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 12 IN THE UNITED STATES DISTRICT COURT
 13 FOR THE EASTERN DISTRICT OF CALIFORNIA
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16 **HINDU AMERICAN FOUNDATION, INC.,**
 17 **a Florida Not-For-Profit Corporation; and**
 18 **SAMIR KALRA; MIHIR MEGHANI;**
 19 **SANGEETHA SHANKAR; DILIP AMIN;**
 20 **SUNDAR IYER; RAMANA KOMPELLA;**
 21 **SHAISHAV DESAI; and SRIVATS IYER;**
 22 **as individuals;**

Plaintiffs,

v.

23 **KEVIN KISH, an individual, in his official**
 24 **capacity as Director of the California Civil**
 25 **Rights Department; and DOES 1-50,**
 26 **inclusive,**

Defendants.

Case No. 2:22-CV-01656-DAD-JDP

**REPLY IN SUPPORT OF MOTION TO
 DISMISS SECOND AMENDED
 COMPLAINT PURSUANT TO
 YOUNGER ABSTENTION DOCTRINE,
 RULE 12(b)(1), AND RULE 12(b)(6)**

Date: December 3, 2024
 Time: 1:30 p.m.
 Judge: Hon. Dale A. Drozd

Action Filed: September 20, 2022
 Second Am. Compl. Filed: August 27, 2024

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INTRODUCTION

1
2 Plaintiff Hindu American Foundation (“HAF”) and the eight new Individual Plaintiffs
3 (collectively “Plaintiffs”) allege in their Second Amended Complaint (“SAC,” *see* ECF No. 50)
4 that the Civil Rights Department’s (“CRD” or “the Department”) pending workplace
5 discrimination suit against Cisco Systems, Inc. (“Cisco”) violates the Free Exercise Clause and
6 Establishment Clauses of the First Amendment, and the Due Process and Equal Protection
7 Clauses of the Fourteenth Amendment, by incorrectly describing India’s caste system as a “strict
8 Hindu social and religious hierarchy.” (ECF No. 50 at 2:15-16, ¶¶ 16, 19, 49, 57). The SAC
9 suffers from four fatal defects: one prudential, two jurisdictional, and one on the merits. As
10 Plaintiffs ask this Court to intrude on an ongoing civil prosecution in state court and the *Younger*
11 doctrine applies, the Court should abstain from hearing Plaintiffs’ claims and dismiss their suit.
12 In the alternative, as this matter is neither justiciable nor states a claim upon which relief can be
13 granted, Plaintiffs’ SAC must be dismissed under Rule 12.

14 First, Plaintiffs’ suit violates principles of comity and federalism as recognized in *Younger*
15 *v. Harris*, 401 U.S. 37, 54 (1971), by asking this Court to directly interfere in CRD’s ongoing
16 enforcement action under the California Fair Employment and Housing Act (“FEHA”) against
17 Cisco (referred to hereinafter as the “State Action” or “*CRD v. Cisco*”). (*See* ECF Nos. 51, 56-4;
18 *see also* Cal. Gov’t Code § 12965).¹ Second, Plaintiffs have failed to demonstrate facts sufficient
19 to show that any Plaintiff—or, in HAF’s case, any member or constituent—has suffered or is at
20 imminent risk of suffering an alleged deprivation of their First or Fourteenth Amendment rights,
21 let alone one reasonably traceable to the State Action and redressable by this suit. Third,
22 Plaintiffs Sundar Iyer and Ramana Kompella lack standing to pursue injunctive relief under the
23 Equal Protection Clause because they have been dismissed with prejudice from the State Action.²
24 Finally, even if Plaintiffs could establish standing—they cannot—Plaintiffs have failed to allege
25 facts showing that CRD’s State Action: (1) substantially burdens HAF’s members or the
26 Individual Plaintiffs’ ability to practice their faith in violation of the Free Exercise Clause; (2)

27
28 ¹ Unless otherwise noted, all references are to current California state laws and regulations.

² Unless otherwise noted, all references to “Plaintiff Iyer” or “Mr. Iyer” refer to Sundar Iyer.

1 dictates religious doctrine or coerces anyone’s religious beliefs or practices in violation of the
2 Establishment Clause; (3) deprives HAF’s members or the Individual Plaintiffs of fair notice of
3 the conduct that is prohibited under the FEHA in violation of the Due Process Clause; or (4)
4 targets or discriminates against HAF’s members or the Individual Plaintiffs in violation of the
5 Equal Protection Clause.

6 Plaintiffs’ Opposition does not refute these grounds for dismissal or address the
7 deficiencies in its pleadings. Plaintiffs similarly fail to identify any facts that would cure their
8 pleading deficiencies. Rather than address their lack of standing and failure to state any viable
9 claims, Plaintiffs offer rhetoric about CRD and its actions that is misleading and, in some cases,
10 patently false. For example, as in their SAC, Plaintiffs entirely disregard the operative complaint
11 in the State Action, which lacks the very phrase to which Plaintiffs tie the genesis of their alleged
12 injury. They claim that CRD has made racist statements about Indian Americans, maligned
13 Hinduism, and called Hindu Americans “second-class citizens,” but do not—and cannot—offer
14 even a single citation to support these incorrect assertions. And Plaintiffs HAF, Iyer, and
15 Kompella again omit or misstate key facts about their involvement in the State Action. These
16 arguments underscore the futility of any further opportunity to amend.

