

1 Timothy C. Travelstead, Esq. (SBN 215260)  
*t.travelstead@narayantravelstead.com*  
2 Scott C. Ku, Esq. (SBN 314970)  
*s.ku@narayantravelstead.com*  
3 NARAYAN TRAVELSTEAD P.C.  
7901 Stoneridge Drive, Suite 230  
4 Pleasanton, CA 94588  
Telephone: (650) 403-0150

5 Attorneys for Plaintiffs  
6 HINDU AMERICAN FOUNDATION;  
SAMIR KALRA; MIHIR MEGHANI;  
7 SANGEETHA SHANKAR; DILIP AMIN; SUNDAR IYER;  
RAMANA KOMPELLA; AND DOES ONE TO THREE  
8

9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE EASTERN DISTRICT OF CALIFORNIA

11 HINDU AMERICAN FOUNDATION, INC., a  
12 Florida Not For Profit Corporation; Samir Kalra  
Mihir Meghani; Sangeetha Shankar; Dilip  
13 Amin, Sundar Iyer, Ramana Kompella as  
individuals; and Doe Plaintiffs One to Three  
14 Plaintiffs,

15 vs.

16 KEVIN KISH, an individual, in his official  
17 capacity as Director of the California Civil  
Rights Department; and DOES 1 - 50,  
18 inclusive,

19 Defendants.  
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Case No. 2-22-CV-01656-DAD-JDP

**PLAINTIFF’S OPPOSITION TO  
DEFENDANT’S MOTION TO DISMISS  
PURSUANT TO RULE 12(b)(1) AND  
12(b)(6)**

Date: August 20, 2024

Time: 1:30 p.m.

Judge: Hon. Dale A. Drodz

Date Action Filed: September 20, 2022

FAC Filed: September 21, 2023

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**I. INTRODUCTION**

1  
2 Defendant’s current Motion to Dismiss is yet another unconscionable attempt by a  
3 “Civil Rights Agency” to deny Plaintiffs their civil rights and to be heard on the merits of this  
4 case. Reading his description of the enforcement action the California Civil Rights  
5 Department (“CRD”) filed in Santa Clara County Superior Court (Case No. 20-CV-372366,  
6 the “State Action”), you would be hard-pressed to believe the case had any connection to  
7 religion. It characterizes its efforts as a normal part of its mandate to “safeguard the right and  
8 opportunity of all persons to seek...employment without discrimination or abridgement on  
9 account of race, religious creed” or any of the other categories listed in the Fair Employment  
10 and Housing Act (“FEHA”).

11 The State Action engages in the very discrimination the CRD is charged with  
12 preventing, discrimination based on religious creed. Worse, it engages in that discrimination  
13 based on a wrong and misguided fallacy about Hinduism, thereby promoting the very  
14 misinformation that leads to anti-Hindu discrimination in society generally. Defendant’s  
15 Motion suggests that the CRD has filed a cause of action for caste discrimination against  
16 Cisco. But it has not. Rather, it has brought a claim for discrimination and harassment “on  
17 the Basis of Religion, Ancestry, National Origin/Ethnicity, and Race/Color” on behalf of a  
18 single individual, Mr. Chetan Narsude.

19 And that is the crux of the entire case. The CRD included a claim that caste  
20 discrimination was a form of religious discrimination based on its wrongheaded contention that  
21 caste is “a strict Hindu social and religious hierarchy,” that the individual defendants and other  
22 employees of Indian origin “imported the discriminatory system’s practices into their team and  
23 Cisco’s workplace,” and that Cisco was liable for caste-based discrimination because it “failed  
24 to recognize casteism as a form of unlawful religion-, ancestry-, national-origin/ethnicity- and  
25 recognize casteism as a form of unlawful religion-, ancestry-, national-origin/ethnicity- and  
26 race/color-based discrimination.” (See, Civil Rights – Second Amended Complaint  
27 (“Complaint”).)

28 The Hindu American Foundation (“HAF”) has not filed this action to decide whether or  
29 not caste discrimination, properly understood as having nothing to do with Hindu religious  
30 teachings, is or is not prohibited by FEHA. HAF does not claim that FEHA is unconstitutional

1 on its face, and has not filed this action to determine whether or not applying it to prohibit caste  
2 discrimination is unconstitutional, but it *does* contest that the CRD’s enforcement position, as  
3 revealed in the State Action, is an unconstitutional application of FEHA to the extent it relies on  
4 the wrong and defamatory assertion that Hindu religious beliefs require adherence to a “strict  
5 social and religious hierarchy” and that, therefore, caste discrimination is religious  
6 discrimination based on a misrepresentation of Hindu beliefs.

