James A. Sonne, Cal. Bar No. 250759
jsonne@law.stanford.edu
Zeba A. Huq, Cal. Bar No. 261440
zebahuq@law.stanford.edu
STANFORD LAW SCHOOL RELIGIOUS LIBERTY CLINIC
559 Nathan Abbott Way
Stanford, CA 94305
(650) 723-1422
(650) 723-4426 (fax)

Teresa S. Renaker, Cal. Bar No. 187800
teresa@renakerhasselman.com
RENAKER HASSELMAN SCOTT LLP
505 Montgomery Street, Suite 1125
San Francisco, CA 94111
(415) 653-1733
(415) 727-5079 (fax)

Counsel for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

Haaris Syed,

Plaintiff,

v.

County of Los Angeles; County of Los Angeles Horizons Deferred Compensation and Thrift Plan Administrative Committee; and County of Los Angeles 401(k) Savings Plan Administrative Committee,

Defendants.

Case No.: 2:19-CV-10410 GW-KESx

Second Amended Complaint

1. Violation of Title VII of the Civil Rights Act of 1964
2. Violation of the California Fair Employment and Housing Act
3. Violation of the U.S. Constitution, Amend. I
4. Violations of the California Constitution, Art. I, § 4 and Art. XVI, § 17
5. Violation of the California Uniform Prudent Investor Act
6. Violation of the Los Angeles County Ordinance

INTRODUCTION

1. Federal and state civil-rights laws forbid employers from discriminating on the basis of religion in employee compensation and benefits. What's more, these laws require employers to accommodate employee religious beliefs when it comes to such payments and opportunities, absent demonstrable hardship. Finally, when the employer is a public entity, our federal and state constitutions, together with state and local fiduciary law, insist on equal treatment and accommodation while also requiring retirement plans to be handled in the employees' interests.

2. Unfortunately, however, the County of Los Angeles and its agents have thwarted long-time public defender Haaris Syed's ability to participate in the County's defined-contribution retirement plans, with accompanying employer-matching funds, by requiring Mr. Syed to violate the sincerely held tenets of his Muslim faith in order to do so.

3. Specifically, the County, together with its Horizons Deferred Compensation and Thrift Plan Administrative Committee and 401(k) Savings Plan Administrative Committee—otherwise called PACs—insist that to qualify to direct investments under those employer-provided plans in a manner consistent with his Muslim faith, Mr. Syed must maintain at least $25,000 in one or more "core funds" that include only investments which violate that faith—e.g., alcohol, tobacco, no-risk bonds. As a result, Mr. Syed cannot participate in the Plans or receive employer matching.

4. In the face of Mr. Syed's continuing requests over many years to participate in the County's retirement plans without violating his faith, and, in turn, access due compensation through and in the plans, Defendants have persisted in refusing him without legitimate reason—even when expressly directed to another public employer that provides such an option through the same benefits-service provider used by Defendants. Rather, the County and PACs provide only pretextual excuses and intentionally discriminate against Mr. Syed in continuing to pay him less than his non-Muslim colleagues while knowing other large employers with a diverse workforce readily provide the kind of option he seeks.

5. By conditioning Mr. Syed's participation in its retirement plans—and therefore his receipt of the employer matching as well—on abandoning his sincerely held religious beliefs, and refusing to accommodate him to avoid the conflict, Defendants have violated Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act, California Constitution Article I Section 4 and Article XVI Section 17, the First Amendment of the United States Constitution, and state and local fiduciary law.

6. By their actions, Defendants have caused Mr. Syed to lose out on hundreds of thousands of dollars in tax-deferred investment earnings and employer-matching contributions—to the grave financial and emotional harm of Mr. Syed and his family. Indeed, to achieve the same level of retirement savings without

participating in the Plans, Mr. Syed will need to work more than a decade longer than his non-Muslim colleagues.

7. Mr. Syed therefore seeks all legal and equitable remedies that are available to him as redress for that which he has been unjustly denied and to ensure going forward the full benefit of his employment with the County in a manner consistent with his sincerely held religious beliefs.

JURISDICTION AND VENUE

8. This action arises under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e; the California Fair Employment and Housing Act, Cal. Gov't Code § 12940; the California Uniform Prudent Investor Act, Cal. Prob. Code § 16045; Title 5 of the Los Angeles County Ordinances; and the Constitutions of California and the United States, respectively.

9. As described below, Mr. Syed seeks applicable monetary, injunctive, and declaratory relief for unlawful employment discrimination and non-accommodation on the basis of his religion, and for the related failure by Defendants to act in the interests of employees by erecting arbitrary barriers to participation in the Plans for those with Mr. Syed's sincerely held religious beliefs.

10. Jurisdiction of this Court is based chiefly on Mr. Syed's claimed deprivation of federal civil and constitutional rights via 28 U.S.C § 1331—giving district courts original jurisdiction over civil actions arising under the Constitution, laws,

or treaties of the United States—and 28 U.S.C. § 1343—giving district courts original jurisdiction over actions to secure civil rights afforded by the United States government. Supplemental jurisdiction is then extended to Mr. Syed's state civil-rights and fiduciary-duty claims via 28 U.S.C. § 1367—giving district courts supplemental jurisdiction over claims that are so related as to "form part of the same case or controversy."

11. This Court also has the authority to issue the declaratory relief sought under the Federal Declaratory Judgment Act, 28 U.S.C. § 2201(a).

