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14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA

17
18 BRIANNA BOLDEN-HARDGE,
19 Plaintiff,

20 v.

21 OFFICE OF THE CALIFORNIA STATE
22 CONTROLLER and BETTY T. YEE in
23 her official capacity as California State
Controller,

24 Defendants.

No.

**COMPLAINT FOR DAMAGES,
DECLARATORY, AND INJUNCTIVE
RELIEF**

1. Violation of Title VII of the Civil Rights Act of 1964 (42 U.S.C. Sec. 2000e, *et seq.*)
2. Violation of the California Fair Employment and Housing Act (Cal. Gov't Code Sec. 12940, *et seq.*)
3. Violation of the First Amendment to the U.S. Constitution
4. Violation of Article I of the California Constitution

DEMAND FOR JURY TRIAL

1 Plaintiff Brianna Bolden-Hardge alleges as follows:

2 **INTRODUCTION**

3 1. This case involves a paradigmatic violation of legal protections for religious freedom and
4 accommodation in the public workplace. Specifically, a state-employer defendant rescinded a job
5 offer it made to the plaintiff simply because, in accordance with her religious beliefs as a Jehovah's
6 Witness, the plaintiff asked to condition her signing of a loyalty oath on an accommodation that
7 would allow her to indicate in such signing that her first duty is to God. And all this despite the fact
8 other public employers for which the plaintiff has worked—before and since—have hired her
9 without insisting on exclusive loyalty to the state. Because the defendant's intransigence violates
10 the First Amendment and a host of other federal and state laws, this action follows.

11 2. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, and the California Fair
12 Employment and Housing Act (FEHA), Cal. Gov't Code § 12940, broadly forbid employers from
13 refusing job opportunities because of an applicant's religious beliefs. What's more, in the face of a
14 conflict between those beliefs and a job requirement, those laws also require the employer to
15 accommodate the would-be employee's beliefs absent proof of undue hardship.

16 3. When the employer is a government entity, the Free Exercise Clause of the First
17 Amendment to the United States Constitution and Article I, Section 4 of the California Constitution
18 further forbid a public employer from substantially burdening a job applicant's religious exercise
19 absent a constitutionally valid defense. And the Free Speech Clauses of both the federal and state
20 constitutions similarly condemn compelled speech in violation of one's faith.

21 4. These broad protections notwithstanding, after Plaintiff Brianna Bolden-Hardge accepted
22 an offer to work for the California State Controller's Office (or SCO) in its payroll department, the
23 SCO insisted she swear a loyalty oath that violated her beliefs as a Jehovah's Witness that her first
24 duty is to God and, accordingly, she could never take up arms for the state—despite her expressed
25 willingness to sign the oath with a mere notation that her signing was subject to these beliefs.

26 5. Rather than accommodate Bolden-Hardge's sincerely held religious beliefs—which are
27 shared by millions around the globe and well known in the law through the landmark pledge-of-
28

1 allegiance ruling in *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943),
2 among other cases—the SCO rescinded her job offer and reposted the position.

3 6. Moreover, and strikingly, the SCO’s rescission of Bolden-Hardge’s job offer contrasted
4 with the lack of any such absolute insistence on this same loyalty oath by other state agencies in
5 California—including those Bolden-Hardge has in fact worked for.

6 7. The SCO’s refusal to accommodate Bolden-Hardge likewise contradicts then-Governor
7 Schwarzenegger’s assurance in vetoing an express religious exemption to state loyalty-oath
8 requirements for the stated reason that such an express exemption was “unnecessary” because
9 “[e]xisting law already requires public employers, including the State of California, to
10 accommodate an employee whose sincerely held religious beliefs conflict with an employment
11 requirement.” Veto Statement, S.B. 115, Cal. Leg., 2009-2010 Reg. Sess. (Cal. 2009).

12 8. For these reasons and others detailed below, Bolden-Hardge seeks a declaratory
13 judgment, equitable relief, and damages to vindicate her constitutional and statutory rights.

14 **PARTIES**

15 9. Plaintiff Brianna Bolden-Hardge is and at all relevant times has been a resident of
16 Sacramento County in the State of California.

17 10. Defendant California State Controller’s Office is and at all relevant times has been an
18 agency of the State of California.

19 11. Defendant Betty T. Yee, who is sued in her official capacity, is and since 2015 has been
20 the State Controller of California. In this role, Yee resides in Sacramento and is responsible for all
21 operations, policies, and procedures of the State Controller’s Office. All allegations against the
22 SCO herein therefore also apply to Yee to the extent provided by law—and vice-versa.