17 ARGUMENT

18 I. THE *YOUNGER* ABSTENTION DOCTRINE REQUIRES THAT THE COURT ABSTAIN 19 FROM HEARING PLAINTIFFS’ CLAIMS AND DISMISS THE SUIT

20 The *Younger* abstention doctrine applies to lawsuits, such as this one, where the plaintiffs
21 seek to use the federal courts to interfere with pending state enforcement actions that are akin to
22 criminal prosecutions, such as the State Action. See *Hirsh v. Justices of the Sup. Ct. of State of*
23 *Cal.*, 67 F.3d 708, 712 (9th Cir. 1995) (citing *Younger v. Harris*, 401 U.S. 37, 40–41 (1971); *New*
24 *Orleans Pub. Serv., Inc. v. Council of New Orleans (NOPSI)*, 491 U.S. 350, 367-68 (1989).
25 Plaintiffs do not contest that the State Action was initiated prior to this federal action and remains
26 ongoing to date. (See ECF No. 58 at 4-8; see also ECF No. 55 at 7-9). As to the remaining
27 *Younger* factors, Plaintiffs contend the State Action: (1) is not akin to a criminal proceeding under
28 *NOPSI*; (2) does not implicate important state interests because it only benefits one person; (3)

1 has not actually provided the Plaintiffs a forum for their federal claims; and (4) would not be
2 affected by the relief sought in this federal action. (ECF No. 58 at 4-8). Plaintiffs also contend
3 that, even if the *Younger* factors applied, the Court should not abstain because they will suffer
4 “irreparable harm” if their claims are not heard. (ECF No. 58 at 8). Plaintiffs are wrong.

5 **A. Plaintiffs Seek to Interfere with the Ongoing State Action, Which Is the**
6 **Civil Equivalent to a Criminal Prosecution Under *NOPSI***

7 Plaintiffs contend that *Younger* cannot apply because the State Action—a civil rights
8 enforcement action brought by a state agency within its statutory mandates to redress alleged
9 employment discrimination—is not equivalent to a criminal proceeding under *NOPSI*. This relies
10 on incorrect premises about CRD’s role and the nature of relief it seeks in the public interest.

11 Specifically, Plaintiffs claim that *Younger* does not apply because Department is allegedly
12 “acting as the attorney for the plaintiff in the State Action,” raising claims [the plaintiff] could
13 raise himself through a private attorney,” and seeking “remedies only between the parties.” (ECF
14 No. 58 at 5:14-17). This reflects a fundamental misunderstanding of CRD’s role in the State
15 Action. CRD brought the State Action pursuant to Government Code section 12965, subdivision
16 (a)(1), and *is itself the plaintiff*. (See ECF No. 56-4). As the plaintiff, and consistent with its
17 legislative mandate, CRD is “acting in the public interest” (Gov’t Code § 12965(a)(1)) and is not
18 a “private party” as Plaintiffs contend (see ECF No. 58 at 17-18). In that role, CRD seeks more
19 than just individual relief for Mr. Narsude. (See ECF No. 56-4 at 19-20). Rather, the Department
20 seeks declaratory and injunctive relief that will benefit all individuals at Cisco now or in the
21 future to be free from similar discrimination. (*Id.*) Indeed, in resolving an earlier appeal in the
22 State Action in which Plaintiffs Iyer and Kompella were among the appellees, the California
23 Court of Appeal explained that CRD is “the public arm of [FEHA’s] enforcement procedure,”
24 “acts independently when it sues for FEHA actions,” and “can seek remedies beyond those
25 brought by an employee.” *DFEH v. Cisco Systems, Inc.*, 82 Cal. App. 5th 93, 100–01 (Cal. Ct.
26 App. 2022). By contrast, as the complainant, Mr. Narsude is named as a Real Party in Interest to
27 the State Action. (See ECF Nos. 51, 56-4). He has the discretion to choose whether to participate
28 as a party and be represented by counsel in the State Action. Gov’t Code § 12965(a)(3).

1 Contrary to Plaintiffs’ claims, CRD is *not* acting as Mr. Narsude’s counsel. (See ECF No. 58 at
2 5:14-15). There is no attorney-client relationship between CRD and a complainant like Mr.
3 Narsude. *Wood v. Super. Ct.*, 46 Cal. App. 5th 562, 571, 581–82 (Cal. Ct. App. 2020). And CRD
4 is not acting as a proxy for Mr. Narsude. *DFEH v. Cisco*, 82 Cal. App. 5th at 101.

