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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRIANNA BOLDEN-HARDGE,

Plaintiff,

v.

OFFICE OF THE CALIFORNIA STATE CONTROLLER, *et al.*,

Defendants.

No. 2:20-CV-02081-JAM-SCR

REPLY IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (LIABILITY) AND OPPOSITION TO DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT

Judge:	Hon. John A. Mendez
Trial Date:	March 16, 2026
Action Filed:	October 19, 2020
Hearing Date:	August 26, 2025
Time:	1:00 pm
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INTRODUCTION

Brianna Bolden-Hardge is entitled to summary judgment. The record confirms the Ninth Circuit's pleadings-stage holding that SCO's insistence she sign a loyalty oath without clarification or other accommodation conflicted with her religion under Title VII. Moreover, Defendants cannot prove any accommodation would cause undue hardship—by clarifying the oath's meaning, taking Bolden-Hardge's suggestion to swear to uphold the law without pledging to bear arms or denounce her faith, or otherwise. Nor can their oath policy survive strict scrutiny under the First Amendment. After all, the oath law allows exemptions, and other arms of the state and the agency charged with regulating the oath honor conflicts like Bolden-Hardge's and the accommodation she needed.

Strikingly, Defendants lead their opposition not by justifying their actions under Title VII. Rather, they proclaim—through an argument they already raised in their now-rejected motion to dismiss—that state loyalty oaths are entirely beyond Title VII's reach. But not only does this defy Title VII's text, it flouts established authority from the EEOC and this Circuit—including the Ninth Circuit's holding in this case. *Bolden-Hardge v. Off. of Cal. State Controller*, 63 F.4th 1215, 1218, 1222-24 & nn. 2, 4 (9th Cir. 2023). Defendants' recycled theory is as audacious as it is wrong.

Alternatively, Defendants argue Bolden-Hardge cannot establish a conflict under Title VII. They start by dismissing her concern that "true faith and allegiance" would cause her to pledge loyalty to the state over God. But the Ninth Circuit has already accepted that conflict. *Id.* at 1224. Undeterred, Defendants then say that "defend against all enemies" cannot offend Bolden-Hardge's beliefs against pledging to bear arms; the oath does not implicate her political neutrality; and she could sign without "mental reservation." But not only does the SPB accept the "defense" conflict—or at least respect a "mental reservation"—Defendants' refusal to clarify alone triggers liability.

As for hardship, Defendants make five more flawed points. First, they cite operations. But Defendants offer only a generic summary with no job specifics; and they fail to explain, as they must, how clarifying the oath, allowing Bolden-Hardge's attached statement or one the SPB urges, or any other option would surely cause undue hardship. *Opuku-Boateng v. California*, 95 F.3d 1461, 1467 (9th Cir. 1996) ("Only if the employer can show that no accommodation would be possible without undue hardship is it excused from taking the necessary steps to accommodate.").

Second, Defendants say accommodating Bolden-Hardge would have caused their Human Resources chief to violate his own oath. But he did not share that concern in deposition; and again, accommodation is authorized by the oath law and SPB policy, and is required by Title VII. Third, Defendants argue Bolden-Hardge cannot "write her own oath" and this would be a religious test. But the statement she offered was just one option, and it merely clarified her understanding of the oath—she was not "writing her own oath." It also required no religious pledge and made clear her commitment to uphold the law. Fourth, Defendants dismiss other agency actions and say the SPB's accommodation directive is "not well known." But again, accommodations are permitted by state law and mandated by Title VII; the law authorizes SPB policy; and ignorance is no excuse.

Defendants' final undue-hardship claim is that no clarification is required. But Title VII's demand that all options be explored naturally includes clarification. *See Opuku-Boateng*, 95 F.3d at 1467 (holding employer must negotiate in effort to accommodate). For that matter, if Defendants truly think the oath could in no way conflict with Bolden-Hardge's faith, then clarifying that to her—as other agencies have done in other cases, and the SPB urges—would surely have been preferable to the people of California than losing her services and enduring this litigation.

Regarding her disparate-impact claim, Defendants contend Bolden-Hardge failed to show SCO's oath policy has a discriminatory impact on Jehovah's Witnesses as a class because she lacks statistics, her experience is subjective, and her expert must be ignored. Additionally, they say their policy is justified. But the expert not only meets the evidentiary requirements, he established that Bolden-Hardge's concerns are shared by the class and confirmed the Ninth Circuit's holding that the disparity for Jehovah's Witnesses who cannot take the oath is plain on its face. *Bolden-Hardge*, 63 F.4th at 1228. Further, Defendants offer no evidence of necessity for the job at issue or explain how a clarification or the sort of accommodation the SPB urges are not valid alternatives.

Finally, Defendants say the Section 1983 claim is untimely; it cannot be brought against them in any capacity; and the oath policy is generally applicable. But since her claims arise from the same wrong, Bolden-Hardge's Title VII EEOC process tolled her First Amendment claim. *See Cervantes v. City of San Diego*, 5 F.3d 1273, 1275 (9th Cir. 1993) (describing liberal equitable tolling). At a minimum, moreover, she can prevail against the Controller in her official capacity

for prospective injunctive relief. Plus, the oath law's exemption mechanism, the SPB's directive, and other accommodations by the state trigger strict scrutiny that, for these and related reasons, Defendants cannot meet. *Bessard v. Cal. Cmty. Colls.*, 867 F. Supp. 1454, 1465 (E.D. Cal. 1994).

ARGUMENT

I. BOLDEN-HARDGE PREVAILS ON HER ACCOMMODATION CLAIMS.

A. Title VII and FEHA apply to state loyalty oaths.

Title VII forbids employers from denying a job due to a conflict between an employment requirement and an individual's "religion," and it defines "religion" in part to include "all aspects of religious observance and practice, as well as belief." 42 U.S.C. §§ 2000e-2(a)(1), 2000e(j). The statute further defines "employer" to include a state "government[];" and while it excludes from its protections select officials, this "shall not include" the rank-and-file. *Id.*, § 2000e(a), (b), (f).

Accordingly, the Ninth Circuit and EEOC apply Title VII to government loyalty oaths. In *Lawson v. Washington*, for example, the Court addressed as actionable under Title VII a conflict between a state loyalty oath and Jehovah's Witness beliefs against swearing allegiance to the state over God. 296 F.3d 799, 804-06 (9th Cir. 2002). The EEOC has concluded likewise, finding cause under Title VII where an applicant was rejected for refusing an oath to work for a municipal agency based on her Jehovah's Witness beliefs against language she feared would commit her to support laws in "conflict with God's laws." 38 Fair Emp. Prac. Case (BNA) 1884 (1985) [*EEOC Ruling*], 1985 WL 32782. And the Ninth Circuit held here that Bolden-Hardge pled a conflict under Title VII in being forced "to choose between her religious beliefs and a government job" by swearing "true faith and allegiance" without accommodation. *Bolden-Hardge*, 63 F.4th at 1222-24; *see also id.* at nn. 2, 4 (holding Title VII covers state employment and the oath as a job requirement).