12. Mr. Syed has met the jurisdictional prerequisite for his civil-rights claims. Specifically, he timely filed a charge with the Equal Employment Opportunity Commission on April 24, 2019, alleging religious discrimination and non-accommodation in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, and the California Fair Employment and Housing Act, Cal. Gov't Code. § 12940, under Charge Number 480-2019-02633. The EEOC thereafter issued a "right-to-sue" letter on September 10, 2019 (attached as Exhibit A), and Mr. Syed filed suit within 90 days of his receipt of that letter, or on December 9, 2019.

13. Venue is proper under 28 U.S.C. § 1391(b) because the events and omissions giving rise to the claims occurred in Los Angeles, California.

INTRADISTRICT ASSIGNMENT

14. Pursuant to General Order 19-03, Section I.B.1.a.(1)(c), this case should be assigned to the Western Division of the Central District of California.

PARTIES AND PLANS

15. Haaris Syed is a resident of the State of California and a public defender for the County of Los Angeles—a position he has held for almost fifteen years.

16. Defendant County of Los Angeles (the "County") is a political subdivision of the State of California. As a governmental entity, the County is bound by its own ordinances as well as the requirements of the California and United States Constitutions. It also employs more than 500 people and is covered by both the California Fair Employment and Housing Act, Cal. Gov't Code § 12926(d), and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e(b).

17. Pursuant to Los Angeles County Code Chapter 5.25, the County sponsors the County of Los Angeles Deferred Compensation and Thrift Plan (the "Horizons Plan") for participation by County employees. The Horizons Plan is a defined-contribution or "individual account" retirement plan, meaning that it provides a benefit—namely a monetary payout—at an employee participant's retirement in the amount of the participant's plan account balance. The Horizons Plan is intended to qualify for favorable tax treatment under Internal Revenue Code § 457.

18. Pursuant to Los Angeles County Code Chapter 5.26, the County sponsors the County of Los Angeles Savings Plan (the "401(k) Plan"; together with the Horizons Plan, the "Plans") for participation by County employees. The 401(k) Plan is also a defined-contribution plan, and is intended to qualify for favorable tax treatment under Internal Revenue Code §§ 401(a) and 401(k). Chapter 5.26 explains that the 401(k) Plan is "a retirement benefit enhancement provided to Employees subsequent to the withdrawal of the County from the Social Security System effective December 31, 1982."

19. Defendant County of Los Angeles Horizons Deferred Compensation and Thrift Plan Administrative Committee (the "Horizons PAC") is the manager of the Horizons Plan. As an entity created by the County pursuant to statute and the provider of the Horizons Plan benefits, the Horizons PAC is an agent of the County for these purposes. *See* Cal. Gov't Code § 53213. Pursuant to Chapter 5.25, the Horizons PAC is responsible for selecting the investment options available to participants in the Horizons Plan and for establishing any threshold requirements to apply to participants seeking to select any Horizons Plan investment feature.

20. Defendant County of Los Angeles 401(k) Savings Plan Administrative Committee (the "401(k) PAC"; together with the Horizons PAC, the "PACs") is the manager of the 401(k) Plan. As an entity created by the County pursuant to statute and the provider of the 401(k) Plan benefits, the 401(k) PAC is also an agent

of the County for these purposes. *See* Cal. Gov't Code § 53213. Pursuant to Chapter 5.26, the 401(k) PAC is responsible for selecting the investment options available to participants in the 401(k) Plan, and for establishing any threshold requirements to apply to participants seeking to select any 401(k) Plan investment feature.

STATEMENT OF FACTS

21. Haaris Syed has served as a public defender for the County of Los Angeles since 2005.

22. As a public defender, Mr. Syed has represented thousands of clients and also trained new defenders to prepare them for their work representing the accused.

23. Throughout his career, Mr. Syed has demonstrated a strong commitment to supporting the mission of the County's Office of the Public Defender.

24. Mr. Syed is also a lifelong and devout Muslim who has a sincerely held religious belief in what he understands to be the orthodox principles of Sunni Islam and tenets of Islamic finance.

25. Islamic finance is an alternative approach to lending and investing based on Islamic morals, values, and beliefs. Its body of rules, developed over the centuries, requires responsible saving and investing in line with core Islamic principles.

26. More specifically, Islamic finance prohibits dealing in interest; engaging in speculation or unduly risky transactions; and investing in certain products or activities, including pork, gambling, alcohol, and illicit entertainment.

27. In practice, this means Islamic finance rules prohibit investment in bonds, overly leveraged stocks, or industries related to prohibited goods and services.

28. Mr. Syed has a sincere religious belief in adhering to the rules of Islamic finance and strives for strict compliance with them. He believes that following these rules is critical to his spiritual wellbeing—both in this life and the next.

29. Consequently, for example, Mr. Syed does not maintain a traditional savings account where account funds accrue interest.

30. Mr. Syed regularly consults with experts to ensure his financial decisions conform with the principles of Islamic finance.

31. Indeed, Mr. Syed's beliefs about Islamic finance are shared by Muslims in the United States and across the world.

32. To cater to demand for Islamic-compliant banking and investing, therefore, a number of banks have created Islamic finance divisions. These include HSBC Amanah Islamic Financial Solutions, J.P. Morgan Islamic Banking, and Standard Chartered Saadiq Islamic Banking.

33. Similar to other values-based investments, such as socially responsible or environmentally friendly investment options, funds compliant with Islamic law are

also readily available on financial markets. Examples include the Allied Asset Advisors' Dow Jones Islamic Fund and Saturna Capital's Amana Mutual Fund.