7 HAF objects to the CRD’s gross mischaracterization of Hinduism as requiring caste  
8 discrimination, and very much objects to adopting enforcement positions based on this gross and  
9 unconstitutional misrepresentation that perpetuates damaging stereotypes about Hindu teachings.  
10 HAF objects to the CRD’s enforcement position as a violation of its Free Exercise, Due Process,  
11 and Equal Protection rights under the First and Fourteenth Amendments to the U.S. Constitution.

12 HAF has actively defended the rights of Hindu Americans throughout the country, is  
13 directly harmed by the CRD’s unconstitutional actions, and has standing to assert those claims  
14 under its First Amended Complaint (“FAC”) completely and accurately states those claims, and  
15 Defendant’s attempts to avoid that reality by simply ignoring the clear and concise statement of  
16 those claims in the FAC is without merit.

17 HAF has both direct and associational standing to assert these claims and has included all  
18 the allegations to establish its claims here. It, therefore, respectfully asks the Court to deny the  
19 Motion and order Defendant to respond to these claims rather than trying to avoid answering for  
20 its unconstitutional conduct through meritless jurisdictional arguments.

## 21 **II. PROCEDURAL HISTORY**

22 In October 2020, the California Civil Rights Department (“CRD”) initiated an action in  
23 state court on behalf of Mr. Narsude against his employer Cisco Systems, Inc. (“Cisco”) and two  
24 of its supervisors, now-Plaintiffs Sundar Iyer and Ramana Kompella. The CRD’s state court  
action alleges that Mr. Narsude has suffered discrimination, harassment, and retaliation based on  
his Dalit caste, in violation of the FEHA’s prohibition against discrimination and harassment  
based on national origin/ethnicity, ancestry, race/color, and religion (referred to herein as the  
“State Action” or “*CRD v. Cisco*”).

1 Subsequently, HAF filed this federal action against the Department’s Director, Kevin  
2 Kish, under section 1983 of Title 42 of the United States Code (“Section 1983”), alleging that the  
3 CRD’s efforts to remedy caste- based discrimination at Cisco violate the United States  
4 Constitution’s Free Exercise Clause of the First Amendment and the Due Process and Equal  
5 Protection Clauses of the Fourteenth Amendment by linking the practice of caste discrimination  
6 to Hinduism. Through this suit, HAF seeks to have this Court declare the CRD’s state suit  
7 against Cisco unconstitutional and enjoin the CRD from pursuing certain types of future  
8 employment discrimination actions.

9 After Defendant filed and the Court granted a motion to dismiss HAF’s original  
10 complaint, on September 21, 2023, HAF filed its First Amended Complaint (“FAC”), adding  
11 nine new individual plaintiffs (collectively the “Individual Plaintiffs”)—including three unnamed  
12 “Doe” plaintiffs and two new claims under the United States Constitution’s Establishment  
13 Clause of the First Amendment and Equal Protection Clause of the Fourteenth Amendment.  
14 Defendant has now filed a motion to dismiss the FAC. Defendant asserts several bases for its  
15 motion to dismiss, including the abstention doctrine under *Younger v. Harris*, 401 U.S. 37, 41  
16 (1971), that HAF lacks standing to pursue the FAC, and that the FAC fails to state claims for  
17 which relief can be granted.

### 18 **III. DISCUSSION**

#### 19 **A. The *Younger* Abstention Doctrine Does Not Apply Because There Is No 20 Criminal Proceeding in State Court**

21 Defendant argues this Court should refrain from hearing this case because there is an on-  
22 going state proceeding akin to a criminal proceeding that implicates important state interests and  
23 provides Plaintiffs with an appropriate forum to raise their constitutional rights claims. The  
24 *Younger* Abstention Doctrine does not apply because not all of its requirements are met.