In opposition, Defendants start by describing a goal of oaths "to ensure that public servants are faithful to the law;" the "affirm" option for those who cannot swear; and the California oath's evolution. ECF No. 89 at 7-10. But their selective history lesson, with its attendant judicial-notice requests (ECF No. 92), is immaterial. Bolden-Hardge offered in her attached statement a "vow to uphold the Constitutions;" and, absent her need for accommodation, Defendants did not doubt her commitment to the law. ECF No. 91 at ¶¶ 64, 66, 77; *cf.* U.S. Const. art. VI, cl. 3 (on high-ranking

state officials' "support" for Constitution). Moreover, Bolden-Hardge can swear an oath. ECF No. 91 at ¶ 15. And although she objected to terms here without clarification or other accommodation, Bolden-Hardge was in fact willing to sign this oath with accommodation she would not be pledging to bear arms, denounce her faith, or engage in politics—concerns the SPB and other agencies honor and Defendants in fact disclaim. *Id.* at ¶¶ 65, 110-15, 119, 122-32; ECF No. 89 at 16-19. In short, Bolden-Hardge is the very sort of public servant Defendants say the oath is designed to ensure.[1]

Turning to Title VII, then, Defendants double down on their absolutist approach—and on a resurrected yet otherwise wholly novel theory. Specifically, Defendants recycle an argument they raised in their motion to dismiss that state loyalty oaths are categorically outside Title VII's reach. *See* ECF No. 9 at 6-9 & ECF No. 13 at 7-8 (raising argument). Defendants take a winding path, but their position can be distilled to two global points. First, they say Title VII's extension to public workers applies only to actions private employers take, and an oath is not one of them. ECF No. 89 at 11-12. Second, Defendants claim that, given the existence and constitutionality of certain oaths when Congress applied Title VII to state workers and adopted its religious-accommodation provision, Title VII excludes oaths. *Id.* at 12-16. But not only does the Ninth Circuit's holding that Bolden-Hardge has a Title VII claim preclude Defendants' argument as law of the case, their points are otherwise in conflict with the statute's text, unsupported, immaterial, or flat wrong.

Law of the Case. The Ninth Circuit's holding that Bolden-Hardge has a Title VII claim is law of the case Defendants cannot avoid. "[A] court is generally precluded from reconsidering an issue that has already been decided by the same court, or a higher court in the identical case." *Thomas v. Bible*, 983 F.2d 152, 154 (9th Cir. 1993). Indeed, law of the case "applies not only to issues decided explicitly in an earlier opinion, but also to issues decided by necessary implication." *United States v. Iron Mountain Mines, Inc.*, 987 F. Supp. 1244, 1246 (E.D. Cal. 1997).

Here, the Court of Appeals held that "[b]oth [Title VII and FEHA] apply to state employers such as the Controller's Office" and that the oath is a covered "employment requirement." *Bolden-Hardge*, 63 F.4th at 1222 & nn. 2, 4. Moreover, the Court decided Bolden-Hardge has a Title VII

[1] Defendants try to distinguish from Title VII this Court's finding in *Bessard*, 867 F. Supp. 1454, that an unaccommodated California oath failed strict scrutiny under RFRA, 42 U.S.C. § 2000bb. ECF No. 89 at 33. But *Bessard* defeats their claim to the policy's necessity regardless.

claim, holding she pled a prima facie case for failure-to-accommodate and disparate impact based on SCO's insistence she take the oath without accommodation. *Id.* at 1224-28. In further support, the Court cited the oath challenge in *Lawson* and similar treatment by the EEOC. 63 F.4th at 1223 n.5 (citing *Lawson*, 296 F.3d at 802; *EEOC Ruling*, 1985 WL 32782). The Court also cited in this oath context *Malabed v. North Slope Borough*, 335 F.3d 864, 871 (9th Cir. 2003), for the proposition that Title VII's Section 708 "preemption provision . . . invalidates state laws that are inconsistent with the Act's purpose." *Bolden-Hardge*, 63 F.4th at 1225. This is all law of the case.[2]

Plain Text. Even absent law of the case—which ends the matter—Defendants' argument on the inapplicability of Title VII to state oaths rightly fails on its own merits. Globally, Title VII's text makes no such exception; rather, it forbids refusing a job due to any "aspect[] of religious observance and practice, as well as belief;" defines "employer" to include a state "government[];" and excludes from "employee" elected and affiliated officials but expressly not ordinary state "civil service" workers. 42 U.S.C. §§ 2000e(a), (b), (f), (j); 2000e-2(a)(1); *see also Bostock v. Clayton Cnty.*, 590 U.S. 644, 674 (2020) ("[W]hen the meaning of the statute's terms is plain, our job is at an end . . . . The people are entitled to rely on the law as written . . . ."). Accordingly, Defendants' argument about congressional intent not to regulate state oaths is stopped in its tracks.

Worse yet for Defendants, even if one were to ignore the doubly dispositive law of the case and plain statutory text against them, their argument about the supposed limited scope of Title VII in regulating public employers is wrong and inapplicable to state oaths in any event. Indeed, courts apply Title VII to oaths in other contexts and any employer might adopt one. *See EEOC v. Unión Independiente de la Autoridad de Acueductos y Alcantarillados*, 279 F.3d 49 (1st Cir. 2002) (union oath). And though Defendants invoke *Dothard v. Rawlinson*, 433 U.S. 321 (1977), and *Johnson v. Transportation Agency of Santa Clara County*, 480 U.S. 616 (1987), neither case supports them.

[2] The Ninth Circuit's reliance on *EEOC Ruling*, *Lawson*, and *Malabed* also defeats SCO's points in its brief that *EEOC Ruling* and *Lawson* did not find Title VII applies to oaths or that *Malabed* is inapposite because there is no "express sanction" of illegality. ECF No. 89 at 15-16. Regardless, *EEOC Ruling* did in fact find Title VII applies (1985 WL 32782 at *3 (finding oath law "superseded" by Title VII)), and *Lawson* necessarily agreed (296 F.3d at 804 (applying prima facie case)). Plus, Title VII makes clear that, unlike the sex-discrimination provision in the case on which SCO relies—*California Federal Savings and Loan Association v. Guerra*, 479 U.S. 272 (1987)—Title VII condemns as illegal the refusal to accommodate religion (42 U.S.C. § 2000e(j)).