23 **JURISDICTION AND VENUE**

24 12. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 (federal-question
25 jurisdiction) and 1367 (supplemental jurisdiction over state-law claims), as well as 42 U.S.C.
26 § 1983 (jurisdiction over claims challenging the deprivation of federal constitutional rights).

27 13. Venue is proper in this district under 28 U.S.C. § 1391(b) because the State Controller’s
28 Office is a state government entity that maintains a principal place of business in this district

1 (Sacramento), all defendants reside in California, and a substantial part of the events giving rise to
2 this action took place here. The decision to refuse to hire Bolden-Hardge occurred in Sacramento
3 County, California, and the records relevant to that decision are maintained and administered there.

4 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

5 14. All conditions precedent to filing claims under Title VII and FEHA have been performed
6 or have occurred. In particular, Bolden-Hardge filed a timely charge of discrimination with the U.S.
7 Equal Employment Opportunity Commission (EEOC) on January 23, 2018; the California
8 Department of Fair Employment and Housing issued a right-to-sue notice on April 9, 2018; and the
9 EEOC issued a right-to-sue notice on July 21, 2020.

10 15. This case is brought within 90 days of receipt of the EEOC notice on July 24, 2020 (by
11 counsel) and July 25, 2020 (by Bolden-Hardge).

12 16. Plaintiff has fully exhausted her administrative remedies and is entitled to file in the
13 district court. This Complaint is filed within the appropriate time.

14 **STATEMENT OF FACTS**

15 17. Brianna Bolden-Hardge, 31, is a life-long Californian and working mother of two.

16 18. Bolden-Hardge is also a devout Jehovah's Witness—a religion with adherents across the
17 globe, including an estimated 1.3 million in the United States.

18 19. Consistent with the religious beliefs of other Jehovah's Witnesses, Bolden-Hardge has
19 come to sincerely believe that her faith forbids her from (1) swearing primary allegiance to any
20 human government and, correspondingly, (2) swearing to engage in political or military activity—
21 including taking up of arms.

22 20. Rather, Bolden-Hardge's sincerely held religious beliefs mandate that her allegiance is
23 first and foremost to the Kingdom of God—which she believes to be a government in heaven—and
24 that she cannot engage in any sort of violence in support of a human government.

25 21. In January 2016, Bolden-Hardge started working for the California Franchise Tax Board
26 (FTB) as a Staff Services Analyst. When she was presented with a loyalty oath at the time of her
27 hiring in that job, Bolden-Hardge declined to sign the oath in accordance with her faith. Even so,
28 the FTB allowed her to continue in the position for another 18 months without objection.

1 22. In 2017, Bolden-Hardge applied for a position with the California State Controller’s
2 Office as an Associate Governmental Program Analyst. She understood that this position would
3 primarily involve training and assisting with the agency’s payroll. None of the position’s job duties
4 require taking up arms, nor does the job present any particular security risk.

5 23. Among other things, the job posting for the SCO analyst position promised: “The State
6 of California is an equal opportunity employer to all, regardless of . . . religious creed”

7 24. Bolden-Hardge met all qualifications for the SCO job, as affirmed by the SCO’s review
8 of her education and experience, and her high score on the “Supplemental Application Exam.”

9 25. Based on Bolden-Hardge’s exam scores, education, and work history, the SCO
10 determined she was qualified for the analyst position and offered her it in late July 2017.

11 26. Bolden-Hardge accepted the job offer. After fulfilling all job qualifications and passing
12 required criminal-record and background checks, Bolden-Hardge was confirmed to have passed all
13 pre-employment requirements. She was told her first workday would be August 7, 2017.

14 27. Before her start date, however, the SCO asked Bolden-Hardge to sign an oath as part of
15 the onboarding process. The oath stated: “I, _____, do solemnly swear (or affirm) that I will
16 support and defend the Constitution of the United States and the Constitution of the State of
17 California against all enemies, foreign and domestic; that I will bear true faith and allegiance to the
18 Constitution of the United States and the Constitution of the State of California; that I take this
19 obligation freely, without any mental reservation or purpose of evasion; and that I will well and
20 faithfully discharge the duties upon which I am about to enter.”

21 28. Based on religious teachings, Bolden-Hardge sincerely believes that the language in the
22 prescribed oath—including swearing faith and allegiance to the state and swearing to “defend . . .
23 against all enemies, foreign and domestic”—would require her to put her allegiance to the
24 government over her allegiance to God and likewise commit her to take up arms in defense of the
25 state, all in violation of her sincerely held religious beliefs.