The Supreme Court has held there is a “national policy forbidding federal courts to stay  
or enjoin pending state court proceedings except under special circumstances.” *Younger v.  
Harris*, 401 U.S. 37, 41 (1971). In “exceptional circumstances,” the *Younger* abstention doctrine  
instructs federal courts to decline to hear a case when a parallel state criminal proceeding is  
ongoing. *Applied Underwriters, Inc. v. Lara*, 37 F.4th 579, 588 (2022); see also *Sprint  
Commc'ns, Inc. v. Jacobs*, 134 S. Ct. 584, 588 (2013). However, *Younger* abstention is not

1 justified simply because there happens to be parallel state and federal proceedings; a federal  
2 court's obligation to hear and decide a case is still “virtually unflagging.” *Id.* at 590–91. It is  
3 only proper for a federal court to abstain from that “unflagging” obligation when three elements  
4 are met: (1) there must be ongoing state proceedings; (2) the proceedings must implicate  
5 important state interests; and (3) the federal plaintiff must be able to litigate its federal claims in  
6 the state proceedings. *Middlesex County Ethics Committee v. Garden State Bar Ass'n*, 457 U.S.  
7 423, 433 (1982). Each of these elements must be satisfied to justify abstention; that is,  
8 abstention cannot be based on “weighing” or “balancing” these elements. *AmerisourceBergen*  
9 *Corp. v. Roden*, 495 F.3d 1143, 1148 (9th Cir. 2007). It is also vital that the policies behind the  
10 *Younger* doctrine be implicated by the actions requested of the federal court. *Id.* at 1149. Put  
11 another way, if the three *Younger* elements set out in *Middlesex* are satisfied, “the court does not  
12 automatically abstain, but abstains only if there is a *Younger*–based reason to abstain—i.e., if the  
13 court’s action would enjoin, or have the practical effect of enjoining, ongoing state court  
14 proceedings.” *Id.*

15 The first requirement for *Younger* abstention is that there must be parallel state *criminal*  
16 proceedings. There are no criminal proceedings involved herein. *CRD v. Cisco* is not a criminal  
17 proceeding nor “akin” to a criminal proceeding. There are monetary remedies available to the  
18 CRD and Mr. Narsude should they prevail in their action against Cisco. For that reason alone,  
19 the action cannot be deemed “criminal” or “akin to a criminal prosecution.” Moreover, “the  
20 hallmark of the civil enforcement proceeding category for *Younger* purposes” is when a  
21 defendant in the state action initiates the federal action to challenge the state action. *Applied*  
22 *Underwriters, Inc. v. Lara*, 37 F.4th 579, 588 (2022). Had Cisco initiated this federal action,  
23 *Younger* abstention may apply. However, none of the Plaintiffs here are a part of the state  
24 action. Since Defendant will be unable to establish each of the *Younger* factors, abstention is not  
warranted herein. The *Younger* doctrine simply does not apply to this case.

Further, the *CRD v. Cisco* case does not implicate important state interests. The interests  
in that case are personal to Mr. Narsude and not to the State of California. The case is not a class  
or representative action but is simply a single plaintiff case wherein the remedies will only  
benefit one person. *Sprint Communs., Inc. v. Jacobs*, 571 U.S. 69 (2013) (holding *Younger* did  
not apply in part because the proceeding was intended “to settle a civil dispute between two



1 private parties”). When assessing the importance of a state’s asserted interest, courts are to  
2 consider “its significance broadly, rather than by focusing on the state’s interest in the resolution  
3 of an individual case.” *AmerisourceBergen*, 495 F.3d at 1150. “The key to determining whether  
4 comity concerns are implicated in an ongoing state proceeding—and thus whether the second  
5 *Younger* requirement is met—is to ask whether federal court adjudication would interfere with  
6 the state’s ability to carry out its basic executive, judicial, or legislative functions. Unless  
7 interests ‘vital to the operation of state government’ are at stake, federal district courts must  
8 fulfill their ‘unflagging obligation’ to exercise the jurisdiction given them.” *Potrero Hills*  
9 *Landfill, Inc. v. Cty. of Solano*, 657 F.3d 876, 883 (9th Cir. 2011).

10 Here, Defendant has not communicated clearly and precisely how vital the asserted  
11 “criminal law enforcement” interest is in this case. Although Plaintiffs recognize the importance  
12 in protecting the public from discrimination, characterizing the state interest as “the general  
13 welfare” or “public safety” is meaningless. Moreover, were the Court to abstain from hearing  
14 any matter concerning the constitutionality of a state law, policy or action, federal court  
15 jurisdiction would be restricted in a profound way. Thus, the fact that the instant action involves  
16 a state policy does not by itself usher this case under the umbrella of *Younger* abstention.

