47. Specifically, state actors like Defendants cannot single out particular
11 religions for ridicule by ascribing to them tenets that are not part of their faith and
12 that members of that faith find repugnant.

13 48. The First Amendment ***requires*** that government “proceed in a manner
14 neutral toward and tolerant” of people’s “religious beliefs.” *Masterpiece Cakeshop*
15 *Ltd. v. Colo. C.R. Comm’n*, 138 S.Ct. 1719, 1731 (2018). And, while neutrality is
16 compelled as between religious and secular groups, there must be “strict adherence
17 to the ‘principal of denominational neutrality’” where, as here, one religion is
18 treated differently than all others. *Adair v. England*, 183 F. Supp.2d 31, 48 (D.D.C.
19 2002) (quoting *Larson*, 456 U.S. at 246–47). This has been bedrock constitutional
20 law for decades. *See, e.g., Larson*, 456 U.S. at 246 (quoting *Abington Sch. Dist. v.*
21 *Schempp*, 374 U.S. 203, 305 (1963) (internal punctuation omitted) (“the fullest
22 realization of true religious liberty requires that government effect no favoritism
23 among sects and that it work deterrence of no religious belief”)); *Epperson v.*
24 *Arkansas*, 393 U.S. 97, 98 (1968) (emphasis added) (citations omitted) (“The First
25 Amendment mandates governmental neutrality between religion and religion
26 The State may not aid or oppose any religion This prohibition is absolute.”).

1 49. The Interim Policy violates those basic tenets of the Religion Clauses
2 by ascribing an oppressive and discriminatory caste system to the entire Hindu
3 religion. In this manner, the Interim Policy ascribes a negative (and false) attribute
4 to a particular faith – Hinduism – that is not neutral or generally applicable since it
5 singles out only a supposed practice of the Hindu religion.

6 50. Not only is California constitutionally prohibited from linking a caste
7 system with the Hindu religion, that conclusion is simply wrong.

8 51. Indeed, Plaintiffs here do not believe in nor engage in caste
9 discrimination at all. Rather, they abhor it, as they abhor all forms of discrimination.
10 It is their sincerely held religious belief that the Hindu religion in no way includes or
11 endorses an oppressive and discriminatory caste system, yet CSU and the State have
12 now told them that it is a part of their religion.

13 **The Equal Protection Clause**

14 52. The Equal Protection Clause of the Fourteenth Amendment “prohibits
15 the government from classifying people based on suspect classes, unless the
16 classification is narrowly tailored to satisfy a compelling governmental interest . . .
17 .” *Al Saud v. Days*, 36 F.4th 949, 953 (9th Cir. 2022) (citing *Kadmas v. Dickinson*
18 *Pub. Sch.*, 487 U.S. 450, 457–58 (1988)).

19 53. “[A]ny official action that treats a person differently on account of his
20 race or ethnic origin is inherently suspect.” *Fisher*, 570 U.S. at 310 (quoting
21 *Fullilove*, 448 U.S. at 523).

22 54. Consequently, the general rule is that when a state actor explicitly treats
23 an individual differently on the basis of race, strict scrutiny is applied. *Id.*; *Johnson*,
24 543 U.S. at 505; *Adarand Const., Inc. v. Pena*, 515 U.S. 200, 227 (1995). The
25 Supreme Court has “insisted on strict scrutiny in every context, even for so-called
26 ‘benign’ racial classifications, such as race-conscious university admissions policies,
27

1 race-based preferences in government contracts, and race-based districting intended
2 to improve minority representation.” *Johnson*, 543 U.S. at 505.

3 55. Race, ethnicity, national origin and religion are protected classes under
4 the Equal Protection Clause. *See, e.g., Days*, 36 F. 4th 954; *Mitchell v. Washington*,
5 818 F.3d 436, 444–45 (9th Cir. 2018).