5 Plaintiffs also contend that *Younger* cannot apply because none of the Plaintiffs are parties
6 to the State Action. (ECF No. 58 at 5:19-6:9). But Plaintiffs’ reliance on *Applied Underwriters,*
7 *Inc. v. Lara*, 37 F.4th 579 (9th Cir. 2022), is misplaced because—unlike here—that suit was not
8 aimed at redressing a public offense. *Applied Underwriters*, 37 F.4th at 590. The Ninth Circuit
9 distinguished the insurance conservatorship at issue there from other enforcement proceedings
10 where abstention *is* warranted because the parallel proceedings are either “in aid of” a criminal
11 statute or “aimed at punishing some wrongful acts through a penalty of sanction”—aims that were
12 not pursued in the conservatorship. *Id.* at 589-90 (citing, *e.g.*, *Ohio Civ. Rights Comm’n v.*
13 *Dayton Christian Schools, Inc.*, 477 U.S. 619, 629 (1986) (abstention warranted by state-initiated
14 administrative proceedings to enforce state civil rights laws, noting “potential sanctions for the
15 alleged sex discrimination”); *Huffman*, 420 U.S. at 596-98 (state-initiated proceeding to enforce
16 public nuisance laws, which provided penalties for violations, triggered *Younger*)). Here, as in
17 *Dayton Christian Schools* and *Huffman*, CRD brought the State Action to redress a public
18 offense: Cisco’s alleged violations of FEHA. (See ECF No. 56-4 at 19-20). Plaintiffs’ reliance
19 on *Applied Underwriters* is further misplaced because the decision reiterates the *typical*—but not
20 requisite or exclusive—characteristics of a civil enforcement proceeding akin to a criminal
21 prosecution, and does not cabin *Younger*’s application to only cases with those characteristics.³

22 Indeed, the Supreme Court has recognized that there are circumstances—such as these—in
23 which *Younger* should apply even when the federal plaintiffs and state defendants are not one and
24 the same. For example, in *Hicks v. Miranda*, 422 U.S. 332 (1975), the Supreme Court considered
25 a federal challenge brought by a theater, its owner, and its employees to an ongoing state
26 enforcement proceeding of a California obscenity statute. Although some of the federal plaintiffs

27 ³ See *Applied Underwriters*, 37 F.4th at 588 (“Such enforcement actions are
28 *characteristically* initiated to sanction the federal plaintiff . . . [and] a state actor is *routinely* a
party . . . and *often* initiates the action.”) (emphasis added) (citation omitted)).

1 were not parties to the state enforcement proceeding at the time the federal action was filed, the
2 Supreme Court nonetheless held that the district court erred by not invoking abstention. *Hicks*,
3 422 U.S. at 348. The Court explained that, because the claims of the federal plaintiffs would
4 interfere with the state case, the “same comity considerations appl[ied]” to warrant abstention,
5 notwithstanding that the parties did not entirely overlap. *Id.* at 349 (quoting *Allee v. Medrano*,
6 416 U.S. 802, 831 (1974) (Burger, C.J., conc.)). Likewise, the Ninth Circuit has held that there
7 are circumstances in which the principles underlying abstention are advanced even when federal
8 and state parties differ, such as when the parties are “closely related” or have “sufficiently
9 intertwined interests.” *Canatella v. California*, 404 F.3d 1106, 1116 (9th Cir. 2005).

10 This case demands the same result. As in *Hicks*, at least some of the Plaintiffs were parties
11 to the parallel state enforcement action to enforce the FEHA at Cisco at the time the federal suit
12 was initiated. Indeed, Plaintiffs HAF, Iyer, and Kompella were all involved in the State Action at
13 the time that HAF filed its federal complaint in September 2022—HAF as a proposed plaintiff-
14 intervenor and Mr. Iyer and Mr. Kompella as defendants charged by CRD. (See ECF Nos. 10-1,
15 Exh. B, 20 & 21, Exh. A). In fact, HAF was *still* part of the State Action at the time it amended
16 its complaint to add the Individual Plaintiffs a year later in September 2023. (See ECF No. 42-6).
17 HAF purports to represent the interests of the Individual Plaintiffs, and claims it can speak on
18 their behalf in this suit under an associational standing theory. (See ECF No. 50 ¶ 41). As in
19 *Canatella*, HAF’s interests are sufficiently intertwined with the Individual Plaintiffs such that
20 HAF’s involvement in the State Action warrants abstention under *Younger* as to all Plaintiffs.

21 Moreover, as in *Hicks*, here the Plaintiffs expressly seek to have this Court interfere with an
22 ongoing state proceeding. Plaintiffs inaccurately contend that the relief sought from this Court
23 will “in no way interfere[.]” with the State Action. (*Id.* at 7:21-22). The crux of Plaintiffs’ legal
24 theory is that the ongoing State Action violates their constitutional rights. (*Id.* at 7:16-20). In
25 their SAC, Plaintiffs specifically ask to have the Department’s actions in *CRD v. Cisco* declared
26 unconstitutional under the First and Fourteenth Amendments and enjoin further action. (ECF No.
27 50 at 35; see also ECF No. 58 at 3:19-20). It is difficult to imagine a plaintiff seeking any more
28 direct interference. This is precisely the type of case that requires abstention under *Younger*.

1 **B. The State Action Implicates Important State Interests and Provides or Has**
2 **Provided the Requisite Opportunity Under *Younger***

3 Plaintiffs further contend that *Younger* abstention is not warranted because: (1) the State
4 Action does not implicate important state interests; and (2) Director Kish has not met “his”
5 burden of showing the state proceeding has provided a full and fair opportunity for Plaintiffs to
6 litigate their federal claims. (ECF No. 58 at 6-7). Plaintiffs are wrong on both counts.