34. Furthermore, and in recognition of the importance of a diverse workforce, private employers across various industries readily make these investment options available to employees as part of their retirement-savings plans, including Stanford University, Microsoft, Apple, Google, Amazon, Accenture, FedEx, and Shell.

35. Public-sector employers, such as the State of New York and New Jersey's public-university system, also make Islamic-compliant retirement options available. New York, for example, allows employees to self-direct funds in the open market—which of course includes Islamic-compliant funds—subject only to a minimal threshold in core funds. And New Jersey's university system includes the Amana Mutual Fund in its core-fund menu.

36. As an employer to thousands of public servants, including Mr. Syed, the County provides a valuable benefits and compensation package to employees that includes generous retirement-savings options within the Horizons Plan and the 401(k) Plan. Public defenders can simultaneously participate in both of the Plans.

37. Each Plan allows employees to contribute a portion of their earnings on a pre-tax basis and obtain a match by the County of up to four percent of employee compensation.

38. The County's retirement-savings options are a significant component of employee compensation. Among other things, a public defender like Mr. Syed who contributes to each of the Plans will receive a total employer match of up to eight percent of his earnings on a tax-deferred basis.

39. Participants in the Plans can direct investment of their savings into any of several "core funds" that are professionally managed mutual funds of various risk levels selected by each of the PACs.

40. In addition, participants who maintain at least a $25,000 balance in core funds can also utilize a "self-directed brokerage account" that allows them to independently purchase investments outside of the Plans' core funds.

41. The County ordinances establishing the Plans allow their PACs to select the threshold investment amount a participant must maintain in core funds before enrolling in the self-directed brokerage account.

42. Currently, each PAC has set the core-fund threshold for enrolling in the self-directed brokerage account at $25,000. Thus, a participant cannot invest outside the core funds unless he or she maintains a balance of at least $25,000 in them.

43. Although the County of Los Angeles employs hundreds, if not thousands, of Muslims—with at least ten working at the Office of the Public Defender—the Plans include no Islamic-compliant way for them to participate.

44. Specifically, none of the core funds presently offered by the Plans is designed to comply with Islamic investing principles. And although Mr. Syed is informed and believes that a self-directed brokerage account in each Plan can be used to direct retirement savings into Islamic-compliant mutual funds, under the core-fund threshold presently established by the PACs Mr. Syed would have to continuously maintain a $25,000 balance in each Plan's non-compliant core funds in order to self-direct retirement savings into Islamic-compliant funds.

45. Consequently, there is a conflict with Mr. Syed's faith—whether as a direct core-fund investment matter or in the maintenance of the $25,000 minimum in core funds required as a pathway to allow him to access investments consistent with his faith through the self-directed account.

46. Mr. Syed inquired into the possibility of an Islamic-compliant retirement investment option when he began working for the County, but the County told him no such option existed. Such options, however, did then exist in the market.

47. Mr. Syed again requested an accommodation from the Defendants in both 2011 and in 2016 that would have allowed him to participate in the Plans in a manner consistent with his faith, but was denied each time on dubious grounds.

48. On Mr. Syed's 2011 request, for example, the Horizons PAC did not respond until a year later at a February 2012 meeting.

49. Moreover, although Mr. Syed had understood he was making the 2011 request to both the Horizons and 401(k) PACs since their boards include almost identical members, only the Horizons PAC publicly considered Mr. Syed's request. The 401(k) PAC did not respond.

50. And at the 2012 meeting, advisors to the Horizons PAC articulated only baseless reasons for not acceding to Mr. Syed's request. Specifically, the advisors said (a) the $25,000 threshold is necessary to "collect the Plan's County administrative and [third-party administrator] fees"; (b) the $25,000 threshold is necessary to assure the PAC that "only knowledgeable investors are enrolled in" the self-directed brokerage account; (c) an Islamic-compliant core option would be "designed for relatively few participants"; and (d) "adding more core options in response to specific beliefs could result in increased participant confusion and ineffective investment behavior." (Meeting Minutes, attached as Exhibit B.)

51. None of these rationales holds water. First, it would be impossible for any applicable administrative fees paid by an individual Horizons Plan participant to ever approach $25,000, or even come close.

52. In fact, records of the County's third-party administrator selection process in 2018 show that at that time, the County's third-party administrator charged an annual fee of $34.44 per participant, with the winning proposal reducing that fee

to $34.20 per participant. (*See* 2018 Adopted Recommendations, attached as Exhibit C.)

53. The Horizons Plan also charges a $50 annual fee for a participant's use of the self-directed brokerage account and that Plan can charge an administrative fee of up to .15 percent of Plan assets, allocated among participants on a per capita basis, but this similarly results in a small amount per participant. *See* Los Angeles County Ordinance 5.25.090(G)(1). For example, as of June 30, 2017, the Horizons Plan had assets of $9,951,769,875 and 103,486 participants, so if the maximum fee of .15 percent were imposed at that time, each participant would be charged $144.25 per year, or $12.02 per month. (*See* Exh. C.) Thus, unless the Plan assets suddenly increase some 170-fold – to well into the trillions of dollars – there is no possibility of a participant needing $25,000 on hand to pay administrative fees. In reality, administrative fees for Horizons Plan participants likely total less than $250 per year.

54. In response to Mr. Syed's request, the Horizons PAC identified no circumstance in which the Horizons Plan would require an individual participant to have $25,000 available to cover administrative fees.