17 Moreover, Plaintiffs have *not* had a full and fair opportunity to litigate their federal  
18 claims during the ongoing state proceedings. *Benavidez v. Eu*, 34 F.3d 825, 831 (9th Cir. 1994)  
19 (citing *Ohio Civil Rights Comm’n, Inc. v. Dayton Christian Schools, Inc.*, 477 U.S. 619, 627).  
20 When individual Plaintiffs Sundar Iyer and Ramana Kompella raised the issue and sought for  
21 sanctions against the CRD, the CRD quickly withdrew their claims and dismissed them from the  
22 case. And the state court further declined HAF’s attempt to intervene. Thus, Defendant has not  
23 met the burden of showing that the federal claims in this action can be litigated in the specific  
24 state court proceeding.

Finally, even where the *Younger* factors are satisfied, ‘federal courts do not invoke it if  
there is some extraordinary circumstance that would make abstention inappropriate. *Betschart v.*  
*Oregon*, 103 F.4th 607, 618 (9th Cir. 2024). The extraordinary circumstances exception  
constitutes an independent basis for federal intervention, regardless of whether the *Younger*  
factors were met. *Arevalo v. Hennessy*, 882 F.3d 763, 767 (9th Cir. 2018). The *Younger*  
abstention doctrine does not apply where it would result in irreparable harm. *Id.* at 766. Here,

1 Plaintiffs would be irreparably harmed if this Court abstains and the CRD is permitted to define  
2 and denigrate the Hindu religion and characterize it as a caste system, and pursue religious  
3 discrimination claims on its definition of religious doctrine.

4 **B. The Hindu American Foundation Has Standing To Bring These Claims.**

5 Defendant's argument that HAF lacks associational standing to bring this action lacks  
6 merit. HAF has direct and associational standing to bring the claims.

7 The California Civil Rights Department's ("CRD") denigration of the Hindu religion and  
8 blanketly racist statements about people of Indian origin and to the corresponding  
9 psychologically damaging and spiritually deflating impact on HAF's leadership, staff and  
10 membership represents the precise type of concrete injury which gives HAF standing to bring the  
11 claims here. HAF has standing both directly because of the injury to itself as an association and  
12 based on the injuries it inflicts on its members and the Hindu American community.

13 To invoke organizational standing on behalf of its members, the plaintiff must allege  
14 facts demonstrating that: "(1) its members would otherwise have standing to sue in their own  
15 right; (2) the interests it seeks to protect are germane to the organization's purpose; and (3)  
16 neither the claim asserted nor the relief requested requires the participation of individual  
17 members in the lawsuit." *Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1096 (9th Cir. 2021)  
18 (citing *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977)).

19 As set forth in the FAC, the Individual Plaintiffs are all California-based supporters,  
20 members, or constituents of HAF. They have all suffered concrete injury, based on the CRD's  
21 hurtful, harmful and impermissible misrepresentations about Hinduism. Each has an injury  
22 traceable to the conduct of the CRD falsely claiming that Hinduism is an inherently  
23 discriminatory religion. And that injury is likely to be redressed by the injunctive relief sought  
24 here. Each of the Individual Plaintiffs have suffered a deep mental, psychological and spiritual  
injury based on the CRD's conduct. The CRD has labeled all Hindus, and all Indian Americans,  
as adhering to a discriminatory caste system that Hinduism and the overwhelming majority of  
Indian Americans reject. The CRD labels Hindus and Indian Americans, "second-class citizens"  
and that "their participation in the political community will be chilled" by the State of California  
labeling them as inherently caste-ist. *Catholic League for Religious & Civ. Rights v. City &*

1 County of San Francisco, 624 F.3d 1043, 1049 (9th Cir. 2009). The Individual Plaintiffs suffered  
2 the “spiritual or psychological harm” sufficient to establish  
3 standing here. *Id.* at 1050.