26 29. Indeed, signing the oath would compel Bolden-Hardge to affirmatively state and affirm
27 something contrary to her faith.
28

1 30. To avoid violating her faith or speaking contrary to that faith, therefore, Bolden-Hardge
2 submitted a written request for a religious accommodation on August 1, 2017.

3 31. Specifically, Bolden-Hardge agreed to sign the oath but with an accompanying indication
4 that her allegiance was first and foremost to God and that she would not take up arms.

5 32. Bolden-Hardge offered a proposed addendum as follows: “I, Brianna Bolden-Hardge,
6 vow to uphold the Constitutions of the United States and of the State of California while working
7 in my role as an employee of the State Controller's Office. I will be honest and fair in my dealings
8 and neither dishonor the Office by word nor deed. By signing this oath, I understand that I shall not
9 be required to bear arms, engage in violence, nor to participate in political or military affairs.
10 Additionally, I understand that I am not giving up my right to freely exercise my religion, nor am I
11 denouncing my religion by accepting this position.”

12 33. Following Bolden-Hardge’s accommodation request, the SCO pushed her start date back
13 a week, claiming it needed time for its human-resources and legal departments to review the matter.

14 34. A few days later, the SCO rescinded Bolden-Hardge’s job offer on the stated ground that
15 the oath requirement could not be modified and her proposed addendum would constitute a
16 modification.

17 35. In addition to her written request on August 1, Bolden-Hardge also pursued her request
18 for accommodation in phone calls and emails with SCO employees and officials.

19 36. The SCO failed to explore any available alternative means of accommodating Bolden-
20 Hardge, insisting instead on the loyalty oath without exception, notation, or addendum.

21 37. By extending the job offer to Bolden-Hardge, the SCO had deemed her qualified. It
22 rescinded her job offer only after—and because—she asked for a religious accommodation.

23 38. In so doing, the SCO willfully and intentionally denied her employment and refused to
24 consider or accommodate Bolden-Hardge’s religious convictions.

25 39. Bolden-Hardge detrimentally relied on the SCO’s offer. Among other things, she
26 announced her impending departure to her then-employer, beginning the severance process. She
27 also discontinued her weeks-long job search.
28

1 40. As a result of the SCO's rescission of her job offer, Bolden-Hardge returned to her job at
2 the Franchise Tax Board for six more months at compensation inferior to the SCO position, while
3 she actively sought out a new job that offered compensation comparable to the SCO's offer.

4 41. When Bolden-Hardge returned to the FTB, she was asked to sign the loyalty oath she had
5 declined to sign when she had started working there as a Staff Services Analyst in January 2016.
6 But unlike the SCO, the FTB then promptly granted Bolden-Hardge's request for religious
7 accommodation and allowed her to sign the oath with an attached addendum stating her allegiance
8 was first and foremost to God and that she would not take up arms.

9 42. After her prolonged underemployment at the FTB, Bolden-Hardge ultimately secured an
10 Associate Governmental Program Analyst position—albeit this time for the California Department
11 of Corrections and Rehabilitation (CDCR).

12 43. Bolden-Hardge has since transferred to the California Department of Housing and
13 Community Development (HCD). Among other responsibilities, this employment has included
14 helping our state address the COVID-19 pandemic by assisting with contact tracing and education
15 efforts for those who contract the virus.

16 44. The CDCR and HCD hired Bolden-Hardge without insisting she sign a loyalty oath.

17 45. On information and belief, other state agencies in California have granted
18 accommodations to employees who object to signing the loyalty oath.

19 46. The SCO is and at all relevant times has been responsible for hiring its own employees.

20 47. The SCO employs more than 1,500 people, and at no time relevant to this Complaint did
21 it ever employ fewer than 15 persons.

22 48. The SCO's budget for fiscal year 2017-2018 exceeded \$200 million.

23 **FIRST CLAIM FOR RELIEF**

24 **Violation of Title VII of the Civil Rights Act of 1964**
25 **Disparate Treatment/Failure to Accommodate on the Basis of Religion**
26 **(42 U.S.C. § 2000e, *et seq.*)**
27 **Against The SCO**

28 49. Bolden-Hardge realleges and incorporates by reference all the above paragraphs of this
Complaint.