In *Dothard*, the Court said only that Title VII was extended to public employment so those workers benefit from its protections, not that those protections are limited in that extension—hence the Court's rejection there of a per se defense based on a state employer's adherence to statute. 433 U.S. at 331-32. As for *Johnson*, the Court merely upheld the employer's policy there under Title VII. 480 U.S. at 626-42. It nowhere precluded Title VII from otherwise providing robust protection for employees—public or private—against discriminatory job rules, much less remove any such rule from the statute's purview. Plus, even were it proper to resort to legislative history here—it is not—that history shows that in extending Title VII to state workers—at the same time insisting the failure to accommodate is illegal religious discrimination—Congress saw a particular need. *See* ECF No. 96-12 at 5 (on need); ECF No. 96-13 at 4 (stressing minority-faith protection).

Oath Laws. As for Defendants' claim that Title VII's 1972 amendments exclude state oaths, they say four things: (1) "swear or affirm" oaths existed and had been deemed constitutional; (2) Congress did not expand Title VII's preemption provision in its amendments; (3) the religious-accommodation provision does not address oaths; and (4) that provision did not disrupt federal oaths. But not only is each point again defeated by the statutory text, they all fail on their merits.

First, although the federal civil-servant oath was deemed constitutionally permissible in *Cole v. Richardson*, 405 U.S. 676 (1972), and a state "support" oath was upheld in *Biklen v. Board of Education*, 333 F. Supp. 902 (N.D.N.Y. 1971), the former was decided only on free-speech and assembly grounds, and both cases involved facial challenges—not a failure to accommodate, much less where an employee was otherwise willing to take the oath with accommodation. Second, not only has the Ninth Circuit affirmed the application of Title VII's preemption provision in this case (*Bolden-Hardge*, 63 F.4th at 1225), Defendants provide no authority—nor are we aware of any—that in expanding Title VII to state workers and affording them "access to the remedies available under the Act," Congress withheld the statute's preemptive protections. ECF No. 96-12 at 4.[3]

[3] Defendants warn against preemption of a state's "police powers" when it comes to its treatment of public employees as "disaster service workers" under the Government Code. ECF No. 89 at 13-14. But Title VII indisputably applies to these workers. 42 U.S.C. § 2000e(b), (f); *accord* ECF No. 96-12 at 5. And as the EEOC noted, simply because an unaccommodating oath law is "in conflict with and superseded by the provisions of Title VII" does not mean the government is deprived of the chance to otherwise prove "undue hardship" were it able to do so. 1985 WL 32782 at **2-3.

Third, as to Defendants' claim that Title VII's religious-accommodation provision does not address oaths, the law's definition of "religion" to include "all aspects of religious observance and practice, as well as belief" shows oaths are covered—as are a host of religious practices the legislative history may not have emphasized. 42 U.S.C. § 2000e(j). Fourth and finally, Defendants' contention about Title VII's non-application to certain federal oaths is immaterial to state oaths—particularly the one here, which, unlike the federal civil-service oath at 5 U.S.C. § 3331, expressly authorizes statutory exemptions—and, as Defendants note, would likely be subsumed by RFRA considerations in any event. *See* ECF No. 89 at 15. Moreover, were the federal government to refuse an oath accommodation, not only would that be in tension with its workplace guidelines—ECF No. 96-15 at 7—there is no reason the matter should or would not be resolved like any other conflict of law; namely, under an "undue hardship" analysis, as opposed to categorical exclusion. *See Bolden-Hardge*, 63 F.4th at 1224-27 (treating violation of other law as undue-hardship matter); *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 830-31 (9th Cir. 1999) (same).[4]

B. Bolden-Hardge has established one or more actionable conflicts.

A plaintiff establishes a prima facie case under Title VII and FEHA where she suffered an adverse action because of a conflict between her religious beliefs and an employment requirement. *Heller v. EBB Auto Co.*, 8 F.3d 1433, 1438 (9th Cir. 1993). Here, Bolden-Hardge did so because SCO revoked the job offer based on her inability to sign the oath without accommodation based on one or more conflicts with her religious beliefs; namely, against pledging loyalty to the state over God, taking up arms, or participating in politics, and being unable to sign the oath without mental reservation. ECF No. 50 at 15-16; ECF No. 91 at ¶¶ 7, 9, 11, 50-56. At a minimum, the Court of Appeals has already held Bolden-Hardge could show an actionable conflict under Title VII between the oath's pledge of "true faith and allegiance" and her beliefs on primary loyalty to God, and the record confirms this. *Bolden-Hardge*, 63 F.4th at 1222-24; ECF No. 91 at ¶¶ 11, 53.[5]

[4] SCO also says the Eleventh Amendment bars the FEHA claim in federal court. ECF No. 89 at 28. But it did not raise that in litigating FEHA liability at the motion-to-dismiss stage, and the Ninth Circuit held the claim can proceed. *See* ECF Nos. 9, 13; *Bolden-Hardge*, 63 F.4th at 1218.

[5] Defendants do not dispute the merits of paragraphs 50 to 55 in Plaintiff's Statement of Undisputed Facts (or related paragraphs 7, 9, and 11) that Bolden-Hardge had concerns the oath (continued…)

True Faith and Allegiance. Defendants argue the oath lacks the word "primary" and our "constitutional tradition itself presumes that allegiance to political authority is not and ought not be understood as individual's 'primary' allegiance." ECF No. 89 at 17. But the Ninth Circuit held that, although the text "does not expressly require a pledge of *ultimate* or *primary* allegiance," Bolden-Hardge's then-pled-now-proven beliefs raise a conflict since "it is possible to understand the oath as requiring state employees to place their allegiance to the federal and state constitutions over their allegiance to God." *Bolden-Hardge*, 63 F.4th at 1223; No. 91 at ¶¶ 53, 56. And, as the Court noted, other courts and the EEOC have found similar conflicts actionable. *Id.* at 1223 n.5.

In any event, the only authorities Defendants offer to say the oath could not mean "primary" allegiance are *Ohlson v. Phillips*, 304 F. Supp. 1152 (D. Colo. 1969); James Madison's *Memorial and Remonstrance* (1785); and similarities in other government oaths. ECF No. 89 at 17. But the *Ohlson* observation Defendants rely on for the oath being a "simple recognition that ours is a government of laws and not of men" concerned there only an "uphold" pledge. 304 F. Supp. at 1153-55. Moreover, and leaving aside the implication that a plaintiff in Bolden-Hardge's position should know Madison's thinking and its import for understanding a state oath adopted 150 years later, the *Memorial and Remonstrance* was a political letter that did not concern oaths for public workers—much less their wording—but taxpayer support for religion teachers. *Memorial and Remonstrance Against Religious Assessments*, in JAMES MADISON: WRITINGS 29 (J. Rakove ed. 1999). And whether other jurisdictions use a "true faith and allegiance" pledge does not nullify the conflict for Bolden-Hardge. *See* ECF No. 80 at 7 (amici stressing respect for sincere conflict).