55. Just as divorced from reality is the rationale that the $25,000 threshold provides the PAC with "assurance that only knowledgeable investors are enrolled in" the self-directed brokerage account. (Exh. B.) Depending on the amount of

contributions that have been made to a participant's account, a $25,000 balance might indicate the person is a knowledgeable investor, or it might reveal the opposite. For example, a participant who has a $25,000 balance after $50,000 in contributions has had a poor investment outcome, which may imply a lack of investment knowledge. In contrast, a participant who has a $25,000 balance after $10,000 in contributions has had a favorable investment outcome, which may imply greater investment knowledge. Viewed in isolation, an account balance tells the PAC nothing about whether the participant is a knowledgeable investor.

56. Finally, the PAC's rationales that few participants would select an Islamic-compliant core fund or that many participants would be confused by its inclusion are unfounded. (*See* Exh. B.) There is no indication the PAC conducted any factual inquiry into the number of participants who would select an Islamic-compliant core fund, nor is there any basis to believe that participants who did not want to choose such a fund would be confused by its inclusion in the core-funds lineup.

57. At the 2012 meeting, Mr. Syed responded to all these representations by stating that the failure of Defendants to provide an Islamic-compliant retirement option (and the employer matching funds) to him and other Muslim employees is unfair and unequal.

58. The PAC then asked legal counsel to look into any obligation of the County or PAC to provide an Islamic-compliant retirement benefit option and asked staff

to determine whether other public employer defined-contribution plans had experience with providing Islamic-compliant investment options.

59. But when Mr. Syed later called the County's Human Resources Department to follow up, Susan Moomjean told him the County and PAC had no obligation to grant his request.

60. Mr. Syed again requested to access the Plans in April 2018 in a manner consistent with his faith. Specifically, he spoke to a County human-resources representative and asked that he at least be permitted to enroll in the self-directed brokerage account option without the $25,000 core-funds prerequisite.

61. Mr. Syed had decided to ask again in 2018 because he had learned the State of New York did something similar to what he was seeking, namely it provided the option for employee-participants in its deferred-compensation plan to utilize a brokerage account to self-direct funds with a threshold investment of only $500. Mr. Syed believed this meant the County could do the same or better.

62. On July 5, 2018, however, Angela Jung in the County's Human Resources Department told Mr. Syed by phone that the County had denied his renewed request, citing unspecified "system limitations."

63. New York's plan, however, illustrates the ease with which an employer may offer the type of option Mr. Syed seeks. Specifically, its State Deferred Compensation Plan provides a "Self Directed Investment Account Religious

Exception" that allows participants to lower the core-fund prerequisite for investing through the plan's self-directed brokerage account from $10,000 to $500 by completing a "Self Directed Investment Account Religious Exception form." (*See* New York Plan 2019 Administration Manual Excerpt, attached as Exhibit D.)

64. On information and belief, the $500 balance required by New York in the "Self Directed Investment Account Exception" is a narrowly tailored means for the plan to collect administrative fees for each participant.

65. Accordingly, if an Islamic-compliant core-fund option is not possible, Mr. Syed's faith would allow him to invest in a non-Islamic-compliant core fund in an amount reasonably calculated to cover administrative fees that may be required by the Plans—unlike the current $25,000 threshold.

66. Notably, the New York Deferred Compensation Plan's self-directed brokerage account is provided by Charles Schwab, the same benefits-service provider used by the Defendants.

67. By denying Mr. Syed's requests despite the existence of readily available options from their own benefits-service provider, and thwarting his ability to participate in the Plans, Defendants have deprived Mr. Syed of significant amounts of compensation in the form of employer-matching contributions, tax deferral, and investment returns for almost fifteen years.

68. Since the onset of his employment in 2005, Mr. Syed's salary has increased each year, but he is unable to contribute any portion of his pre-tax pay and obtain any employer-matching contribution to his retirement savings.

69. Defendants' failure to provide an Islamic-compliant retirement-savings option has forced Mr. Syed to choose between receiving significant compensation available to non-Muslim County employees and violating his sincerely held religious beliefs.

70. Put to the choice, Mr. Syed has decided to continue to live his life according to his faith and forego participating in the Plans; in so doing, however, he loses out on significant and valuable compensation—including in tax-deferred savings, employer matching, and investment gains.

71. Indeed, Mr. Syed suffers anew with every paycheck he receives.

72. Because Mr. Syed has not been able to participate in the Plans and grow his wealth with employer-matching funds during his tenure as a public defender for the County, he will be forced to retire much later than his peers. As a result, he has suffered stress and insecurity about the future financial well-being of his family.

73. Mr. Syed filed a pro-se complaint on December 9, 2019, alleging violations of federal and state employment anti-discrimination laws and the U.S. Constitution. He obtained legal counsel in January of 2020, and the parties

subsequently stipulated to an extension for Mr. Syed to file an amended complaint by right under Federal Rule of Civil Procedure 15.

74. Mr. Syed filed his first amended complaint on February 28, 2020. The parties stipulated to an extension for Defendants to file a motion to dismiss and specified a briefing schedule. Defendants subsequently filed their motion on April 2, and the parties telephonically appeared for a hearing before the Court on June 1.

75. On June 26, 2020, the Court ruled on Defendants' motion to dismiss. In so doing, it (1) refused to dismiss Counts II (Title VII disparate impact) and VII (First Amendment); (2) dismissed without leave to amend Count IV (state-law failure-to-accommodate); and (3) dismissed with leave to amend Counts I (Title VII disparate treatment), III (state-law disparate treatment), V (fiduciary breach under state constitution), VI (state uniform prudent investor law), VIII (fiduciary breach under county ordinance), and IX (state-constitution free exercise).