7 First, Plaintiffs erroneously assert that the State Action does not implicate important state
8 interests because it is “acting as a private party’s attorney in a civil dispute between two private
9 entities.” (*Id.* at 6:12-13). As discussed above, this is incorrect. (*See supra* at 3-4). On the
10 contrary, CRD is “a public prosecutor testing a public right when it pursues civil litigation to
11 enforce statutes within its jurisdiction,” including the FEHA. *Dep’t of Fair Emp. & Hous. v. Law*
12 *Sch. Admission Council, Inc.*, 941 F. Supp. 2d 1159, 1168 (N.D. Cal. 2013) (internal citation
13 omitted); *see also* Gov’t Code § 12930(o). It is not a private party.

14 Plaintiffs also mistakenly contend that the state’s interests in ensuring that the people of
15 California are free from discrimination and that businesses comply with anti-discrimination laws
16 are not “vital” enough to warrant abstention under *Younger* or, in the alternative, that an order
17 declaring the State Action unconstitutional will not interfere with CRD’s legislatively mandated
18 activities. (ECF No. 58 at 6). In fact, these are exactly the state interests that courts have
19 recognized as sufficiently important to warrant federal abstention under *Younger*. *See,*
20 *e.g., Dayton Christian Schools*, 477 U.S. at 628 (recognizing “the elimination of prohibited sex
21 discrimination is a sufficiently important state interest”). Indeed, where—as here—“the state is in
22 an enforcement posture in the state proceedings, the ‘important state interest’ requirement is
23 easily satisfied, as the state’s vital interest in carrying out its executive functions is presumptively
24 at stake.” *Potrero Hills Landfill, Inc.*, 657 F.3d at 883-84. *see also* Gov’t Code § 12920 (in
25 enacting FEHA, the Legislature “declared as the public policy of this state that it is necessary to
26 protect and safeguard the right of all persons to seek, obtain, and hold employment without
27 discrimination” and CRD exercises the state’s “police power” to “protect[] . . . the welfare,
28 health, and peace of the people of the state” by enforcing FEHA).

1 Second, Plaintiffs claim that Director Kish has not met “[his] burden” of showing that they
2 have had “a full and fair opportunity to litigate their federal claims during the ongoing state
3 proceedings.” (ECF No. 58 at 7). But *Plaintiffs*—not Director Kish—bear the burden of
4 demonstrating that California law procedurally bars or prevents them from presenting their
5 constitutional claims in the pending state court matter. *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1,
6 15 (1987). Moreover, state court proceedings are presumed to be adequate to raise federal claims
7 “in the absence of unambiguous authority to the contrary.” *Id.* Here, Plaintiffs have failed to
8 demonstrate that they had no opportunity to pursue their claims in the ongoing state proceedings,
9 and without that showing they cannot meet their burden. (See ECF No. 58 at 7; see also ECF No.
10 50 at 5-12). Under *Younger*, federal litigants such as Plaintiffs need only be afforded an
11 *opportunity* to fairly pursue their constitutional claims in the ongoing state proceedings. *Moore v.*
12 *Sims*, 442 U.S. 415, 430 & n.12 (1979) (quoting *Judice v. Vail*, 430 U.S. 327, 337 (1977)). Thus,
13 “abstention is appropriate based on ‘interests of comity and federalism [that] counsel federal
14 courts to abstain from jurisdiction whenever federal claims *have been or could be* presented in
15 ongoing state judicial proceedings that concern important state interests.” *Lebbos v. Judges of the*
16 *Super. Ct.*, 883 F.2d 810, 813 (9th Cir. 1989) (emphasis added, internal citations omitted).

17 In their Opposition, Plaintiffs do not address this standard or the cases raised in Director
18 Kish’s Motion. (See ECF No. 58 at 7:1-11). Instead, Plaintiffs rely on *Benavidez v. Eu*, 34 F.3d
19 825 (9th Cir. 1994), to argue that they have not had the requisite opportunity because Plaintiffs
20 Iyer and Kompella were dismissed from the State Action and because HAF lost its motion to
21 intervene. (ECF No. 58 at 7). In *Benavidez*, the Ninth Circuit considered whether parties who
22 had been granted the ability to intervene in a federal case about redistricting under the California
23 Voting Rights Act could continue to litigate their complaint in intervention after the original suit
24 had been dismissed under *Younger*. *Benavidez*, 34 F.3d at 829-31. In reaching the conclusion
25 that *Younger* could not apply, the Ninth Circuit noted that—but for a five-minute presentation by
26 one intervenor before the special master—the *Benavidez* intervenors had not been involved at all
27 in the parallel state action. *Id.* at 831. And there was no avenue for them to be heard in the state
28 court matter at the time they filed their federal suit because the California Supreme Court had

1 *already peremptorily denied all requests for intervention in the parallel state action. Id.* Thus, at
2 the time when the intervenors filed their federal suit, they could not file a motion to intervene in
3 the ongoing state action to present their federal claims. The Court’s peremptory denial of
4 intervenors in the parallel state action acted as the requisite procedural bar. *See Lebbos*, 883 F.2d
5 at 813; *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass’n*, 457 U.S. 423, 432 (1982)).