Defend Against Enemies. As for Bolden-Hardge's concern that, absent accommodation, her taking the oath would violate her religious beliefs against pledging to take up arms, Defendants say: (1) other agencies have not asked her to bear arms there and it was an administrative job here;

would present the relevant conflicts with her faith; Defendants, rather, contend her concerns were immaterial. ECF No. 91 at ¶¶ 50-55. But the Ninth Circuit has warned against "second-guessing the reasonableness of an individual's assertion that a requirement burdens her religious beliefs;" and, in any event, it held Bolden-Hardge alleged "an actual conflict" based on the now-confirmed facts. *Bolden-Hardge*, 63 F.4th at 1223. Furthermore, despite their motion to strike certain expert evidence, Defendants raised no objection to Plaintiff's expert's testimony that her "interpretation of the oath and its implications for her faith is reasonable and resembles long-standing concerns and precedents involving religious accommodations to oath requirements." ECF No. 86, Ex. 13A ¶ 36 (Dr. Finkelman's report); *see also* ECF No. 84 at 2 (not moving to exclude ¶ 36).

(2) the federal and other state governments include a pledge to "defend" the constitution; and (3) despite its dictionary meaning—which Defendants concede—other courts have not interpreted "defend" to include violence or military action. ECF No. 89 at 18; ECF No. 91 at ¶ 52. But again, Bolden-Hardge's concern was not only about the direct taking up of arms but also pledging to do so. ECF No. 91 at ¶ 8; *see also id.* at ¶ 13 (no dispute she "views oaths as vows and promises"). Moreover, the California oath is not limited to the agency or job where it is taken but transfers. Cal. Gov't Code § 18151. And, Defendants observe, "even an administrative employee['s]" tasks "are not always foreseeable"—and can include other deployments. ECF No. 89 at 20-21.[6]

As to SCO's other arguments, whether governments use or courts have interpreted the term "defense" in other cases not to include violence does not eliminate the conflict for Bolden-Hardge. As the Ninth Circuit emphasized, courts must avoid "second-guessing the reasonableness of an individual's assertion that a requirement burdens her religious beliefs." *Bolden-Hardge,* 63 F.4th at 1223. This warning is especially acute here, where Defendants refused to clarify the term's meaning and the SPB urges accommodation for the conflict raised. ECF No. 91 at ¶¶ 61, 119. A plaintiff need not justify her faith concerns as drawing a "[]reasonable" line, but Bolden-Hardge meets even that standard. *Thomas v. Rev. Bd. of Ind. Emp. Sec. Div.*, 450 U.S. 707, 715 (1981).

Defendants try to dodge the SPB's acknowledgement of a "defend" conflict by saying its policy "provides no legal discussion or reasoning"; the SPB cannot alter law on the oath; and the policy is "not well known or established." ECF No. 89 at 24. But as described in the opening brief, the state constitution empowers the SPB to promulgate oath regulations; it exercised that authority in adopting Section 372 of the PMPP; and, accordingly, the SPB policy has the force of law. ECF No. 50 at 18 (citing Cal. Const. art. VII; Cal. Gov't Code §§ 18210-18213; PMPP Section 372).[7]

[6] Although Defendants' "true faith and allegiance" argument does not raise the point, their reply to Plaintiff's SUF says her concern is immaterial because she has not been "asked to renounce her faith" in other state service. ECF No. 91 at ¶ 53. Like the "defend" term, though, Bolden-Hardge's beliefs concern not only engaging in the conduct but also pledging to do so. Moreover, and yet unlike their argument on "defend," Defendants nowhere seek to disabuse Bolden-Hardge of her allegiance concern about the oath in applying to work for SCO or any other agency to which she might transfer. *See id.* at ¶ 53 (Defendants discussing only her experience in other jobs). At a minimum, Defendants' refusal to clarify fostered a "mental reservation." *Id.* at ¶¶ 55, 60-63.

[7] Defendants dispute the PMPP's admissibility. ECF No. 91 at ¶¶ 117-19. But it was properly submitted by sworn declaration and judicial-notice request. ECF No. 55 at 8-9; No. 52-1 at 2.

Defendants also point to the Supreme Court's upholding a federal "defend" oath and not requiring "positive action" in *Cole*, 405 U.S. at 684; the observation in *Girouard v. United States* that a naturalization oath's use of the term did not permit disqualification on grounds the applicant would not also bear arms, 328 U.S. 61, 64 (1946); and the California Supreme Court's finding in *Pockman v. Leonard* that classifying employees as "civil defense workers" did not include military service, 39 Cal.2d 676, 680 (1952). But none of these cases concerned a religious conflict under Title VII and its rule against "second-guessing the reasonableness of an individual's assertion that a requirement burdens her religious beliefs." *Bolden-Hardge*, 63 F.4th at 1223. Rather, *Cole* was a speech-and-assembly facial challenge; *Girouard* in fact allowed the plaintiff to swear the oath while asserting a right not to bear arms; and *Pockman* involved a distinct statutory dispute.

Regardless, the fact that these matters were disputed all the way to our highest courts shows why Bolden-Hardge—a non-lawyer—was justified in at least having a mental reservation given Defendants' refusal to clarify what it meant by "defend." *See Buonanno v. AT&T Broadband, LLC*, 313 F. Supp. 2d 1069, 1082 (D. Colo. 2004) (finding duty to clarify language that, if required with no clarification, would violate plaintiff's faith). SCO's expert: "I don't think it's unreasonable that people might have questions about what ['defend'] means" in the oath. ECF No. 91 at ¶ 51; ECF No. 55-12 at 38 (Muñoz Dep. at 109:15-17); *accord* ECF No. 55-13 at 98, ¶ 66 (Plaintiff expert's unchallenged point—*see* ECF No. 84 at 2—on her interpretation being reasonable).[8]

Political Activity. As described in her opening brief, Bolden-Hardge was concerned that, absent clarification or other accommodation, the oath's "support" pledge would violate her faith commitment to political neutrality given her would-be supervisor's comment that a reason she may need to take the oath is the Controller's "public official" status. ECF No. 50 at 16; ECF No. 91 at ¶¶ 49, 54. Defendants call Bolden-Hardge's concern "vague" and "amorphous;" say she was "not told that she would have to campaign;" and add it would be illegal to make her do so. ECF No. 89

[8] Strikingly, Defendants repeatedly object to the admissibility of their own expert's testimony—including for lack of expertise, knowledge, and lack of foundation. *See* ECF No. 91 at ¶¶ 18 ("mental reservation"), 19-20 and 22 (oath history), 51-52 ("defend"), 56 (conflicts), 59 (class effects), 61 (employer response), 70-74 (state interests), 98 (exemption), and 122 (other agencies). But they have not withdrawn him, nor can he be excluded for not supporting their position.

at 19. The question, though, is not whether her fear was a reasonable one, but whether it arose of "'honest conviction.'" *Bolden-Hardge*, 63 F.4th at 1223 (citation omitted). Given the supervisor interaction and Defendants' refusal to clarify, Bolden-Hardge's concern amply meets this standard. At a minimum, the situation indisputably caused her mental reservation. ECF No. 91 at ¶ 55.