4 An organization has standing on its own behalf if it can show: (1) that the defendant’s  
5 actions have frustrated its mission; and (2) that it has spent resources counteracting that  
6 frustration of mission. *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1018 (9th Cir. 2013). As  
7 alleged in the FAC, HAF has suffered an injury because of CRD’s wrongfully identifying caste  
8 as an inherent part of Hinduism. HAF has Hindu staff members in California who the CRD has  
9 maligned with its defamatory claims. HAF has extensive Hindu donors and supporters  
10 throughout the state, and HAF itself has had to expend considerable time and resources  
11 defending the integrity of Hinduism against this unjust and unconstitutional attack by the CRD.  
12 The CRD’s decision to falsely label Hinduism as caste-ist as part of its litigation against Cisco  
13 directly and negatively affected HAF. Before the CISCO case, HAF focused on other areas of  
14 advocacy, including ensuring Hinduism is properly reflected in California public schools. After  
15 the CRD’s actions, HAF faced a barrage of calls and concerns from Hindu Americans living in  
16 California because of the false claims about Hinduism, with the concern particularly intense in  
17 technology-related workplaces where Hindus and Indians faced hateful reactions from coworkers  
18 who now see them as agents of religiously and culturally mandated discrimination because of the  
19 CRD’s position.

20 The CRD has treated Hinduism and Hindus unfavorably, and in an unequal manner and  
21 different than the manner in which it treats other religions or their adherents. In doing so, the  
22 CRD is violating the First Amendment’s Establishment and Free Exercise clauses as well as the  
23 14<sup>th</sup> Amendment’s equal protection and due process rights of all Hindu Americans.

24  
***1. The Hindu American Foundation Has Direct Standing to Bring First and Fourteenth Amendment Claims Based On Its Own Injury.***

The constitutional requirement of standing has three elements: (1) the plaintiff must have  
suffered an injury-in-fact – that is, a concrete and particularized invasion of a legally protected  
interest that is actual or imminent, not conjectural or hypothetical; (2) the injury must be causally  
connected - that is, fairly traceable - to the challenged action of the defendant and not the result

1 of the independent action of a third party not before the court; and (3) it must be likely and not  
2 merely speculative that the injury will be redressed by a favorable decision by the court. *Lujan*  
3 *v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *Valley Forge Christian Coll. v. Ams.*  
4 *United for Separation of Church and State, Inc.*, 454 U.S. 464, 475-476 (1982).

5 Because of the nature of the religious rights embodied in the Free Exercise clause, injury  
6 in religious freedom cases does not need to involve physical or financial injuries, but rather the  
7 freedom the amendment grants the people to be free from the spiritual and mental suffering that  
8 government denial of that religious freedom involves. *Vasquez v. Los Angeles Cnty*, 487 F.3d  
9 1246, 1250 (9th Cir. 2007).

10 The Ninth Circuit has clearly described this very standard in *Catholic League for*  
11 *Religious & Civ. Rights v. City & County of San Francisco*, 624 F.3d 1043 (9th Cir. 2009) (en  
12 banc). The Court found the psychological consequence produced by the government's  
13 condemnation of a person's religion is a concrete harm sufficient to establish standing to sue for  
14 an Establishment Clause claim. *Id.* at 1053. The *Catholic League* Court reasoned that its  
15 decision was consistent with prior United States Supreme Court decisions where standing was  
16 established in cases involving prayer at a football game, a creche in a county courthouse or  
17 public parks, the Ten Commandments displayed on the grounds of a state capital or at a  
18 courthouse, a cross display at a national park, school prayer, a moment of silence at school, Bible  
19 reading at public school and a religious invocation at a graduation. *Id.* at 1049-1050 (citations  
20 omitted).

21 This is precisely the concrete harm present here. HAF alleges the CRD is both defining  
22 and denigrating its Hindu religion by pursuing enforcement actions under the California Fair  
23 Employment and Housing Act ("FEHA") based on the defamatory assertion that a caste system  
24 and caste-based discrimination are integral parts of Hindu teachings and practices. HAF alleges  
further that it has consistently maintained throughout its history, a caste system or discrimination  
on its basis are in no way a legitimate part of Hindu beliefs, teachings, or practices. Perhaps  
most importantly HAF alleges that it vehemently opposes all types of discrimination; and takes  
great exception to the State of California defining, defaming and demeaning all of Hinduism by  
attempting to conflate a discriminatory caste system with the Hindu religion.