6 56. By drafting the Interim Policy to specifically include caste within the
7 meaning of ethnicity, CSU impermissibly singled out Hindu employees, professors
8 (like Plaintiffs) and students, and those of Indian/South Asian origin, based on their
9 perceived national origin or ancestry (Indian/South Asian) and religion (Hinduism).

10 57. The Interim Policy singles out Plaintiffs (as well as others similarly
11 situated) with inaccurate stereotypes – that they adhere to a “caste system”
12 characterized as a racist and inhumane system of discrimination and violence against
13 others. Ex. E, CSSA Resolution at p. 1 (erroneously concluding that caste is “a
14 structure of oppression,” where “[c]aste oppressed groups . . . experience brutal
15 violence at the hands of ‘upper’ castes . . .”).

16 **The Due Process Clause – Vagueness**

17 58. The Due Process Clause of the Fourteenth Amendment requires:

18 First, laws give the person of ordinary intelligence a reasonable
19 opportunity to know what is prohibited, so that he may act
20 accordingly. . . . The vagueness doctrine’s second requirement aims
21 to avoid arbitrary and discriminatory enforcement, and demands that
22 laws provide explicit standards for those who apply them. A law that
relies on a subjective standard—such as whether conduct amounts to
an annoyance—is constitutionally suspect.

23 *Edge v. City of Everett*, 929 F.3d 657, 664–65 (9th Cir. 2019) (internal citations and
24 quotation marks omitted); *see also Arce v. Douglas*, 793 F.3d 968, 988 (9th Cir.
25 2015). This is referred to as the vagueness doctrine. *See Edge*, 929 F.3d at 664.

26 59. In sum, while a statute or policy need not be perfectly clear in order to
27 survive a vagueness challenge, it must nonetheless provide a code of conduct that

1 ordinary citizens can follow to reasonably avoid violation. *See Wal-Mart Stores, Inc.*
2 *v. City of Turlock*, 483 F. Supp.2d 987, 1021 (E.D. Cal. 2006) (internal citations and
3 quotation marks omitted) (“If a statute is not sufficiently clear to provide guidance to
4 citizens concerning how they can avoid violating it and to provide authorities with
5 principles governing enforcement, the statute is invalid.”); *Santa Cruz Lesbian &*
6 *Gay Comm. Ctr. v. Trump*, 508 F. Supp.3d 521, 536 (N.D. Cal. 2020) (executive
7 orders considered void for vagueness when they left plaintiffs unsure as to whether
8 they could continue providing diversity and inclusion training without violating
9 them).

10 60. The Interim Policy is unconstitutionally vague to the extent that it
11 prohibits discrimination based on “caste.”

12 61. While the Interim Policy defines 44 terms, “caste” is not one of them
13 (Ex. A, Interim Policy at pp. 6–16, Art. VII(A)(B)), and the Interim Policy provides
14 no other explanation for why it includes “caste” within the meaning of “Ethnicity.”

15 62. Even those of Indian origin or those who identify as Hindu may very
16 well be unfamiliar with what caste means because there simply is no universally
17 agreed upon definition and because it is a foreign concept. *See Nani Walker, Cal.*
18 *State system adds caste to anti-discrimination policy in groundbreaking decision,*
19 *L.A. TIMES* (Jan. 20, 2022) [https://www.latimes.com/california/story/2022-01-](https://www.latimes.com/california/story/2022-01-20/csu-adds-caste-to-its-anti-discrimination-policy)
20 [20/csu-adds-caste-to-its-anti-discrimination-policy](https://www.latimes.com/california/story/2022-01-20/csu-adds-caste-to-its-anti-discrimination-policy) (noting that “[f]or most South-
21 [Asians, caste practice in the U.S. is a faraway and foreign concept”\).](https://www.latimes.com/california/story/2022-01-20/csu-adds-caste-to-its-anti-discrimination-policy)

22 63. But more importantly, “caste” is not a term that is familiar to the vast
23 majority of CSU employees, professors or students. *See Ex. B, Jan. 18, 2022 Equality*
24 *Labs Press Release* at p. 2 (quoting Prof. Dr. Sarah Taylor, Chair, Dept. of Social
25 Work, CSU East Bay that “[f]or many of us, caste is not yet part of our regular
26 lexicon, but it needs to be”).