6 Unlike the *Benavidez* intervenors, Plaintiffs HAF, Iyer, and Kompella have *all* been
7 involved in the State Action. (*See, e.g.*, ECF Nos. 10-1, 21, Exh. A & 45 at 5:16-17). They have
8 filed briefs, presented arguments, and appeared in court. *Cf. Benavidez*, 34 F.3d at 831 (listing
9 litigation hallmarks *not* afforded to those peremptorily denied intervention by the California
10 Supreme Court). And they were all involved in State Action *at the time that HAF filed its federal*
11 *suit* in September 2022. (*See, e.g.*, ECF Nos. 10-1, 21, Exh. A & 45 at 5:16-17). Thus, at the
12 time this suit was filed, each had an avenue to be heard in state court.

13 Moreover, unlike the *Benavidez* intervenors, Plaintiffs HAF, Iyer, and Kompella were not
14 procedurally “barred” from raising their federal claims in the State Action prior to bringing their
15 federal suit. Unlike in *Benavidez*, HAF was able to file and have its motion to intervene, which
16 raised its federal claims, heard by the state court. (*See* ECF Nos. 10-1, Exh. B, 42-5 & 42-6).
17 That HAF was unsuccessful on the merits of that motion—and, indeed, cemented this loss by
18 voluntarily abandoning its appeal of the trial court’s ruling after CRD amended its complaint in
19 the State Action (*see* ECF No. 33 ¶¶ 6-15)—is immaterial. *See Dubinka v. Judges of Super. Ct.*
20 *of State of Cal. for Cnty. of L.A.*, 23 F.3d 218, 225-26 (9th Cir. 1994) (“The fact that state . . .
21 courts may reject (or have rejected) arguments on the merits, however, does not mean those
22 courts have deprived a plaintiff of the *opportunity* to make the argument[.]”). On the contrary, it
23 demonstrates that HAF has had an opportunity and, in fact, has been heard. Similarly, Mr. Iyer
24 and Mr. Kompella were not precluded by CRD or any court from raising their claims during the
25 nearly *three years* that they were defendants. And, contrary to Plaintiffs’ assertions (*see* ECF No.
26 58 at 1:4-6, 1:11-12, 7:4-5), they were not quickly or unilaterally dismissed from the State Action
27 in an attempt by CRD to circumvent or deprive them of their rights to defend themselves. In fact,
28 they first sought to be dismissed from the State Action as early as December 2020. (Declaration

1 of Carly J. Munson in Support of Supplemental Request for Judicial Notice (“Munson Decl.”),
2 Exh. A). When CRD did not dismiss them, Mr. Iyer and Mr. Kompella moved for sanctions.
3 (Munson Decl., Exh. B & C). Mr. Iyer and Mr. Kompella ultimately negotiated with CRD to be
4 dismissed from the State Action in 2023 by virtue of a mutual settlement and release. (See ECF
5 Nos. 56-2 at 2:11-13 & 5:8-10, 56-9 & 56-10). It is therefore disingenuous for Plaintiffs HAF,
6 Iyer, and Kompella to claim they have not had a full and fair opportunity or are like the *Benavidez*
7 intervenors who were barred from presenting their claims by the California Supreme Court *before*
8 they filed suit in federal court.

9 As to the remaining Individual Plaintiffs—who all claim to be aligned with or members of
10 HAF—Plaintiffs make no argument about why they have not attempted or could not attempt to
11 raise their claims in the State Action. (See ECF No. 58 at 7:7-11).⁴ “[W]hen a litigant has not
12 attempted to present his federal claims in related state-court proceedings, a federal court should
13 assume that state procedures will afford an adequate remedy, in the absence of unambiguous
14 authority to the contrary.” *Pennzoil Co.*, 481 U.S. at 15. Accordingly, the Court should presume
15 that they, like Plaintiffs HAF, Iyer, and Kompella, had or have an opportunity to present their
16 claims in the ongoing State Action.

17 **C. Plaintiffs Have Not Demonstrated that “Extraordinary Circumstances”**
18 **Justify the Court’s Declining to Abstain Under *Younger***

19 Finally, the “extraordinary circumstances” exception does not apply here. Federal courts
20 may decline to abstain and enjoin pending state court proceedings in those “extraordinary
21 circumstances” where the court “properly finds that the state proceeding was motivated by a
22 desire to harass or is conducted in bad faith, or where the challenged statute is ‘flagrantly and
23 patently violative of express constitutional prohibitions in every clause, sentence and paragraph,
24 and in whatever manner and against whomever an effort might be made to apply it.’” *Huffman*,
25 420 U.S. at 611 (citing *Younger*, 401 U.S. at 53-54). The “danger of irreparable loss” must be
26 “both great and immediate.” *Younger*, 401 U.S. at 46; *see also World Famous Drinking*

27 _____
28 ⁴ Any argument that the remaining Individual Plaintiffs were not afforded the same opportunity as
HAF to raise claims in the State Action undermines HAF’s alleged basis for associational standing.

1 *Emporium, Inc. v. City of Tempe*, 820 F.2d 1079 (9th Cir. 1987). The “extraordinary
2 circumstances” exception to *Younger* abstention is “very narrow.” *Dubinka*, 23 F.3d at 225.

3 Here, Plaintiffs claim that they fit within the “extraordinary circumstances” exception
4 because they will face “irreparabl[e] harm” if the Court abstains. (ECF No. 58 at 8:5:7).
5 However, Plaintiffs have failed to identify *any* facts—let alone facts alleged in the SAC—
6 showing that they will face irreparable harm if this lawsuit is dismissed under the *Younger*
7 abstention doctrine. (*See id.*) And Plaintiffs offer no legal support for their argument that their
8 suit, which neither challenges a statute nor alleges that the State Action was brought for the
9 purposes of harassment, otherwise falls within the narrow “extraordinary circumstances”
10 exception. (*See id.*)⁵ Plaintiffs offer no substantiated basis—let alone an extraordinary one—for
11 the Court to decline to abstain under *Younger*.