76. This Second Amended Complaint follows.

COUNT I
Violation of Title VII of the Civil Rights Act of 1964
Disparate Treatment on the Basis of Religion
42 U.S.C. § 2000e-2(a)(1)
Against All Defendants

77. Mr. Syed realleges and incorporates by reference all the above paragraphs of this Complaint.

78. Defendants' actions constitute disparate treatment with respect to Mr. Syed's compensation, terms, conditions, or privileges of employment on the basis of his religion in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a)(1) in at least two respects: first, by refusing without legitimate and non-pretextual reason to provide equal compensation to Mr. Syed compared to similarly-situated employees because of his religion; and second, by refusing to accommodate Mr. Syed's sincerely held religious beliefs absent undue hardship.

79. Among other things, Title VII prohibits an employer from discriminating against an employee "with respect to his compensation, terms, conditions, or privileges of employment" because of the employee's "religion." 42 U.S.C. § 2000e-2(a)(1).

80. Title VII further defines "religion" to include "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate [such observance or practice] . . . without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j); *see also EEOC v. Abercrombie & Fitch Stores, Inc.*, 135 S. Ct. 2028, 2031-32 (2015) (including non-accommodation as a species of disparate-treatment claim under Title VII given that statute's definition of religion).

81. And when it comes to retirement benefits, Title VII protections apply regardless whether participation in the subject plan is mandatory or voluntary. *See*

Arizona Governing Comm. v. Norris, 463 U.S. 1073, 1074-75 (1983) (holding voluntary retirement plan to violate Title VII); *see also id*. at 1082 n.10 (Marshall, J., concurring) ("It is irrelevant that . . . participation in the Arizona deferred compensation plan is voluntary. Title VII forbids all discrimination concerning 'compensation, terms, conditions, or privileges of employment,' not just discrimination concerning those aspects of the employment relationship as to which the employee has no choice.")

82. In conditioning Mr. Syed's participation in the Plans—with accompanying employer-matching contributions—on a core-fund investment in violation of his known and sincerely held religious beliefs in an intentionally discriminatory manner resulting in reduced compensation compared to similarly situated employees, and by related acts and omissions, Defendants violated and continue to violate Title VII's prohibition against disparate treatment.

83. Defendants have intentionally discriminated against Mr. Syed by repeatedly and dismissively rejecting his faith-based request for a readily available Islamic-compliant retirement option—whether in the refusal of a compliant core fund or in the $25,000 non-compliant core-fund prerequisite—without legitimate, non-pretextual reason, and thus knowingly providing him reduced compensation as a result. And all this despite using the same benefits-service provider that other employers—including the State of New York—use to treat Muslim employees

equally to similarly situated employees in a way Mr. Syed seeks. *See EEOC v. Inland Marine Industries*, 729 F.2d 1229, 1235-36 (9th Cir. 1984) ("The requisite intent lay in [the employer's] two-time refusal . . . to bring the blacks' hourly wages in line with those of whites. . . . By refusing to change his subjective wage-setting policies or to bring black wages in line with those of whites, [the employer] ratified the existing disparities. His ratification constituted all the intent the court needed to find Inland Marine guilty on a disparate treatment theory.").

84. Moreover, through Title VII's definition of "religion"—to include "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate without undue hardship"—Defendants' refusals of Mr. Syed's request—whether in the refusal of an Islamic-compliant core fund or in the $25,000 non-compliant core-fund prerequisite—likewise constitute intentional discrimination in violation of Title VII. 42 U.S.C. § 2000e(j).

85. As a direct and proximate result of these unlawful actions, Mr. Syed has suffered and, absent relief from this Court, will continue to suffer financial damage and emotional distress.

COUNT II
Violation of Title VII of the Civil Rights Act of 1964
Disparate Impact on the Basis of Religion
42 U.S.C. §§ 2000e-2(a)(2) & (k)
Against All Defendants

86. Mr. Syed realleges and incorporates by reference all the above paragraphs of this Complaint.

87. Defendants' actions in providing County employees a retirement-savings plan that Mr. Syed (and others with similar sincerely held religious beliefs) cannot participate in or benefit from also disparately impacts Mr. Syed's employment opportunities in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e-2(a)(2) & (k).

88. Title VII makes it illegal for an employer to "limit, segregate, or classify his employees . . . in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's . . . religion." 42 U.S.C. § 2000e-2(a)(2). Furthermore, the statute provides that where a plaintiff demonstrates an employment policy causes such a disparate impact, the employee wins absent proof by the employer "that the challenged practice is job related . . . and consistent with business necessity" or the employee shows there is an alternative way to serve the stated needs but the employer refuses it. 42 U.S.C. § 2000e-2(k)(1)(A)(i)-(ii).

89. The core-fund investment approach imposed by Defendants—whether in the refusal to provide an Islamic-compliant core fund or in the $25,000 non-compliant core-fund prerequisite—and related acts and omissions, even if facially neutral, causes a disparate impact on Mr. Syed (and any similarly situated Muslim who shares his religious beliefs) by forcing him to abandon his religious objections or forego substantial retirement-savings opportunities and benefits under the Plans otherwise enjoyed by County employees who do not share those beliefs.

90. Furthermore, Defendants cannot prove that the offending core-fund requirement is job-related and consistent with business necessity, and they refused the less-restrictive yet feasible option used by the State of New York that was proposed by Mr. Syed to be explored.