1 50. Title VII forbids an employer from refusing a job to someone because of her need for
2 religious accommodation, absent proof that granting the accommodation would cause it undue
3 hardship. 42 U.S.C. §§ 2000e(j), 2000e-2(a)(1); *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 575
4 U.S. 768, 774 (2015).

5 51. This extension of actionable religious discrimination to include a failure to accommodate
6 derives from Title VII’s definition of “religion” to include “all aspects of religious observance and
7 practice, as well as belief, unless an employer demonstrates that he is unable to reasonably
8 accommodate to an employee’s or prospective employee’s religious observance or practice without
9 undue hardship on the conduct of the employer’s business.” 42 U.S.C. § 2000e(j).

10 52. A plaintiff can therefore make out a prima facie case under Title VII by showing (1) she
11 held a bona fide religious belief, the practice of which conflicted with an employment duty; (2) the
12 employer took adverse action—including the refusal to hire—because of the plaintiff’s inability to
13 fulfill the job requirement; and (3) the plaintiff’s religious practice was a motivating factor in the
14 employer’s decision. Chin et al., *Cal. Prac. Guide: Employment Litigation* (The Rutter Group 2019)
15 ¶ 7:620; see also *Abercrombie & Fitch*, 575 U.S. at 775.

16 53. More specifically, courts and the EEOC have insisted that federal law can require
17 employers to accommodate sincere religious objections to a loyalty oath—even when that oath
18 might otherwise be required by state law. *See, e.g., Lawson v. Washington*, 296 F.3d 799, 802-04
19 (9th Cir. 2002) (recognizing as actionable under Title VII a statutorily prescribed oath that would
20 violate an employee’s obligation as a Jehovah’s Witness to “only swear allegiance to his faith and
21 to God”); *Bessard v. Cal. Cmty. Colls.*, 867 F. Supp. 1454, 1462 (E.D. Cal. 1994) (finding a public-
22 employer oath gave rise to a claim under the Religious Freedom Restoration Act, because its
23 language “to ‘bear true faith and allegiance’ to the state and federal constitutions contravene[d]
24 plaintiffs’ sincerely held belief that they must bear faith and allegiance to God alone”); *see also*
25 EEOC Decision No. 85-13, 38 Fair Empl. Prac. Cas. (BNA) 1884 (1985) (concluding that a public
26 employer’s refusal to accommodate an employee’s request to sign an alternate oath for religious
27 reasons violated Title VII).

1 54. Here, Bolden-Hardge had a sincerely held religious belief in primary loyalty to God and
2 refusing to take up arms, and the practice of that belief conflicted with the SCO's stated requirement
3 of signing the loyalty oath. Bolden-Hardge informed the SCO of this conflict and expressly sought
4 an accommodation.

5 55. In response to Bolden-Hardge's request for an accommodation, the SCO took an adverse
6 action against Bolden-Hardge by rescinding her offer of employment and declining to hire her
7 because of her religious need for an accommodation. *See* 42 U.S.C. § 2000e-2(a)(1) (actionable
8 adverse actions include "fail[ing] or refus[ing] to hire," "discharg[ing]," or otherwise
9 discriminating with respect to the "terms" and "conditions" of employment).

10 56. Furthermore, "[w]hen an employer does not propose an accommodation, . . . the employer
11 must accept the employee's proposal or demonstrate that the proposal would cause the employer
12 undue hardship." *E.E.O.C. v. Townley Eng'g & Mfg. Co.*, 859 F.2d 610, 615 (9th Cir. 1988); *see*
13 *also Opuku-Boateng v. California*, 95 F.3d 1461, 1467 (9th Cir. 1996) ("Only if the employer can
14 show that no accommodation would be possible without undue hardship is it excused from taking
15 the necessary steps to accommodate the employee's religious beliefs.").

16 57. But the SCO made no efforts at all to accommodate Bolden-Hardge's sincerely held
17 religious objection to the loyalty oath—either through her proposed addendum or otherwise—and
18 then rescinded her job offer because of that conflict. Its failure to produce any alternative therefore
19 requires it to have accepted Bolden-Hardge's proposal absent undue hardship.

20 58. Although the SCO has yet to invoke any hardship defense and did not do so at the time it
21 reneged on its job offer to Bolden-Hardge, accommodating Bolden-Hardge would not have
22 imposed an undue hardship on the SCO. Other state agencies have not insisted on the stated oath
23 or its language without allowing accommodations for objectors.

24 59. As a result of the SCO's violations of Title VII, Bolden-Hardge suffered lost income and
25 other economic and non-economic damages.