1 **CLAIMS**

2 **FIRST CLAIM FOR DECLARATORY JUDGMENT**
3 **(AGAINST ALL DEFENDANTS)**

4 64. Plaintiffs hereby incorporate by reference the foregoing paragraphs as
5 though fully set forth herein.

6 65. Plaintiffs have viable claims under the First and Fourteenth
7 Amendments to the United States Constitution as explained herein.

8 66. Consequently, Plaintiffs certainly face impending injuries under the
9 Interim Policy.

10 67. A declaratory judgment holding the Interim Policy unconstitutional, and
11 thus unenforceable, as to caste discrimination will relieve the Plaintiffs of their very
12 realistic fears of impending injury. *See Crossley v. Cal.*, 479 F. Supp.3d 901, 920
13 (S.D. Cal. 2020) (quoting *Steffel v. Thompson*, 415 U.S. 452, 460 (1974) (In order to
14 prevail on a claim for declaratory relief, “[t]he plaintiff must demonstrate that the
15 probability of [a] future [undesirable] event is real and substantial [and] ‘of sufficient
16 immediacy and reality to warrant the issuance of a declaratory judgment.’”)).

17 68. Plaintiffs are therefore entitled to declaratory relief declaring the Interim
18 Policy to be unconstitutional to the extent that it references “caste” and to injunctive
19 relief enjoining Defendants from enforcing the “caste” provision of the Interim
20 Policy.

21 **SECOND CLAIM FOR VIOLATION OF FREE EXERCISE CLAUSE OF**
22 **THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION –**
23 **42 U.S.C. § 1983**
24 **(AGAINST ALL DEFENDANTS)**

25 69. Plaintiffs hereby incorporate by reference the foregoing paragraphs as
26 though fully set forth herein.

1 70. 42 U.S.C. §1983 prohibits any state actor or person acting under color
2 of state law from depriving others of their rights, privileges, or immunities under the
3 United States Constitution.

4 71. Defendants were state actors and/or acting under color of state law when
5 they promulgated the Interim Policy.

6 72. Defendants are state actors and/or acting under color of state law in
7 enforcing the Interim Policy.

8 73. Violations of the First Amendment are actionable under 42 U.S.C. §
9 1983.

10 74. “The [Free Exercise Clause of the] First Amendment protects the right
11 of religious institutions ‘to decide for themselves, free from state interference,
12 matters of church government as well as those of faith and doctrine.’” *Our Lady of*
13 *Guadalupe Sch.*, 140 S. Ct. at 2055 (citing *Kedroff v. St. Nicholas Cathedral of*
14 *Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952)).

15 75. The Interim Policy violates the Free Exercise Clause of the First
16 Amendment by, *inter alia*, defining the contours and practices of the Hindu religion
17 by impermissibly (and erroneously) concluding that inherent to the teachings and
18 practices of Hinduism is a “caste system” characterized as a racist and inhumane
19 system of discrimination and violence against others.

20 76. The Interim Policy is neither neutral nor generally applicable in that it,
21 *inter alia*, refers to caste (which California and CSU consider to be a “religious
22 practice” of Hinduism); is being specifically applied only to the Hindu religion; and
23 does not apply to any other sincerely-held religious beliefs.

24 77. The Interim Policy is not narrowly tailored to meet a compelling
25 government interest.

26 78. As a result of the Interim Policy violating the Free Exercise Clause,
27 Plaintiffs have suffered a *de facto* irreparable injury.

1 79. Enforcing the Interim Policy will not only cause Plaintiffs (and others
2 similarly situated) to live with the fear of being disciplined for committing
3 discrimination they did not commit, such accusations – and indeed the mere
4 stereotypes and implicit bias the Interim Policy has perpetuated – will follow them
5 throughout the rest of their careers.