1 HAF also satisfies the two remaining elements required to establish direct standing, e.g.  
2 the injury must be causally connected - that is, fairly traceable - to the challenged action of the  
3 defendant and not the result of the independent action of a third party not before the court; and it  
4 must be likely and not merely speculative that the injury will be redressed by a favorable  
5 decision by the court. *Lujan, supra*, 504 U.S. 555, 560-61; *Valley Forge Christian Coll., supra*,  
6 454 U.S. 464, 475-76.

7 HAF is directly harmed by the CRD's actions. The CRD's defamatory and  
8 unconstitutional actions against Hindu teachings and practices have directly affected HAF and  
9 the three board members, four staff members, three National Leadership Council members, four  
10 Advisory Committee members, 815 donors, 5,000 HAF newsletter recipients, and half dozen  
11 Hindu scholars that work with HAF and live and work in California.

12 These harms, and the harms inflicted on all Hindu Americans and people of South Asian  
13 decent that are presumed to be practicing Hindus, is clearly traceable to CRD's denigration of the  
14 Hindu Religion, the enforcement actions it is currently prosecuting against a California employer  
15 (Cisco) and California residents based on the CRD's defamatory assertions that Hindu  
16 employees followed a "Hindu strict social and religious hierarchy."

17 Finally, because HAF seeks declaratory and injunctive relief as remedies for the  
18 Defendant's wrongdoing (State Action Complaint – Prayer at ¶¶ 1-4), the injury will be  
19 redressed by a favorable decision of the Court.

## 20 **2. The Hindu American Foundation Has Associational Standing to Bring 21 First and Fourteenth Amendment Claims Based Injury to Its Members**

22 Defendant spends much of the motion arguing that HAF does not have associational  
23 standing to bring the claim. Technical membership structures are not required to satisfy the  
24 requirements for associational standing. Rather, an organization satisfies the *Hunt* requirements  
for associational standing where "the organization is sufficiently identified with and subject to  
the influence of those it seeks to represent as to have a 'personal stake in the outcome of the  
controversy.'" *Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1096 (9th Cir. 2021) (quoting  
*Or. Advoc. Ctr. v. Mink*, 322 F.3d 1101, 1111 (9th Cir. 2003); further quoting *Vill. of Arlington  
Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 261 (1977)). "The ultimate consideration  
when determining whether an organization has associational standing is whether it has a

1 ‘personal stake in the outcome of the controversy.’” *Id.*; quoting *Oregon Advocacy*, 322 F.3d at  
2 1111 (citation omitted).

3 HAF represents the interests of Hindu Americans throughout the United States, including  
4 those working at Cisco, as alleged in the State Action by the CRD itself. By filing the State  
5 Action, the CRD has harmed those interests, directly affecting the California-based Hindu  
6 Americans that HAF represents. It has a clear and undeniable “personal stake” in the outcome of  
7 the controversy, and therefore has standing to assert these claims here. HAF Board members,  
8 employees, Leadership and Advisory Council members, donors, newsletter readers and scholars  
9 residing in California have been directly harmed by the CRD’s actions, requiring significant  
10 redeployment of HAF resources and personally subjecting them to the emotional and spiritual  
11 injuries of CRD’s gross mischaracterization of Hindu teachings. HAF represents the interests of  
12 Hindu Americans in California and across the nation, and Defendant’s standing arguments  
13 simply have no merit.

14 Defendant argues that HAF lacks standing because the lawsuit is not germane to its  
15 purpose. Nothing could be further from the truth. Preventing governmental attacks on the  
16 religious freedoms of Hindu Americans, and establishing the right to all faiths to define for  
17 themselves the scope of their own religious beliefs, is central to the Hindu American  
18 Foundation’s mission and purpose, as is ensuring that ethnic minorities enjoy equal protection  
19 under the law.

20 Defendant argues that associational standing is not appropriate here under *Hunt* because  
21 participation of individual members is necessary to the adjudication of the claims. The claims  
22 here are not based on an individual decision or practice affecting certain members or interfering  
23 with a subset of the Hindu American community in California. Rather, it is based on a blanket  
24 mischaracterization and slander against Hindu beliefs, followed by a legal assertion by the  
government that those beliefs require all Hindus to violate FEHA.