12 **II. PLAINTIFFS LACK STANDING TO PURSUE THIS LITIGATION**

13 Plaintiffs contend that the Individual Plaintiffs have direct standing and that HAF has both
14 direct and associational standing to raise claims under the Free Exercise, Establishment, Due
15 Process, and Equal Protection Clauses. (ECF No. 58 at 8-17). Yet, as discussed in Defendant’s
16 Motion, Plaintiffs have failed to plead facts sufficient to show that HAF or any Individual
17 Plaintiff has standing under either theory for any claim asserted. (*See* ECF No. 55 at 11-23).

18 HAF lacks direct standing: it has not satisfied Article III’s requirements (*see Arizona*
19 *Alliance for Retired Americans v. Mayes*, 117 F.4th 1165, 1173-81 (9th Cir. 2024) (*petition for*
20 *reh’g en banc pending*)) or demonstrated that CRD’s actions have frustrated its mission and
21 forced it to expend resources and take action to avoid other injury as a result of the State Action.
22 *See Our Watch with Tim Thompson v. Bonta*, 682 F. Supp. 3d 838, 847 (E.D. Cal. 2023) (citing
23 *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1018 (9th Cir. 2013); *E. Bay Sanctuary Covenant v.*
24 *Biden*, 993 F.3d 640, 663 (9th Cir. 2021). In their Opposition, Plaintiffs claim that HAF has

25 _____
26 ⁵ Plaintiffs further rely on *Arevalo v. Hennessy*, 882 F.3d 763 (9th Cir. 2018), in arguing that the
27 “extraordinary circumstances exception constitutes an independent basis for federal intervention regardless
28 of whether the *Younger* factors are met.” (ECF No. 58 at 8). *Arevalo* held that a deprivation of *physical*
liberty—being detained in jail—may constitute irreparable harm that “requires intervention” by the federal
court “before trial” in the state court under *Younger*’s narrow exception. *Arevalo*, 882 F.3d at 767.
Plaintiffs have alleged no such deprivation of physical liberties or other tangible harm. (*See* ECF No. 50).

1 direct standing because knowledge of and disagreement with CRD’s State Action has caused
2 unspecified “spiritual and mental suffering” (*id.* at 13:22-14:2) for various individuals ranging
3 from staff to newsletter recipients who live and work in California (ECF No. 58 at 14:24-15:3).
4 HAF also alleges it has had to “expend considerable time and resources defending the integrity of
5 Hinduism” and has faced a “barrage of calls and concerns” since CRD filed its State Action. (*Id.*
6 at 13:2-3 & 13:6-7). Even if Plaintiffs’ statements are accepted as true for purposes of this
7 Motion, they are insufficient for standing. As in their original complaint, Plaintiffs have not
8 shown—nor even alleged—that HAF would have suffered *any* “other injury” nor that it avoided
9 such injury by “divert[ing] resources to counteracting” the State Action. *La Asociacion de*
10 *Trabajadores de Lake Forest v. Lake Forest*, 624 F.3d at 1083, 1088 (9th Cir. 2010). Nor have
11 they shown how the State Action has frustrated HAF’s mission. (*See* ECF Nos. 58 at 13-15 & 50
12 ¶¶ 29-31, 45-51). In fact, the advocacy and educational outreach HAF alleges it has undertaken
13 in response to third-party inquiries about *CRD v. Cisco* appear to fall squarely *within* HAF’s
14 stated mission and ordinary activities. (*See* ECF No. 55 at 18-20; *see also* ECF No. 50 ¶¶ 29-31,
15 36-37, 40).

16 HAF also lacks associational standing. First, as in their original complaint, HAF has failed
17 to identify a clear constituency, let alone one that has suffered the requisite injury under any of
18 the claims asserted and whose interests HAF can represent in this suit. (*See* ECF No. 55 at 21-
19 22). Plaintiffs again refer to diverse groups such as “Hindu Americans throughout the United
20 States” (ECF No. 58 at 15:20), “Hindu Americans in California” (*id.* at 16:3), and “the
21 community of American and California citizens entitled to [constitutional rights]” (*id.* at 10:8-9),
22 but those are significantly larger and more diffuse than those that courts have found appropriate
23 for the purposes of associational standing.⁶ *See, e.g., Or. Advoc. Ctr. v. Mink*, 322 F.3d 1101,
24 1111-12 (9th Cir. 2003); *Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1096-97 (9th Cir.
25 2021); *Catholic League for Religious & C.R. v. City & Cnty. of S.F.*, 624 F.3d 1043, 1048, 1063-

26 ⁶ In their SAC, Plaintiffs also allege that HAF represents all Indian Americans and South Asian
27 Americans. (*See* ECF No. 50 ¶¶ 38, 43-44). In their Opposition, Plaintiffs refer to such groups in passing
28 (*see, e.g.,* ECF No. 58 at 17:6 (referring to “employees of Indian origin at Cisco”), but again fail to address
how HAF can properly represent such expansive and diverse groups in this suit. (*See* ECF Nos. 55 at 21-
22, 58 at 15-17).