6 80. Similarly, because the Interim Policy does not describe what
7 repercussions exist for alleged “caste” discrimination (or even explain what “caste”
8 discrimination is), *any* employee within the CSU system, regardless of their ancestry
9 or actual religious beliefs, could be subject to losing privileges at the university, their
10 tenures, or even their professorship positions, if they are even *accused of* caste
11 discrimination.

12 81. Plaintiffs have no adequate remedy at law to prevent or redress the
13 irreparable injuries alleged herein.

14 82. Unless Defendants are enjoined and restrained from enforcing the
15 portion of the Interim Policy applying caste as a Protected Status, Plaintiffs will be
16 irreparably injured, as they will be deprived of their rights under the United States
17 Constitution forever.

18 83. As Plaintiffs’ constitutional violations are ongoing and capable of
19 repetition, Plaintiffs are entitled to injunctive relief.

20 84. Because Defendants’ actions required Plaintiffs to retain counsel and
21 incur attorneys’ fees and costs to bring this action, Plaintiffs are entitled to the
22 recovery of those fees and costs pursuant to, *inter alia*, 42 U.S.C. § 1983 *et seq.* and
23 42 U.S.C. § 1988(b).

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1 **THIRD CLAIM FOR VIOLATION OF THE ESTABLISHMENT CLAUSE**
2 **OF THE FIRST AMENDMENT TO THE UNITED STATES**
3 **CONSTITUTION – 42 U.S.C. § 1983**
4 **(AGAINST ALL DEFENDANTS)**

5 85. Plaintiffs hereby incorporate by reference the foregoing paragraphs as
6 though fully set forth herein.

7 86. CSU and California, through the Interim Policy and elsewhere, have
8 unilaterally determined that the contours of Hinduism include caste and an oppressive
9 and discriminatory caste system.

10 87. No other religion or religious practice is included in the Interim Policy.

11 88. The Interim Policy is not narrowly tailored to meet a compelling
12 government interest.

13 89. Defendants were state actors and/or acting under color of state law when
14 they promulgated the Interim Policy.

15 90. Defendants are state actors and/or acting under color of state law in
16 enforcing the Interim Policy.

17 91. As a result of the Interim Policy violating the Establishment Clause,
18 Plaintiffs have suffered a *de facto* irreparable injury.

19 92. Enforcing the Interim Policy will not only cause Plaintiffs (and others
20 similarly situated) to live with the fear of being disciplined for committing
21 discrimination they did not commit, such accusations – and indeed the mere
22 stereotypes and implicit bias the Interim Policy has perpetuated – will follow them
23 throughout the rest of their careers.

24 93. Similarly, because the Interim Policy does not describe what
25 repercussions exist for alleged “caste” discrimination (or even explain what “caste”
26 discrimination is), *any* employee within the CSU system, regardless of their ancestry
27 or actual religious beliefs, could be subject to losing privileges at the university, their

1 tenures, or even their professorship positions, if they are even *accused of* caste
2 discrimination.

3 94. Plaintiffs have no adequate remedy at law to prevent or redress the
4 irreparable injuries alleged herein.

5 95. Unless Defendants are enjoined and restrained from enforcing the
6 portion of the Interim Policy applying caste as a Protected Status, Plaintiffs will be
7 irreparably injured, as they will be deprived of their rights under the United States
8 Constitution forever.

9 96. As Plaintiffs’ constitutional violations are ongoing and capable of
10 repetition, Plaintiffs are entitled to injunctive relief.

11 97. Because Defendants’ actions required Plaintiffs to retain counsel and
12 incur attorneys’ fees and costs to bring this action, Plaintiffs are entitled to the
13 recovery of those fees and costs pursuant to, *inter alia*, 42 U.S.C. § 1983 *et seq.* and
14 42 U.S.C. § 1988(b).