91. As a direct and proximate result of these unlawful actions, Mr. Syed has suffered and, absent relief from this Court, will continue to suffer financial damage and emotional distress.

COUNT III
Violation of the California Fair Employment and Housing Act
Disparate Treatment on the Basis of Religion
Cal. Gov't Code § 12940(a)
Against All Defendants

92. Mr. Syed realleges and incorporates by reference all the above paragraphs of this Complaint.

93. Defendants' actions—namely refusing to provide Mr. Syed equal compensation compared to similarly situated employees without legitimate and non-pretextual reason—constitute disparate treatment with respect to Mr. Syed's compensation, terms, conditions, or privileges of employment on the basis of his "religious creed" in violation of the California Fair Employment and Housing Act ("FEHA"), Cal. Gov't Code § 12940(a).

94. FEHA prohibits an employer from discriminating against an employee with respect to compensation, terms, conditions, or privileges of employment because of an employee's "religious creed." A person's religious creed includes "all aspects of religious belief, observance, and practice." Cal. Gov't Code § 12926(q).

95. By conditioning Mr. Syed's participation in the Plans—with accompanying matching funds—on a core-fund investment in violation of his known and sincerely held religious beliefs in an intentionally discriminatory manner resulting in reduced compensation compared to similar situated employees, and by related acts and omissions, Defendants violated and continue to violate FEHA's prohibition against disparate treatment.

96. Defendants have intentionally discriminated against Mr. Syed by repeatedly and dismissively rejecting his faith-based request for a readily available Islamic-compliant retirement option—whether in the refusal of a compliant core fund or in the $25,000 non-compliant core-fund prerequisite—without legitimate, non-

pretextual reason and thus knowingly providing him reduced compensation as a result. And all this despite using the same benefits-service provider that other employers—including the State of New York—use to treat Muslim employees equally to similarly situated employees in a way Mr. Syed seeks. *See EEOC v. Inland Marine Industries*, 729 F.2d 1229, 1235-36 (9th Cir. 1984) ("The requisite intent lay in [the employer's] two-time refusal . . . to bring the blacks' hourly wages in line with those of whites. . . . By refusing to change his subjective wage-setting policies or to bring black wages in line with those of whites, [the employer] ratified the existing disparities. His ratification constituted all the intent the court needed to find Inland Marine guilty on a disparate treatment theory.").

97. As a direct and proximate result of these unlawful actions, Mr. Syed has suffered and, absent relief from this Court, will continue to suffer financial damage and emotional distress.

COUNT IV
Violation of the California Fair Employment and Housing Act
Failure to Accommodate Sincerely Held Religious Beliefs
Cal. Gov't Code § 12940(*l*)(1)
Against All Defendants

98. This count alleging a violation of the California Fair Employment and Housing Act, Cal. Gov't Code Section 12940(l)(1), was dismissed by the Court with prejudice over the objection of Mr. Syed. Although Mr. Syed understands it may not be necessary—*see Lacey v. Maricopa Cty.*, 693 F.3d 896, 927-28 (9th Cir.

2012)—out of abundance of caution and for the purpose of preserving any appeal on the matter, Mr. Syed respectfully repleads this count verbatim as follows.

99. Mr. Syed realleges and incorporates by reference all the above paragraphs of this Complaint.

100. FEHA also requires employers to reasonably accommodate employee religious practices absent a concrete and particularized showing that doing so would cause "undue hardship" to its business. Cal. Gov't Code § 12940(*l*)(1); *Soldinger v. Northwest Airlines, Inc.*, 51 Cal.App.4th 345, 370 (1996).

101. Notably, FEHA defines "undue hardship" to mean "significant difficulty or expense"—which is the same heightened test to avoid the need to provide a disability accommodation and the most protective of employees in the nation in the arena of religious accommodation. Cal. Gov't Code §§ 12926(u); 12940(*l*)(1).

102. By refusing Mr. Syed's request to resolve the known conflict between the Plans' core-fund prerequisites and his sincerely held religious beliefs without concrete or particularized proof of significant difficulty or expense, and by related acts and omissions, Defendants violated and continue to violate Mr. Syed's right to religious accommodation under FEHA.

103. As a direct and proximate result of these unlawful actions, Mr. Syed has suffered and, absent relief from this Court, will continue to suffer financial damage and emotional distress.

COUNT V
Violation of California Constitution Article XVI, Section 17
Breach of Fiduciary Duty
Against Horizons PAC and 401(k) PAC

104. Mr. Syed realleges and incorporates by reference all the above paragraphs of this Complaint.

105. Article XVI, Section 17 of the California Constitution includes the following provisions:

a. "Notwithstanding any other provisions of law or this Constitution to the contrary, the retirement board of a public pension or retirement system shall have plenary authority and fiduciary responsibility for investment of moneys and administration of the system."

b. "The retirement board of a public pension or retirement system shall have the sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system. The retirement board shall also have sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries."

c. "The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system. A retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty."

d. "The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims."

106. Article XVI, Section 17 further specifies "the term 'retirement board' shall mean the board of administration, board of trustees, board of directors, or other governing body or board of a public employees' pension or retirement system."

107. The Horizons Plan and 401(k) Plan are public pension or retirement systems within the meaning of Article XVI, Section 17.

108. The Horizons PAC and 401(k) PAC are retirement boards within the meaning of Article XVI, Section 17, in that they are the governing bodies or boards of the Horizons Plan and 401(k) Plan, respectively.