“The third prong of *Hunt*, which requires that associations have standing only when  
neither the claim asserted, nor the relief requested requires the participation of individual  
members in the lawsuit,’ [citation], is one such prudential, as opposed to constitutional,  
requirement of standing.” *Or. Advocacy Ctr. v. Mink*, 322 F.3d 1101, 1113 (9th Cir. 2003)  
*quoting Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977); and citing *United*

1 *Food & Commer. Workers Union Local 751 v. Brown Grp.*, 517 U.S. 544, 557 (1996). “[T]he  
2 third prong of the associational standing test is best seen as focusing on these matters of  
3 administrative convenience and efficiency, not on elements of a case or controversy within the  
4 meaning of the Constitution.” *United Food, supra*, 517 U.S. at 557; *see also Cent. Delta Water*  
5 *Agency v. United States*, 306 F.3d 938, 951 n.9 (9th Cir. 2002) (noting that unlike the first two  
6 *Hunt* factors, “the third factor is ‘merely prudential,’ and designed to promote efficiency in  
7 adjudication”).

8 Here, there is no prudential need for the participation of individual members. In this  
9 case, the CRD has mischaracterized Hindu beliefs as requiring a strict caste hierarchy and caste-  
10 based oppression and then declared that that strict caste hierarchy and oppression violates the  
11 Fair Employment and Housing Act. No participation of individual members is needed to show  
12 whether labeling all Hindus as inherently guilty of violating the Fair Employment and Housing  
13 Act constitutes a violation of the Free Exercise Clause.

14 In this case, the CRD has taken a blanket position that mischaracterizes Hindu belief and  
15 practice and then labels all Hindus, especially those employees of Indian origin at Cisco, as  
16 inherently discriminatory in violation of FEHA based on that mischaracterization. No  
17 involvement of individual members is needed to determine whether these actions violate the Free  
18 Exercise Clause.

19 **C. Plaintiffs’ FAC States Sufficient Claims for Relief**

20 The purpose of a motion to dismiss for failure to state a claim under Federal Rules of  
21 Civil Procedure (FRCP), Rule 12(b)(6) (“Rule 12(b)(6)”) is to test the formal sufficiency of the  
22 plaintiff’s statement of the claim for relief. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957);  
23 *Navarro v. Block*, 250 F. 3d 729, 732 (9th Cir 2001). A motion for failure to state a claim is not  
24 a procedure for resolving a contest about the merits of the case. *Nielsen v. Union Bank of Cal.,*  
*N.A.*, 290 F. Supp. 2d 1101, 1151 (CD Cal. 2003). Dismissal for failure to state a claim is  
appropriate only when the plaintiff can prove no set of facts supporting relief. *Guerrero v.*  
*Gates*, 357 F. 3d 911, 916 (9th Cir. 2004). Thus, the motion is viewed with disfavor and is rarely  
granted. *Gilligan v. Jamco Development Corp.*, F. 3d 246, 249 (9th Cir. 1997); *Gallardo v.*  
*DiCarlo*, 203 F. Supp. 2d 1160, 1164-1165 (CD Cal. 2002).

1 The legal sufficiency of a complaint is measured by whether it meets the pleading  
2 standards set forth in FRCP Rule 8. The party bringing a motion to dismiss for failure to state a  
3 claim bears the burden of demonstrating that the plaintiff has not met the pleading requirements  
4 of Rule 8(a)(2) in stating a claim. *Gallardo, supra* at 1165. Rule 8(a)(2) requires parties seeking  
5 relief in federal court a complaint to include a short and plain statement of the claim showing  
6 that the pleader is entitled to relief. FRCP Rule 8(a)(2). Each allegation must be simple, concise  
7 and direct. FRCP Rule 8(d)(1).

8 A complaint need only “give the defendant fair notice of what the plaintiff’s claim is and  
9 the grounds upon which it rests. *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002); accord  
10 *Atchison, Topeka & Santa Fe Ry. v. Buell*, 480 U.S. 557, 568 n.15 (1987) (under Federal Rule 8,  
11 claimant has “no duty to set out all of the relevant facts in his complaint”). “Specific facts are  
12 not necessary in a Complaint; instead, the statement need only ‘give the defendant fair notice of  
13 what the . . . claim is and the grounds upon which it rests.’” *Epos Tech. v. Pegasus Tech*, 636 F.  
14 Supp.2d 57, 63 (D.D.C. 2009) (quoting *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007)).