15 **FOURTH CLAIM FOR VIOLATION OF THE NO PREFERENCE AND**
16 **ESTABLISHMENT CLAUSES OF THE CALIFORNIA CONSTITUTION**
17 **(AGAINST ALL DEFENDANTS)**

18 98. Plaintiffs hereby incorporate by reference the foregoing paragraphs as
19 though fully set forth herein.

20 99. The No Preference and Establishment Clauses of the California
21 Constitution (the “Religion Clauses of the California Constitution”) provide that
22 “[f]ree exercise and enjoyment of religion without discrimination or preference are
23 guaranteed The Legislature shall make no law respecting an establishment of
24 religion.” Cal. Const., art. I, § 4.

25 100. The Religion Clauses of the California Constitution offer religion the
26 same, if not more, protections as those under the Federal Constitution. *See Barnes*
27 *Wallace v. City of San Diego*, 704 F.3d 1067, 1082 (9th Cir. 2012). Accordingly,

1 Defendants have violated the Religion Clauses of the California Constitution for
2 reasons discussed *supra*.

3 101. The Interim Policy does not satisfy strict scrutiny for the reasons
4 discussed *supra*.

5 102. Enforcing the Interim Policy will not only cause Plaintiffs (and others
6 similarly situated) to live with the fear of being disciplined for committing
7 discrimination they did not commit, such accusations – and indeed the mere
8 stereotypes and implicit bias the Interim Policy has perpetuated – will follow them
9 throughout the rest of their careers.

10 103. Similarly, because the Interim Policy does not describe what
11 repercussions exist for alleged “caste” discrimination (or even explain what “caste”
12 discrimination is), *any* employee within the CSU system, regardless of their ancestry
13 or actual religious beliefs, could be subject to losing privileges at the university, their
14 tenures, or even their professorship positions, if they are even *accused of* caste
15 discrimination.

16 104. Unless Defendants are enjoined and restrained from enforcing the
17 portion of the Interim Policy applying caste as a Protected Status, Plaintiffs will be
18 irreparably injured, as they will be deprived of their rights under the United States
19 Constitution forever.

20 105. As Plaintiffs’ constitutional violations are ongoing and capable of
21 repetition, Plaintiffs are entitled to immediate and permanent injunctive relief.

22 **FIFTH CLAIM FOR VIOLATION OF THE EQUAL PROTECTION**
23 **CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED**
24 **STATES CONSTITUTION – 42 U.S.C. § 1983**
25 **(AGAINST ALL DEFENDANTS)**

26 106. Plaintiffs hereby incorporate by reference the foregoing paragraphs as
27 though fully set forth herein.

1 107. Pursuant to the Fourteenth Amendment to the United States
2 Constitution, no state shall “deny to any person within its jurisdiction the equal
3 protection of the laws.”

4 108. Violations of the Equal Protection Clause are actionable under 42
5 U.S.C. § 1983.

6 109. The Equal Protection Clause “prohibits the government from classifying
7 people based on suspect classes, unless the classification is narrowly tailored to
8 satisfy a compelling governmental interest (*i.e.*, the government’s action passes strict
9 scrutiny).” *Days*, 36 F.4th at 953 (citing *Kadmas*, 487 U.S. at 457–58).

10 110. The Interim Policy creates *de facto* suspect classes by targeting Hindus
11 (religion) and people of Indian/South Asian descent (ancestry) while no other religion
12 or ancestry is treated similarly.

13 111. Defendants were state actors and/or acting under color of state law when
14 they promulgated the Interim Policy.

15 112. Defendants are state actors and/or acting under color of state law in
16 enforcing the Interim Policy.

17 113. The Interim Policy singles out Plaintiffs, as well as other Hindu CSU
18 employees, professors and students and those of Indian/South Asian origin.

19 114. By including “caste” in the Interim Policy, Defendants impermissibly
20 created, and therefore targeted, suspect classes of Hindu CSU employees, professors,
21 and students and those of Indian/South Asian origin.