Mental Reservation. On the foregoing note, the oath requires takers to confirm they do so "without any mental reservation." Cal. Const. art. XX, § 3. Given her concerns over the "true faith and allegiance," "defend," or "support" terms, therefore, Bolden-Hardge conclusively testified that, absent accommodation, she could also not agree to having no "mental reservation" based on her further religious belief against taking an oath with such a reservation. ECF No. 91 at ¶¶ 17, 55.

In response, Defendants argue Bolden-Hardge's mental-reservation concern cannot be an actionable conflict given its roots in other conflicts on "true faith and allegiance," "defend," and "support." ECF No. 89 at 19. But the oath includes both those terms and a pledge of no "mental reservation." Cal. Const. art. XX, § 3. Were the latter needlessly duplicative, there would be no reason to include or insist on it. *See In re C.H.*, 53 Cal.4th 94, 103 (2011) ("It is a settled principle of statutory construction, that courts should 'strive to give meaning to every word in a statute and to avoid constructions that render words, phrases, or clauses superfluous.'") (citation omitted).[9]

C. SCO cannot show undue hardship.

Since Bolden-Hardge had a conflict, SCO must have "'negotiate[d] with [her] in an effort reasonably to accommodate.'" *Opuku-Boateng*, 95 F.3d at 1467 (citation omitted). Only if SCO shows "no accommodation would be possible without undue hardship"—including partial ones—is it excused from the duty to try to work things out. *Id.* at 1467, 1471. And in this, Bolden-Hardge had no duty to preemptively "suggest alternatives or compromise." *Heller*, 8 F.3d at 1440-41.

Substantively, Title VII requires SCO to at least prove that "granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business."

[9] Defendants also dispute Bolden-Hardge's testimony about a mental-reservation conflict, citing her having signed the oath in 2011 as a seasonal clerk. ECF No. 91 at ¶ 17. But not only did she testify to concerns at that time, Defendants do not challenge Bolden-Hardge's sincerity. ECF No. 91 at ¶ 78; ECF No. 96-1 at 16-19 (Plaintiff's Dep. at 45:1-48:18). Regardless, her raising concerns to SCO suffices. *See EEOC v. Ilona of Hungary, Inc.*, 108 F.3d 1569, 1575 (7th Cir. 1997) (respecting employee's right to develop commitment to faith)*; accord Thomas*, 450 U.S. at 715.

Groff v. DeJoy, 600 U.S. 447, 470 (2023). Moreover, this showing "cannot be supported by merely conceivable or hypothetical hardships" and must be tied to the plaintiff. *Tooley v. Martin-Marietta Corp.*, 648 F.2d 1239, 1243 (9th Cir. 1981); *United States v. Cal. Dep't of Corr. & Rehab.* [*CDCR*], 737 F. Supp. 3d 977, 998-99 (E.D. Cal. 2024). And when it comes to parallel state-law obligations, the employer must show accommodating would in fact trigger liability, and, for a state employer, enforcement; a mere violation will not suffice. *Bolden-Hardge*, 63 F.4th at 1225-26.

Here, Defendants cannot establish undue hardship where the oath law nowhere forbids the statement Bolden-Hardge proposed in signing the oath, much less the clarification she first sought. Rather, the text provides only "no other oath, declaration, or test shall be required." Cal. Const. art. XX, § 3. What's more, it permits exceptions for "employees as may be by law exempted." *Id.* And not only did SCO's expert agree this provides a state-law "mechanism" for accommodation under Title VII, the SPB and other agencies have so exercised their legal authority. ECF No. 91 at ¶¶ 98 (ECF No. 55-12 at 29 (Muñoz Dep. at 86:6-14)), 117 (PMPP Section 372); Cal. Const. art. VII & Cal. Gov't Code §§ 18210-18213 (SPB authority); ECF No. 50 at 19 (on other agencies).[10]

As a matter of state law or preemption, moreover, there is no evidence accommodation by SCO would trigger enforcement. ECF No. 91 at ¶¶ 90-91, 141-45. As the Ninth Circuit stressed, "the oath provision in the California Constitution contains no express enforcement mechanism." *Bolden-Hardge*, 63 F.4th at 1225. In any event, SCO cannot show undue hardship where it took no steps to accommodate the conflicts Bolden-Hardge raised; it had no concerns she would not uphold the law if accommodated; and other agencies accommodated her—and in a way its expert said would "generally" meet a state's interest in fidelity, impartiality, or conscientious intent. ECF No. 91 at ¶¶ 71-73, 77, 87-88, 110, 115; *see also Bolden-Hardge*, 63 F.4th at 1226-27 (noting other accommodations call into question "importance of any state interest we might otherwise infer").

In response, Defendants first argue they cannot accommodate Bolden-Hardge given SCO's operations, and that, regardless whether the administrative job she sought requires an oath, her

[10] Defendants dispute their own expert on the oath provision providing a mechanism for a Title VII accommodation by saying the law "only refers to 'inferior officers,'" and so could not include that. ECF No. 91 at ¶ 98. Regrettably, however, Defendants misquote the oath law's exception, which includes "inferior officers *and employees*." Cal. Const. art. XX, § 3 (emphasis added).

tasks are "not always foreseeable" and could include emergencies. ECF No. 89 at 20-21. They also say the people demand "'affirmation of minimal loyalty to the Government'" in words they chose. *Id.* at 20 (citation omitted). But Defendants offer only a generic list of SCO responsibilities, with no evidence on an oath's necessity for them, or, most fatally, Bolden-Hardge in particular. ECF No. 90 at ¶¶ 4, 20; *see also* ECF No. 94 at ¶ 4 (saying only "there are" employees who do certain tasks); *CDCR*, 737 F. Supp. 3d at 998-99 (requiring particularized showing). Similarly, although Defendants cite Bolden-Hardge's assignments in other jobs to COVID tracing and DEI, they offer no evidence on an oath's necessity in those settings or the infeasibility of accommodating there; to the contrary, she was accommodated in those jobs. ECF No. 90 at ¶¶ 46-47; ECF No. 91 at ¶¶ 110-15; *Tooley*, 648 F.2d at 1243 (rejecting "hypothetical hardships"). Lastly, SCO's reliance on as-written oaths is a circular one that fails to explain how clarifying their meaning or allowing Bolden-Hardge's proposed statement—which, aside from its attached status, their HR chief took no issue with and their expert agreed would satisfy a state's interests—would cause hardship. ECF No. 91 at ¶¶ 71-73, 151; *Opuku-Boateng*, 95 F.3d at 1467 (requiring infeasibility of all options).