109. The Horizons PAC and 401(k) PAC have breached their duties of prudence and loyalty under Article XVI, Section 17, including by (a) arbitrarily

imposing a core-funds balance requirement for investing through the self-directed brokerage account that is far in excess of any administrative fees required to be paid by participants in either Plan, despite knowing that the balance requirement acts as a barrier to employees who, for religious reasons, cannot make such an investment in the current core funds; (b) arbitrarily imposing a core-funds balance requirement for investing through the self-directed brokerage account that bears no relationship to a participant's status as a "knowledgeable investor," despite knowing that the balance requirement acts as a barrier to employees who, for religious reasons, cannot make an investment in the current core funds beyond any amount reasonably calculated to cover potential administrative fees; (c) refusing to reduce the core-funds balance requirement for employees who, for religious reasons, are unable to invest $25,000 in the Plans' current core funds, despite knowing such employees exist; (d) refusing to provide a core-fund investment option that complies with principles of Islamic finance, despite knowing that the absence of such a core fund acts as a barrier to employees who, for religious reasons, cannot invest in non-Islamic-compliant funds; and/or (e) related acts and omissions.

110. But for the PACs' breaches, Mr. Syed would have contributed to the Plans throughout his employment and received associated employer matching contributions, tax deferral, and investment growth opportunities.

111. Mr. Syed has been and will continue to be harmed by the PACs' breaches that have forced him to choose between the requirements of his faith and the benefits afforded to County employees by the Plans. As a result, Mr. Syed has been and will continue to be deprived of compensation and benefits due to the PACs' breaches.

COUNT VI
Violation of the California Uniform Prudent Investor Act
Breach of Fiduciary Duty
Cal. Prob. Code § 16045
Against Horizons PAC

112. Mr. Syed realleges and incorporates by reference all the above paragraphs of this Complaint.

113. The California Uniform Prudent Investor Act requires that a trustee administer the trust in the interest of the beneficiaries, and deal impartially with all a trust's beneficiaries, "taking into account any differing interests of the beneficiaries." Cal. Prob. Code §§ 16045, 16002(a), 16003.

114. Los Angeles County Ordinance 5.25.095(A), in turn, requires that the Horizons PAC act in accordance with the California Uniform Prudent Investor Act.

115. The Horizons PAC has breached its duties of prudence and loyalty under the Ordinance and the Act, including by (a) arbitrarily imposing a core-funds balance requirement for investing through the self-directed brokerage account that is far in excess of any administrative fees required to be paid by participants in the

Horizons Plan, despite knowing that the balance requirement acts as a barrier to employees who, for religious reasons, cannot make such an investment in the current core funds; (b) arbitrarily imposing a core-funds balance requirement for investing through the self-directed brokerage account that bears no relationship to a participant's status as a "knowledgeable investor," despite knowing that the balance requirement acts as a barrier to employees who, for religious reasons, cannot make an investment in the current core funds beyond any amount reasonably calculated to cover potential administrative fees; (c) refusing to reduce the core-funds balance requirement for employees who, for religious reasons, are unable to invest $25,000 in the Horizons Plan's current core funds, despite knowing such employees exist; (d) refusing to provide a core-fund investment option that complies with principles of Islamic finance, despite knowing that the absence of such a core fund acts as a barrier to employees who, for religious reasons, cannot invest in non-Islamic-compliant core funds; and/or (e) by related acts and omissions.

116. But for the Horizon PAC's breaches, Mr. Syed would have contributed to the Horizon Plan throughout his employment and received associated employer matching contributions, tax deferral, and investment growth opportunities.

117. Mr. Syed has been and will continue to be harmed by the Horizon PAC's breaches that have forced him to choose between the requirements of his faith and

the benefits afforded to County employees by the Horizon Plan. As a result, Mr. Syed has been and will continue to be deprived of compensation and benefits due to the Horizon PAC's breaches.

COUNT VII
Violation of the Los Angeles County Ordinances
Breach of Fiduciary Duty
Title 5, Chapters 5.25 & 5.26
Against Horizons PAC and 401(k) PAC

118. Mr. Syed realleges and incorporates by reference all the above paragraphs of this Complaint.

119. Section 5.25.095 of the Los Angeles Ordinances imposes on the Horizons PAC the duty to perform its duties for the exclusive benefit, and solely in the interest, of participants and their beneficiaries, and makes the Horizons PAC members liable for their own negligence or willful misconduct in acting with respect to the Horizons Plan.

120. Section 5.26.440(A) makes the 401(k) PAC members liable for their own gross negligence or willful misconduct.

121. The Horizons PAC and the 401(k) PAC have breached their fiduciary duties and acted negligently under these Sections, including by (a) arbitrarily imposing a core-funds balance requirement for investing through the self-directed brokerage account that is far in excess of any administrative fees required to be paid by participants in the Plans, despite knowing that the balance requirement acts

as a barrier to employees who, for religious reasons, cannot make such an investment in the current core funds; (b) arbitrarily imposing a core-funds balance requirement for investing through the self-directed brokerage account that bears no relationship to a participant's status as a "knowledgeable investor," despite knowing that the balance requirement acts as a barrier to employees who, for religious reasons, cannot make an investment in the current core funds beyond any amount reasonably calculated to cover potential administrative fees; (c) refusing to reduce the core-funds balance requirement for employees who, for religious reasons, are unable to invest $25,000 in the Plans' current core funds, despite knowing such employees exist; (d) refusing to provide a core-fund investment option that complies with principles of Islamic finance, despite knowing that the absence of such a core fund acts as a barrier to employees who, for religious reasons, cannot invest in non-Islamic-compliant core funds; and/or (e) related acts and omissions.