22 115. No other religion, alleged religious practice, or ancestry are contained
23 in the Interim Policy.

24 116. Plaintiffs have no adequate remedy at law to prevent or redress the
25 irreparable injuries alleged herein.

26 117. Unless Defendants are enjoined and restrained from enforcing the
27 portion of the Interim Policy applying caste as a Protected Status, Plaintiffs will be

1 irreparably injured, as they will be deprived of their rights under the United States
2 Constitution forever.

3 118. As Plaintiffs’ constitutional violations are ongoing and capable of
4 repetition, Plaintiffs are entitled to injunctive relief.

5 119. Because Defendants’ actions required Plaintiffs to retain counsel and
6 incur attorneys’ fees and costs to bring this action, Plaintiffs are entitled to the
7 recovery of those fees and costs pursuant to, *inter alia*, 42 U.S.C. § 1983 *et seq.* and
8 42 U.S.C. § 1988(b).

9 **SIXTH CLAIM FOR VIOLATION OF THE EQUAL PROTECTION**
10 **CLAUSE OF THE CALIFORNIA STATE CONSTITUTION RELIEF**
11 **(AGAINST ALL DEFENDANTS)**

12 120. Plaintiffs hereby incorporate by reference the foregoing paragraphs as
13 though fully set forth herein.

14 121. “The equal protection analysis under the California Constitution is
15 substantially similar to analysis under the federal Equal Protection Clause.” *Cal.*
16 *Growers Ass’n v. City of Long Beach*, 521 F. Supp.3d 902, 912 (C.D. Cal. 2021)
17 (quoting *RUI One Corp. v. City of Berkeley*, 371 F.3d 1137, 1154 (9th Cir. 2004)).
18 Accordingly, the Interim Policy violates the equal protection clause of the California
19 Constitution for the reasons set forth *supra*.

20 122. As explained above, Plaintiffs have and will continue to suffer harm as
21 a result of the violation of the Equal Protection Clause of the California state
22 constitution.

1 **SEVENTH CLAIM FOR VIOLATION OF THE DUE PROCESS CLAUSE**
2 **OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES**
3 **CONSTITUTION – 42 U.S.C. § 1983**
4 **(AGAINST ALL DEFENDANTS)**

5 123. Plaintiffs hereby incorporate by reference the foregoing paragraphs as
6 though fully set forth herein.

7 124. “A fundamental principle in our legal system is that laws which regulate
8 persons or entities must give fair notice of conduct that is forbidden or required.”
9 *FCC v. Fox TV Stations, Inc.*, 567 U.S. 239, 253 (2012).

10 125. A government policy, statute or regulation violates the Due Process
11 Clause of the Fourteenth Amendment where it “is unclear as to what facts must be
12 proved” to violate it. *United States v. Williams*, 553 U.S. 285, 306 (2008).

13 126. Such vagueness claims are actionable under 42 U.S.C. § 1983.

14 127. The Ninth Circuit has explained that the vagueness doctrine contains
15 two separate requirements:

16 First, laws [must] give the person of ordinary intelligence a reasonable
17 opportunity to know what is prohibited, so that he may act
18 accordingly. . . . The vagueness doctrine’s second requirement aims
19 to avoid arbitrary and discriminatory enforcement, and demands that
20 laws provide explicit standards for those who apply them. A law that
relies on a subjective standard—such as whether conduct amounts to
an annoyance—is constitutionally suspect.

21 *Edge*, 929 F.3d at 664.

22 128. The Interim Policy violates the vagueness doctrine by prohibiting
23 “caste” discrimination without defining that term. Indeed, it is not among the 44
24 other specifically defined terms in the Interim Policy. Ex. A, Interim Policy at pp.
25 6–16, Art. VII(A)(B).

26 129. The term is so vague that people of ordinary intelligence do not know
27 what conduct is prohibited by the Interim Policy. In fact, many of the CSU

1 employees, professors, and students who are governed by the Interim Policy are not
2 familiar with the meaning of the term “caste.”