Defendants next argue that, to accommodate Bolden-Hardge, SCO officials would violate their own oath; here, HR chief Anderson says in a declaration he "felt" this would happen. ECF No. 89 at 22. But Anderson shared no such concern in deposition, and he bases his feeling not on his understanding but the circular fact "SCO had determined that the oath could not be altered or modified under the law." ECF No. 94 at ¶ 5. Indeed, Anderson agreed unshared EEOC authority requiring accommodation would have helped him "understand what I'm doing," and he "wanted to" accommodate. ECF No. 91 at ¶¶ 96-97; ECF No. 55-2 at 77, 101 (Anderson Dep. at 128:10-18, 178:8-10). If correctly advised, Anderson would not have violated his oath by accommodating Bolden-Hardge given the oath law's exception, the SPB's directive, and Title VII requirements.[11]

Defendants' third hardship argument is that allowing Bolden-Hardge's attached statement would permit her to write her "own oath" in conflict with *Smith v. County Engineer of San Diego*

[11] Because state law does not preclude accommodation—the oath law's text says only that "no other oath, declaration, or test, shall be required" (Cal. Const. art. XX, § 3); the SPB policy is state law; and all the Court in *Smith* held was the addendum there did not satisfy the oath—the FEHA regulation on which Defendants rely to exclude accommodations that violate state law is also inapplicable for that claim. *See* ECF No. 89 at 28-29 (citing Cal. Code Regs., tit. 2, § 11010(f)).

County, 266 Cal. App. 2d 645 (1986), and as an impermissible "religious test." ECF No. 89 at 22-24. But her proposal was only one option; SCO must disprove all options—including clarifying the oath, offering the authorized SPB statement, or others. *Groff*, 600 U.S. at 473 (requiring all options be considered). Regardless, and in contrast to Bolden-Hardge, not only did the *Smith* addendum "dissent" from the law, that court said an "expository" or "compatible" option could be fine. 266 Cal. App. 2d at 656. In any event, *Smith* predates Title VII and had no occasion to address accommodation. Finally, Bolden-Hardge's statement imposes no religious test; and, again, it is but one option to satisfy Title VII's accommodation command over an oath she was willing to so sign. *See EEOC v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 775 (2015) (Title VII gives religion "favored treatment"); *Torcaso v. Watkins*, 367 U.S. 488, 489 (1961) (state required belief in God); *Tooley*, 648 F.2d at 1244 (affirming constitutionality of Title VII's accommodation command).[12]

Fourth, Defendants contend that the accommodations provided by other agencies are legally misplaced; the SPB policy has "no legal discussion or reasoning" and is "not well known"; and the Attorney General did not "bless" a prior accommodation. ECF No. 89 at 24-25. But other agency accommodations are imputable and authorized. *See* ECF No. 50 at 19 (summarizing point); *cf*. Governor's Veto Message for S.B. 115, 2009-10 Cal. Leg., Reg. Sess. (2009) (recognizing duty to accommodate oath objections under "[e]xisting law"). What's more, the SPB policy has the force of law no matter its analysis or publicity. ECF No. 91 at ¶¶ 116-19; Cal. Const. art. VII; Cal. Gov't Code §§ 18210-18213. And Defendants cannot dispute the Attorney General clarified the "defend" term in a past effort to accommodate. ECF No. 91 at ¶ 126; ECF No. 55-29 at ¶ 14.

For their last hardship argument, Defendants say the only way they can accommodate is the "affirm" option and they had no duty to clarify the oath's meaning. ECF No. 89 at 25. But Bolden-Hardge's concerns did not turn on the act of swearing but taking a vow or promise that

[12] As a reminder, Bolden-Hardge's proposed statement provided: "I, Brianna Bolden-Hardge, vow to uphold the Constitutions of the United States and of the State of California while working in my role as an employee of the State Controller's Office. I will be honest and fair in my dealings and neither dishonor the Office by word nor deed. By signing this oath, I understand that I shall not be required to bear arms, engage in violence, nor to participate in political or military affairs. Additionally, I understand that I am not giving up my right to freely exercise my religion, nor am I denouncing my religion by accepting this position." ECF No. 91 at ¶ 64.

would violate her beliefs on loyalty to God, taking up arms, engaging in politics, or acting without mental reservation; affirming such things would not be a reasonable accommodation as it would not "eliminate the religious conflict." *Opuku-Boateng*, 95 F.3d at 1467; ECF No. 91 at ¶¶ 7, 9, 11, 13, 15, 17, 50, 53-56, 60; ECF No. 55-1 (Plaintiff's Dep.) at 76:24-78:21, 81:2-11; 95:4-17, 96:3-97:7, 98:4-99:2, 100:9-17, 165:17-166:5, 167:2-168:12; 169:3-10; 195:9-24.

Moreover, Title VII imposes a duty to clarify—whether in the interactive process or independently. *See Ansonia Bd. of Educ. v. Philbrook,* 479 U.S. 60, 69 (1986) (stressing bilateral cooperation); *Heller*, 8 F.3d at 1441 (ruling against employer for not taking " 'initial step' towards accommodating"); *Buonanno*, 313 F. Supp. 2d at 1083 (finding employer "violated Title VII by failing to engage in the required dialogue . . . and by failing to clarify the challenged language").[13]

II. BOLDEN-HARDGE PREVAILS ON HER IMPACT CLAIM.

Title VII prohibits rejecting applicants based on a "practice that causes a disparate impact on the basis of . . . religion," unless it "is job related for the position in question and consistent with business necessity" and there was no less-restrictive option. 42 U.S.C. § 2000e-2(k)(1)(A). It remains undisputed SCO revoked Bolden-Hardge's job based on a policy to reject those unable to take the oath without accommodation. ECF No. 91 at ¶ 99. Moreover, the policy impacts "'all or substantially all'" Jehovah's Witnesses who share Bolden-Hardge's beliefs by "making them feel they must choose between government employment and their religious beliefs." *Bolden-Hardge*, 63 F.4th at 1228. Indeed, HR chief Anderson agreed—to the point of calling it "bothersome"—that the policy "would affect a hundred percent of those" with "the same belief and . . . vein of thought." ECF No. 91 at ¶ 59; ECF No. 55-2 at 37-40 (Anderson Dep. at 86:14-89:6).

Further, because the test is actual "necessity," SCO cannot rely in defense on state law. *Dothard*, 433 U.S. at 331 n.14. Yet even then, Bolden-Hardge wins if SCO "'refuse[d] to adopt an available alternative practice that has less disparate impact and serves [its] legitimate needs.'"