122. But for the PACs' breaches, Mr. Syed would have contributed to the Plans throughout his employment and received associated employer matching contributions, tax deferral, and investment growth opportunities.

123. Mr. Syed has been and will continue to be harmed by the PACs' breaches that have forced him to choose between the requirements of his faith and the benefits afforded to County employees by the Plans. As a result, Mr. Syed has been

and will continue to be deprived of compensation and benefits due to the PACs' breaches.

COUNT VIII
Violation of the First Amendment to the U.S. Constitution
Free Exercise of Religion
Against All Defendants

124. Mr. Syed realleges and incorporates by reference all the above paragraphs of this Complaint.

125. By refusing as state actors to exercise their discretion under the Plans and the Los Angeles County Ordinances or otherwise allow Mr. Syed to participate in a manner consistent with his faith, Defendants substantially burden his right to free exercise of religion guaranteed by the First Amendment of the United States Constitution.

126. Defendants' refusal to exercise the power afforded them by the Plan documents and the Los Angeles Ordinances in Mr. Syed's case—including in the setting of a core-fund minimum and selection of investment products—has forced Mr. Syed to choose between his sincerely held religious beliefs and the financial benefits offered by the Plans to provide for the well-being of his family.

127. Defendants' actions in substantially burdening Mr. Syed's sincerely held religious beliefs are not supported by a compelling governmental interest, nor is their treatment of Mr. Syed narrowly tailored to serve any such interest.

128. As a direct and proximate result of these unlawful actions, Mr. Syed has suffered and, absent relief from this Court, will continue to suffer financial damage and emotional distress.

COUNT IX
Violation of Article I, Section 4 of the California Constitution
Free Exercise of Religion
Against all Defendants

129. Mr. Syed realleges and incorporates by reference all the above paragraphs of this Complaint.

130. By refusing as state actors to exercise their discretion under the Plans and the Los Angeles County Ordinances or otherwise allow Mr. Syed to participate in a manner consistent with his faith, Defendants substantially burden his right to free exercise of religion guaranteed by Article I, Section 4 of the California Constitution.

131. Defendants' refusal to exercise the power afforded them by the Plan documents and the Los Angeles Ordinances in Mr. Syed's case—including in the setting of a core-fund minimum and selection of investment products—has forced Mr. Syed to choose between his sincerely held religious beliefs and the financial benefits offered by the Plans to provide for the well-being of his family.

132. Defendants' actions in substantially burdening Mr. Syed's sincerely held religious beliefs are not supported by a compelling governmental interest, nor is their treatment of Mr. Syed narrowly tailored to serve any such interest.

133. As a direct and proximate result of Defendants' unlawful actions, Mr. Syed is and will continue to be deprived of due compensation and benefits.

PRAYER FOR RELIEF

Mr. Syed therefore respectfully requests that this Court grant the following relief:

134. Issue a declaratory judgment that Defendants' retirement-plan requirements complained of herein violate Mr. Syed's rights under Title VII, FEHA, the California Uniform Prudent Investor Act, the L.A. County Ordinances, the California Constitution, and/or the U.S. Constitution;

135. Issue a declaratory judgment that the PACs have breached their duties of loyalty and prudence under Article XVI, Section 17 of the California Constitution, the California Uniform Prudent Investor Act, and the L.A. County Ordinances;

136. Issue a declaratory judgment that Defendants must allow Mr. Syed to participate in the Plans in a manner consistent with his faith;

137. Grant a permanent injunction requiring Defendants to permit Mr. Syed to participate in the Plans in a manner consistent with his faith, whether by: including an Islamic-compliant core fund in the Plans' investment options; waiving the $25,000 investment prerequisite in the Plans; or, if there were no other feasible option for him to participate, reducing any core-fund prerequisite to an amount limited to that which would cover necessary administrative fees; or otherwise;

138. Grant a permanent injunction preventing the PACs from imposing a non-Islamic compliant core-funds balance requirement on employees who, for religious reasons, cannot maintain an investment in non-Islamic-compliant core funds, subject to an amount reasonably calculated to cover potential administrative fees if dispensing with the requirement altogether proves infeasible;

139. Grant a permanent injunction preventing the PACs from imposing a core-funds balance requirement without providing an Islamic-compliant core fund;

140. As to Counts I, II, III, and VIII, award actual past, present, and future damages resulting from Defendants' offending conduct;

141. Award all reasonable attorneys' fees, costs, and expenses incurred in prosecuting this action under applicable fee and cost-shifting provisions. *See*, *e.g.*, 42 U.S.C. §§ 1988(b) & 2000e-5(k); Cal. Gov't Code § 12965(b); Fed. R. Civ. P. 54(d); and

142. Grant all such other and further relief in law and equity as this Court may deem appropriate and just.

143. Finally, and out of an abundance of caution, Mr. Syed preserves his objection for purposes of appeal, and repleads by incorporation for that purpose, any additional remedies deemed unavailable by this Court in its order of June 26, 2020.

Dated: July 21, 2020

Respectfully submitted,

/s/ *James A. Sonne*

James A. Sonne
Zeba A. Huq
Stanford Law School
Religious Liberty Clinic

Teresa S. Renaker
Renaker Hasselman Scott LLP

Counsel for Plaintiff