3 130. The Interim Policy does not provide explicit standards sufficient to
4 survive a vagueness challenge.

5 131. Thus, the Interim Policy is unconstitutionally vague in violation of the
6 Due Process Clause to the extent that it prohibits discrimination based on “caste.”

7 132. Enforcing the Interim Policy will not only cause Plaintiffs (and others
8 similarly situated) to live with the fear of being disciplined for committing
9 discrimination they did not commit, such accusations – and indeed the mere
10 stereotypes and implicit bias the Interim Policy has perpetuated – will follow them
11 throughout the rest of their careers, potentially having negative implications such as
12 the denial of tenure or the loss of their positions in academia.

13 133. Similarly, because the Interim Policy does not describe what
14 repercussions exist for alleged “caste” discrimination (or even explain what “caste”
15 discrimination is), *any* employee within the CSU system, regardless of their ancestry
16 or actual religious beliefs, could be subject to losing privileges at the university, their
17 tenures, or even their professorship positions, if they are even *accused of* caste
18 discrimination.

19 134. Unless Defendants are enjoined and restrained from enforcing the
20 portion of the Interim Policy applying caste as a Protected Status, Plaintiffs will be
21 irreparably injured, as they will be deprived of their rights under the United States
22 Constitution forever.

23 135. As Plaintiffs’ constitutional violations are ongoing and capable of
24 repetition, Plaintiffs are entitled to injunctive relief.

25 136. Because Defendants’ actions required Plaintiffs to retain counsel and
26 incur attorneys’ fees and costs to bring this action, Plaintiffs are entitled to the
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1 recovery of those fees and costs pursuant to, *inter alia*, 42 U.S.C. § 1983 *et seq.* and
2 42 U.S.C. § 1988(b).

3 **EIGHTH CLAIM FOR VOID FOR VAGUENESS UNDER THE**
4 **CALIFORNIA CONSTITUTION RELIEF**
5 **(AGAINST ALL DEFENDANTS)**

6 137. Plaintiffs hereby incorporate by reference the foregoing paragraphs as
7 though fully set forth herein.

8 138. “A void for vagueness challenge can be brought under either the
9 California constitution or the Fourteenth Amendment of the U.S. Constitution.”
10 *Nat’l City Puppy, LLC v. City of Nat’l City*, No. 19cv1942, 2019 WL 5550247, at *2
11 n.1 (S.D. Cal. Oct. 28, 2019) (quoting *People v. Toledo*, 26 Cal. 4th 221, 228–29
12 (2001)); *see also Martinez v. City of Fresno*, No. 1:22-cv-00307, 2022 WL 1645549,
13 at *12 (E.D. Cal. May 24, 2022). Accordingly, the Interim Policy is void for
14 vagueness under the California Constitution for the same reasons it is void for
15 vagueness under the Federal Constitution.

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, Plaintiffs respectfully pray for judgment against Defendants,
18 in their official capacities, and relief as follows:

- 19 a. For a preliminary injunction enjoining Defendants from
20 enforcing the Interim Policy to the extent that it prohibits
21 discrimination based on “caste”;
- 22 b. For permanent injunctive relief preventing Defendants from
23 enforcing the Interim Policy to the extent that it prohibits
24 discrimination based on “caste”;
- 25 c. For a declaration that the Interim Policy is unconstitutional to the
26 extent that it prohibits discrimination based on “caste”;
- 27 d. For attorneys’ fees and costs; and

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e. For such other and further relief as this Court deems just and appropriate.

Dated: October 18, 2022

Respectfully submitted,

/s/ John Shaeffer
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DEMAND FOR JURY TRIAL

In accordance with Rule 38(b) of the Federal Rules of Civil Procedure.
Plaintiffs hereby demand trial by jury on all issues so triable.

Dated: October 18, 2022

Respectfully submitted,

/s/ John Shaeffer

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