[13] In their response to Plaintiff's Statement of Undisputed Facts, Defendants repeatedly assert that SCO "evaluated and considered Plaintiff's request in good faith" and "Plaintiff has no evidence to support factual position that SCO was not acting in good faith." ECF No. 91 at ¶¶ 81, 83-90, 92-97, 99; *see also id.* at ¶¶ 100-103, 105. But Defendants nowhere identify the legal standard for which they use the term "good faith," nor do they raise any evidence to dispute that "SCO denied Bolden-Hardge's accommodation request without engaging in an interactive process." *Id.* at ¶ 87.

Freyd v. Univ. of Or., 990 F.3d 1211, 1224 (9th Cir. 2021) (citation omitted). Here, SCO's only percipient evidence is Anderson's circular testimony on following the state oath law, without any showing, apart from a need for accommodation, that accommodating Bolden-Hardge would cause her not to follow state policy, law, or procedure. ECF No. 91 at ¶ 77; *accord id.* at ¶ 70 (Muñoz).

As for alternatives, SCO's expert nowhere indicated the oath language here was the only way to meet the asserted interests of the state; he agreed Bolden-Hardge's proposed statement "generally" satisfied claimed oath virtues by expressing fidelity, impartiality, and an intent to be conscientious; and despite his claimed uniformity interest, the oath law exempts "such inferior officers and employees as may be by law exempted" and the SPB allows non-uniformity in its "defend" accommodation. ECF No. 91 at ¶¶ 71-73, 76, 119; Cal. Const. art. XX, § 3.

In response, Defendants say Bolden-Hardge failed to establish impact through statistics or other applicants; that her situation cannot be extrapolated given the role of conscience; and expert testimony on the typical Jehovah's Witness must be excluded. ECF No. 89 at 25-26. But the Ninth Circuit rejected insistence on statistics where others share Bolden-Hardge's faith. *Bolden-Hardge*, 63 F.4th at 1228 (holding impact on Jehovah's Witnesses "is precisely the sort of obvious impact a plaintiff need not support with statistics to plead a prima facie case"). And when the disqualifying effect is so plain, applicant data is unnecessary. *See Mitchell v. Bd. of Trs. of Pickens Cnty. Sch. Dist. A*, 599 F.2d 582, 585 n.7 (4th Cir. 1979) ("To require statistical proof involving a significant sample of actual applications of a policy to establish its disparate impact would always preclude the claim of a 'first impactee.' Title VII of course cannot be read to yield such a result."). Indeed, SCO's own exhibits respect oath objections by Witnesses as a class. *See* ECF No. 96-15 at 7 ("[A job] applicant . . . in a governmental agency who is a Jehovah's Witness should not be compelled, contrary to her religious beliefs, to take a loyalty oath whose form is religiously objectionable.").

When it comes to conscience, moreover, Anderson conceded the disqualification of those who shared Bolden-Hardge's beliefs. ECF No. 91 at ¶ 59. Plus, the sole expert on the issue indicated in report paragraphs Defendants have not challenged that "many Jehovah's Witnesses simply strike out" passport oaths with "defend" and "true faith and allegiance;" and Bolden-Hardge followed the Jehovah's Witness faith's "recommended process of discernment for oath-

taking." ECF No. 55-13 at 97, 99 (unchallenged ¶¶ 61, 73—*see* ECF No. 84 at 2). At a minimum, Anderson's concession and the expert's testimony preclude summary judgment in SCO's favor.

Furthermore, to the extent Defendants challenge the expert's opinions that "based upon my scholarly expertise, . . . signing the California loyalty oath without accommodation would violate the sincerely held religious beliefs of Jehovah's Witness[es] as a group"—ECF No. 55-13 at 100 (¶ 80); *see* ECF No. 84 at 2—that testimony is valid for the reasons described in Bolden-Hardge's opposition to the exclusion motion, and it is properly focused on the beliefs of Jehovah's Witnesses and the attendant obstacle raised by the oath for employment, not ultimate liability. *See* ECF No. 98 at 9-13 (opposition); *Hangarter v. Provident Life & Acc. Ins. Co.*, 373 F.3d 998, 1016 (9th Cir. 2004) (allowing expert to testify as to evidence that supported a finding of bad faith, where expert did not testify he had reached a legal conclusion that defendants actually acted in bad faith).[14]

On necessity and alternatives, Defendants cite the federal constitution's Article VI, Clause 3 that certain state officers—yet not all employees—"shall be bound by Oath or Affirmation, to support this Constitution"; the upholding of a "support" oath in *Biklen*, 333 F. Supp. 902; and that "many [SCO] employees have unique access to valuable assets." ECF No. 89 at 27-28. But again, Bolden-Hardge was willing to sign the oath; she just needed a reasonable accommodation in doing so—including by clarification, a statement making clear her "vow to uphold the Constitutions of the United States and of the State of California," or otherwise. ECF No. 91 at ¶ 64.

Defendants further say they cannot allow "alternatives" because "SCO has no authority to rewrite the constitutionally required oath;" the "affirm" option accommodates; and an attached statement would create a religious test. ECF No. 89 at 28. But not only does state law not preclude accommodation as noted above (*see ante* 12), an employer cannot defend against a disparate-impact claim based on state law in any event. *Dothard*, 433 U.S. at 331 n.14. Moreover, and as also detailed above, the "affirm" option does not solve the issue (*see ante* 14-15), and no religious test would be created by the non-religious statement Bolden-Hardge offered, much less the option

[14] Defendants also quote Bolden-Hardge's expert to say "it would be 'unusual' and 'not common'" for Jehovah's Witnesses to work for the government. ECF No. 89 at 26. But contrary to their implication, the expert's describing Witnesses working in government as "unusual" comes from his description of things decades ago, which he said involved less interest. ECF No. 96-2 at 9-10.

of clarifying the oath's meaning—which, at least according to Defendants, would resolve her concerns given their argument the oath presents no conflicts with her faith in the first place.

III. BOLDEN-HARDGE PREVAILS ON HER FIRST AMENDMENT CLAIM.

Requiring plaintiffs "take an oath that violates their religious tenets as a condition to being considered for public employment places an undue burden on their right of free exercise." *Bessard*, 867 F. Supp. at 1463. And where the state permits or makes exceptions—including where, taken as a whole, it has an exemption mechanism or treats "*any* comparable secular activity more favorably"—it must meet strict scrutiny. *Fulton v. City of Philadelphia*, 593 U.S. 522, 537 (2021); *Tandon v. Newsom*, 593 U.S. 61, 62 (2021); *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 537 (1993). In doing so, moreover, not only must the state "'advance interests of the highest order'" and its policy "be narrowly tailored," it must make such showings for the specific plaintiff. *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 685 (9th Cir. 2023) (citation omitted); *Fulton*, 593 U.S. at 542; *Tandon*, 593 U.S. at 63.