1 64 (9th Cir. 2010). Plaintiffs also claim that HAF represents the interests of Hindu Americans
2 who work at Cisco. (ECF No. 58 at 15:20-21). Yet they have not alleged facts to this effect in
3 their SAC. (See ECF No. 50). Moreover, it is doubtful that HAF could establish that it represents
4 the interests of all such individuals; indeed, CRD initiated its State Action after receiving a
5 complaint from a Hindu American then and now employed by Cisco who alleged caste-based
6 discrimination. (See ECF 56-4 ¶¶ 10-15).

7 Second, Plaintiffs have not demonstrated that HAF satisfies any of the factors required for
8 associational standing under *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333,
9 342-43 (1977). Plaintiffs claim that their suit satisfies the *Hunt* factors but fail to include even a
10 single citation to the SAC to demonstrate how their allegations satisfy the rigorous standing test.
11 (ECF No. 58 at 16-17). And they again misstate and mischaracterize CRD's pleadings and
12 actions in the State Action. (See ECF No. 58 at 1-3, 6-16; see also ECF Nos. 55 at 29-31 & 56-
13 4). In particular, the SAC patently disregards that CRD has amended its complaint in *CRD v.*
14 *Cisco* to remove the language about which Plaintiffs complain in their SAC. (Compare ECF No.
15 50 with ECF No. 56-4). Further, HAF critically fails to show how its alleged members or
16 constituents—including the Individual Plaintiffs—would have standing in their own right to bring
17 these claims, claiming instead that CRD's arguments on this point are “irrelevant tangents.”
18 (ECF No. 58 at 9:18-20, 6-16).

19 Instead, Plaintiffs erroneously contend that, under *Catholic League*, HAF and the Individual
20 Plaintiffs have standing in any type of “religious freedom case” simply because they have alleged
21 injuries that are “mental, psychological, and spiritual” in nature caused by their awareness of and
22 disagreement with the State Action. (ECF No. 58 at 8:18-9:16, 12-17). As a practical matter, an
23 organization cannot experience “psychological harms,” nor has HAF cited any cases recognizing
24 an organization's standing on that basis. (See *id.* at 12-17). Individual Plaintiffs' reliance on
25 *Catholic League* is equally misplaced. Under *Catholic League*, plaintiffs asserting psychological
26 and spiritual harms must show that those harms are tied to real consequences in their particular
27 political community to have standing to bring an Establishment Clause claim. *Catholic League*,
28 624 F.3d at 1051-53. Plaintiffs have failed to do so here. The SAC fails to allege facts that: (1)

1 identify a discernable political community to which the Individual Plaintiffs belong; and (2) show
 2 that the Individual Plaintiffs have been ostracized from or suffered some other tangible harm
 3 similar to that demonstrated by the plaintiffs in *Catholic League* as a result of the State Action.
 4 (*See* ECF No. 50 at 2-26; *see also* ECF No. 55 at 14-15, 27-31).⁷

5 Further, as Director Kish addressed in his Motion, alleged psychological injuries alone,
 6 even if accepted as true for purposes of this Motion, are insufficient to give HAF—or any
 7 Individual Plaintiff—standing under Article III to maintain Free Exercise, Due Process, or Equal
 8 Protection Clause claims. (*See* ECF No. 55 at 12-20). *See Bd. of Educ. of Cent. Sch. Dist. v.*
 9 *Allen*, 392 U.S. 236, 249 (1968) (Free Exercise Clause requires coercive effect on plaintiffs’
 10 practice of religion);⁸ *Montclair Police Officers’ Ass’n v. City of Montclair*, No. 2:12-cv-06444-
 11 PSG-PLA, 2012 WL 12888427, at *4 (C.D. Cal. Oct. 24, 2012) (Due Process Clause requires
 12 plaintiffs to show government’s actions have chilled their ability to engage in a constitutionally
 13 protected activity); *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998) (Equal Protection
 14 Clause requires plaintiffs to show intentional discrimination based on a protected characteristic
 15 and that those similarly situated were treated differently).

16 **III. PLAINTIFFS IYER’S AND KOMPPELLA’S EQUAL PROTECTION CLAIMS ARE MOOT**

17 As discussed in Defendant’s Motion, Plaintiffs Iyer’s and Kompella’s claims under the
 18 Equal Protection Clause are moot because they were dismissed with prejudice from the State
 19 Action five months *before* they attempted to join this case as Individual Plaintiffs. (ECF No. 55
 20 at 25-27; *see also* ECF Nos. 56-9 & 56-10). In their Opposition, Plaintiffs contend that Mr. Iyer’s
 21 and Mr. Kompella’s equal protection claims are not moot because the operative complaint in the
 22 State Action describes actions CRD alleges they took in their roles as supervisors at Cisco. (*See*

23 ⁷ In their Opposition, Plaintiffs claim for the first time that they belong to the political community
 24 of all “American and California citizens entitled to their free exercise, due process, and equal protection
 25 rights” without condemnation. (ECF No. 58 at 10:8-9). *Catholic League* involved the discrete and
 26 discernible political community of one city, where Catholic citizens alleged that a local government
 proclamation had chilled their participation in local political processes. *Catholic League*, 624 F.3d at
 1051-53. A “community” as vast as the entire nation or state could not constitute a “political community”
 under *Catholic League*. And the SAC lacks allegations to this effect. (*See* ECF No. 50 at 2-26).