15 Thus, the Federal Rules embody notice pleading and require only a concise statement of  
16 the claim, rather than evidentiary facts. Factual allegations must be enough to raise a right to  
17 relief above the speculative level. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007).  
18 This plausibility standard does not require heightened fact pleading of specifics. Rather it  
19 requires enough facts to state a claim to relief that is plausible on its face. *Id.* at 555-556.

20 When considering a motion to dismiss a complaint for failure to state a claim pursuant to  
21 Federal Rule of Civil Procedure 12(b)(6), the court must assume as true all allegations contained  
22 in the complaint. *Chance v. Armstrong*, 143 F.3d 698, 701 (2d Cir. 1998). On FRCP 12(b)(6)  
23 motions, the court must assess the legal feasibility of the complaint and whether a plaintiff has  
24 pled claims for which he or she is entitled to discovery. *Sims v. Artuz*, 230 F.3d 14, 20 (2d Cir.  
2000); *Chance*, 143 F.3d at 701.

21 In *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009), the Supreme Court held that courts should  
22 entertain a motion to dismiss by following a two-pronged approach:

23 [A] court considering a motion to dismiss can choose to begin by identifying  
24 pleadings that, because they are no more than conclusions, are not entitled to the  
assumption of truth. While legal conclusions can provide the framework of a



1 complaint, they must be supported by factual allegations. When there are well  
2 pleaded factual allegations, a court should assume their veracity and then  
determine whether they plausibly give rise to an entitlement to relief.

3 A complaint containing allegations that, if proven, present a winning case is not subject  
4 to dismissal under Rule 12(b)(6) “no matter how unlikely such winning outcome may appear” to  
5 the district court. *Balderas v. Countrywide Bank N.A.*, 664 F. 3d 787, 791 (9th Cir. 2011).  
6 Plaintiff’s ability to prove his or her allegations, or possible difficulties in making such proof, is  
7 generally of no concern in ruling on Rule 12(b)(6) motions: “In considering a 12(b)(6) motion,  
8 we do not inquire whether the plaintiffs will ultimately prevail, only whether they are entitled to  
9 offer evidence to support their claims. *Nami v. Fauver*, 82 F. 3d 63, 65 (3rd Cir. 1996); see  
10 *Allison v. California Adult Authority*, 419 F. 2d 822, 823 (9th Cir. 1969); *Peterson v. Grisham*,  
594 F. 3d 723, 727 (10th Cir. 2010) – court does not weigh potential evidence parties may  
present at trial.

11 Because Plaintiffs’ FAC satisfies the pleading requirements of Rule 8, and sets forth a  
12 plausible claim for relief under the Establishment Clause, the Free Exercise Clause, the Due  
13 Process Clause, and the Equal Protection Clause, this Motion to Dismiss should be denied in its  
14 entirety. This is not the stage of the pleadings to test the veracity of the allegations of the FAC.  
15 As noted above, the relevant inquiry is not whether the Plaintiffs will ultimately prevail, only  
16 whether they are entitled to offer evidence to support their claims. Plaintiffs are entitled to offer  
evidence to support their claims and any argument to the contrary is specious.

#### 17 **IV. CONCLUSION**

18 This court should not abstain from proceeding on Plaintiffs’ FAC. Plaintiffs have  
19 standing to bring these claims and Plaintiffs have clearly stated causes of action under 42 U.S.C.  
20 § 1983 based on the CRD’s violation of the Establishment Clause, Free Exercise, Due Process,  
and Equal Protection clauses of the First and Fourteenth Amendments to the U.S. Constitution.

21 Accordingly, Plaintiffs respectfully ask the Court to deny this Motion to Dismiss.  
22 Alternatively, Plaintiffs request leave to amend their FAC. “Courts are free to grant a party leave  
23 to amend whenever ‘justice so requires,’ and requests for leave should be granted with ‘extreme  
liberality.’” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 972 (9th Cir. 2009) (citations omitted).

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Dated: July 3, 2024

NARAYAN TRAVELSTEAD P.C.

/s/ Timothy C. Travelstead  
Timothy C. Travelstead, Esq.  
Scott C. Ku, Esq.  
Attorneys for Plaintiff  
HINDU AMERICAN FOUNDATION;  
SAMIR KALRA; MIHIR MEGHANI;  
SANGEETHA SHANKAR; DILIP AMIN;  
SUNDAR IYER; RAMANA KOMPELLA; AND  
DOES ONE TO THREE