Defendants nowhere dispute in their brief they substantially burdened Bolden-Hardge's religion. *See* ECF No. 50 at 24; ECF No. 89 at 30-34; *Bessard*, 867 F. Supp. at 1463. And strict scrutiny applies, and cannot be met, where the state allows exceptions and Defendants cannot show alternatives would not do. *See* Cal. Const. art. XX, § 3 ("employees as may be by law exempted"); ECF No. 55-12 at 29 (Muñoz: "It seems to me that Article 3 Section 20 provides a mechanism for an exemption from the entire oath."); Cal. Gov't Code §§ 3101, 18150.5 (exempting non-citizens and those under certain "memorandum[s] of understanding"); ECF No. 91 at ¶¶ 110-32 (SPB, other agencies); *Bessard*, 867 F. Supp. at 1464-65 (doubting compelling interest and finding "less restrictive means of furthering the goal of having a loyal workforce"); *Bolden-Hardge*, 63 F.4th at 1226-27 (noting other agency actions undercut state interest). At a minimum, Defendants have made no showing for Bolden-Hardge in particular. *Fulton*, 593 U.S. at 541-42 (requiring this).

In response, Defendants first argue that Bolden-Hardge's free-exercise claim is untimely; she cannot proceed against them in official capacities; and qualified immunity precludes individual liability. ECF No. 89 at 30-33. Defendants then say that either strict scrutiny does not apply because the oath law has no exceptions, is facially neutral, and is constitutional, or strict scrutiny

is met given the state's interest in extending a federal oath of office to "civil servants" and "disaster workers for emergency services." *Id.* at 33-34. Defendants make no argument on narrow tailoring.

On procedure, Bolden-Hardge's claim is timely based on equitable tolling in her required exhaustion of the EEOC process on her Title VII claim. Pursuit of an alternate remedy tolls the period for a further claim if there was: "1) timely notice to the defendants in filing the first claim; 2) lack of prejudice to the defendants in gathering evidence for the second claim; and 3) good faith and reasonable conduct in filing the second claim." *Cervantes*, 5 F.3d at 1275. Notably, "California courts have liberally applied tolling rules . . . to situations in which the plaintiff has satisfied the notification purpose of a limitations statute." *Id.* (internal quotation marks omitted).

Defendants had timely notice of the first claim, as Bolden-Hardge filed her administrative charge within six months. ECF No. 91 at ¶ 150 (January 2018); 42 U.S.C. § 2000e-5(e)(1); *Daviton v. Columbia/HCA Healthcare Corp.*, 241 F.3d 1131, 1138 (9th Cir. 2001). Second, there is no prejudice where the two claims concern the same wrong, giving notice to Defendants. *Compare* ECF No. 55-33 (Title VII/FEHA charge arising from job loss over conflict between faith and oath policy), *with* ECF No. 1 at ¶¶ 74-84; ECF No. 29 at ¶¶ 89-100 (First Amendment claim over same conflict); *Daviton*, 241 F.3d at 1138 (holding notice met where prior complaint over same incident gave defendants opportunity to prepare defense); *Cervantes*, 5 F.3d at 1276 n. 3 (holding notice covers parties in evidentiary privity). Third, Bolden-Hardge acted in good faith in filing her First Amendment claim within three months after exhausting the EEOC process; or, as tolled, with over fifteen months left in its limitations period. ECF No. 1 (October 2020 Complaint); ECF No. 91 at ¶ 150 (July 2020 right-to-sue); *Lane v. Lake Cnty. Hous. Comm'n*, 724 F. Supp. 3d 1026, 1039-43 (N.D. Cal. 2024) (stressing relative timeliness in tolling Section 1983 claim for FEHA process).

Additionally, Bolden-Hardge can secure injunctive relief from Cohen as Controller (and timely as Yee's successor)—including declaratory relief, policy change, and reinstatement of the job offer at or above her current rank and pay. ECF No. 29 at ¶ 123; ECF No. 91 at ¶ 133; *Mecinas v. Hobbs*, 30 F.4th 890, 903 (9th Cir. 2022) (holding Eleventh Amendment immunity subject to "exception for actions for prospective declaratory or injunctive relief against state officers in their

official capacities for their alleged violations of federal law so long as the state officer has some connection with enforcement of the act") (internal quotation marks omitted). Plus, Bolden-Hardge can secure damages from Anderson, as his actions clearly violated decades-old SPB, EEOC, and constitutional authority. *Fulton*, 593 U.S. at 533-34; *Ballentine v. Tucker*, 28 F.4th 54, 61 (9th Cir. 2022); *Bessard*, 867 F. Supp. at 1465; *EEOC Ruling*, 1985 WL 32782; ECF No. 91 at ¶¶ 116-19. At a minimum, she can get nominal damages. *Uzeugbunam v. Preczewski*, 592 U.S. 279, 292-93 (2021). Moreover, Anderson was in privity with SCO; and, tolling for its dismissal, the claim was live for less than eight months from its filing to his being named. ECF Nos. 1, 16, 25, 29, 94.

Finally, as for substance, Defendants' claim that the oath law is "generally applicable" for purposes of avoiding strict scrutiny is wrong as detailed above. *See ante* 18; ECF No. 50 at 24-25. In meeting strict scrutiny, moreover, their failure to make any argument on narrow tailoring alone defeats that showing. *See* ECF No. 89 at 34 (making no such argument); *Fellowship of Christian Athletes*, 82 F.4th at 694 (relying on tailoring prong). Likewise fatal is their failure to make any compelling-interest showing specific to Bolden-Hardge. *See* ECF No. 89 at 34 (referring only to oath-taking civil servants generally); *Fulton*, 593 U.S. at 542 (requiring particularized showing). Regardless, Defendants cannot show a compelling interest based on the constitutionality of oaths in other settings given the spate of exceptions. *See Bolden-Hardge*, 63 F.4th at 1226-27 (stressing other accommodations cast doubt on "importance of any state interest we might otherwise infer from Supreme Court caselaw upholding the constitutionality of loyalty oaths in other contexts").[15]

CONCLUSION

For the above reasons and those in her opening brief, Bolden-Hardge respectfully requests that summary judgment be entered in her favor on her Title VII, FEHA, and First Amendment claims. In the alternative, and at a minimum, it should not be awarded to Defendants.

Dated: July 22, 2025

Respectfully submitted,

/s/ James A. Sonne
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[15] Plaintiff also submits in opposition to Defendants' motion on her fifth claim for relief under the state constitution (ECF No. 88 at 3) the argument here in support of her First Amendment claim.