27 ⁸ And, contrary to Plaintiffs’ assertions, the operative State Action neither seeks to hold any
 28 individuals liable for being Hindu nor alleges that caste discrimination is an inherent part of Hinduism or
 that Hinduism or practicing Hinduism is “inherently illegal.” (*Compare* ECF No. 56-4 with ECF No. 58 at
 9:22-10:1).

1 ECF No. 58 at 17-18). They contend that this action will provide relief from this “slander.”
2 (*Id.*)⁹

3 Mr. Iyer and Mr. Kompella’s claims overstretch the allegations in the State Action. The
4 State Action alleges that Mr. Narsude’s own caste is Dalit Indian, that his caste identity comprises
5 religion, race/ethnicity, national origin, and ancestry, and that he suffered employment
6 discrimination on these bases. (*See* ECF No. 56-4 ¶¶ 1, 28-50). Even assuming *arguendo* that
7 CRD is ultimately unable to prove its factual allegations about Mr. Iyer’s and Mr. Kompella’s
8 motivations in how they formerly supervised Mr. Narsude, this does not revive moot claims—to
9 the extent such claims ever existed. (*See* ECF No. 55 at 25-27). And Plaintiffs do not seek any
10 relief for alleged “slander.” (*See* ECF No. 50 at 35). Moreover, even if this Court agreed with
11 Plaintiffs’ premise that CRD has erred in some way in the State Action, the relief that Plaintiffs
12 seek here would neither afford Mr. Iyer and Mr. Kompella the ability “to defend themselves in
13 the [State Action]” (*see* ECF No. 58 at 18) nor operate to change the minds of third parties
14 regarding either Hinduism or caste-based systems (*see* ECF No. 58 at 10:2-3).

15 Furthermore, as discussed in Director Kish’s Motion, Plaintiffs have not pled facts
16 sufficient to establish equal protection claims here. (*See* ECF Nos. 50 ¶¶ 15-20, 112-135 & 58 at
17 17-18; *see also* ECF No. 55 at 37-39). The fact remains that the crux of Mr. Iyer’s and Mr.
18 Kompella’s alleged claims under the Equal Protection Clause as stated in the SAC is their
19 disagreement with CRD’s charging decisions in the State Action. (ECF No. 50 ¶¶ 15-20, 112-
20 135). Mr. Iyer and Mr. Kompella have been dismissed with prejudice from that suit. (ECF Nos.
21 56-9 & 56-10). And, in any case, courts are properly hesitant to review such matters that fall
22 within prosecutorial discretion. *See United States v. Armstrong*, 517 U.S. 456, 465 (1996) (citing
23 *Wayte v. United States*, 470 U.S. 598, 608 (1985)). (*See also* ECF No. 55 at 38-39).

24 **IV. THE SAC FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED**

25 In his Motion, Director Kish detailed how Plaintiffs have failed to state any constitutional
26 claim upon which relief can be granted. (*See* ECF No. 55 at 27-40). In their Opposition,

27 ⁹ Plaintiffs’ argument that the injunctive relief sought here will remedy this alleged “slander” in
28 the operative complaint of the State Action undermines their contention that this federal action will not
intrude on or interfere with the State Action under *Younger*. (*See* Section I.A., *supra* at 5).

1 Plaintiffs fail to address or rebut *any* of Director Kish’s arguments or demonstrate how they have
2 alleged sufficient facts to state each of their five claims. (See ECF No. 58 at 18-20). Instead,
3 Plaintiffs recite the pleading standard under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007),
4 and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and then state in conclusory fashion that their FAC
5 “satisfies the pleading requirements” and “sets forth [] plausible claim[s] for relief.” (*Id.* at 19-
6 20). As Director Kish has explained, they have not. (See ECF No. 55 at 27-40).

7 **V. ANY FURTHER AMENDMENT WOULD BE FUTILE**

8 Plaintiffs have requested that, in the event that the Court grants the Motion, the Court afford
9 them an additional opportunity to amend their complaint. (ECF No. 58 at 20:11-13). Courts
10 should dismiss a party’s claim without leave to amend where amendment would be futile.
11 *Carrico v. City & Cnty. of S.F.*, 656 F.3d 1002, 1008 (9th Cir. 2011). Such futility has been
12 demonstrated here. HAF was given leave to amend its complaint in August 2023 and failed to
13 cure its pleading deficiencies. See *Brown v. Stored Value Cards, Inc.*, 953 F.3d 567, 574 (9th Cir.
14 2020) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)). And Plaintiffs’ Opposition—which
15 lacks any viable legal argument and fails to demonstrate how any Plaintiff has the ability to
16 maintain this suit—further demonstrates that any additional leave to amend would be futile. (See
17 ECF No. 58). Plaintiffs need not be afforded another opportunity to amend.

18 **CONCLUSION**

19 For the reasons discussed above, Defendant Kish respectfully asks that this Court dismiss
20 Plaintiffs’ complaint in its entirety pursuant to the *Younger* abstention doctrine or, in the
21 alternative, Rule 12(b)(1) or (b)(6).

22
23 Respectfully submitted,

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