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SECOND CLAIM FOR RELIEF

**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 The SCO**

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5 60. Bolden-Hardge realleges and incorporates by reference all the above paragraphs of this
6 Complaint.

7 61. The SCO's insistence on the loyalty-oath requirement without any accommodation
8 deprives and tends to deprive Bolden-Hardge and other similarly situated individuals of
9 employment opportunities on the basis of religion in violation of Title VII's disparate-impact
10 prohibition. 42 U.S.C. §§ 2000e-2(a)(2) & (k).

11 62. Title VII makes it illegal for an employer to "limit, segregate, or classify his employees
12 or applicants . . . in any way which would deprive or tend to deprive any individual of employment
13 opportunities . . . because of such individual's . . . religion." 42 U.S.C. § 2000e-2(a)(2).

14 63. Furthermore, the statute provides that an unlawful employment practice based on
15 disparate impact is established when either an employee shows that an employment policy causes
16 such a disparate impact and the employer fails to show "that the challenged practice is job related
17 . . . and consistent with business necessity," or the employee shows there is an alternative way to
18 serve the stated needs but the employer refuses it. 42 U.S.C. § 2000e-2(k)(1)(A).

19 64. Even if facially neutral, the SCO's categorical requirement that all employees sign the
20 oath without exception, notation, or addendum causes a disparate impact on Bolden-Hardge (and
21 any similarly situated religious individual who shares her religious beliefs) by forcing her to
22 abandon her religious objections or forgo employment with the state.

23 65. Furthermore, the SCO's categorical position on the oath is neither required for the SCO
24 job in question (a governmental analyst position focusing on payroll) nor consistent with business
25 necessity. Moreover, the SCO refused the less-restrictive but feasible option of allowing Bolden-
26 Hardge to sign the oath with an addendum preserving her religious conscience; indeed, at least one
27 other California state agency has granted that precise accommodation.
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1 66. As a direct and proximate result of this additional unlawful action by the SCO under Title
2 VII, Bolden-Hardge suffered lost income and other economic and non-economic damages.

3 **THIRD CLAIM FOR RELIEF**

4 **Violation of the California Fair Employment and Housing Act**
5 **Failure to Accommodate Religious Creed**
6 **(California Government Code § 12940(l)(1))**
7 **Against The SCO**

8 67. Bolden-Hardge realleges and incorporates by reference all the above paragraphs of this
9 Complaint.

10 68. California’s Fair Employment and Housing Act (FEHA) forbids an employer from
11 refusing to hire someone “because of a conflict between the person’s religious belief or observance
12 and any employment requirement, unless the employer or other entity covered by this part
13 demonstrates that it has explored any available reasonable alternative means of accommodating the
14 religious belief or observance . . . but is unable to reasonably accommodate the religious belief or
15 observance without undue hardship.” Cal. Gov’t Code § 12940(l)(1).

16 69. A plaintiff job applicant can therefore make out a prima facie case under FEHA by
17 showing that (1) she applied to work for the defendant employer; (2) she had a sincerely held
18 religious belief or practice that conflicted with a stated job requirement; (3) the employer was aware
19 of this conflict; and (4) the employer either did not explore any available reasonable alternatives
20 for accommodating the plaintiff or refused to employ the plaintiff in order to avoid any such
21 accommodation. Judicial Council of California Advisory Committee on Jury Instructions, CACI
22 No. 2560; *see also* Cal. Gov’t Code, § 12940(l)(1).

23 70. Bolden-Hardge applied for and was offered a position with the SCO. She informed the
24 SCO that she had a sincerely held religious belief against the SCO’s stated job requirement that she
25 sign a loyalty oath. In response, the SCO failed to explore or adopt available reasonable
26 alternatives—including having her sign the oath with the addendum she proposed—and instead
27 rescinded Bolden-Hardge’s job offer to avoid having to accommodate her religious observance.

28 71. As in the analogous Title VII context, “[w]hen an employer does not propose an
accommodation,” FEHA requires that “the employer must accept the employee’s proposal or

1 demonstrate that the proposal would cause the employer undue hardship.” *Townley*, 859 F.2d at
2 615; *see also Cook v. Lindsay Olive Growers*, 911 F.2d 233, 241 (9th Cir. 1990) (observing that
3 courts rely on Title VII precedents to interpret analogous provisions of FEHA).

4 72. Finally, Bolden-Hardge’s requested accommodation would not have imposed an undue
5 hardship on the SCO. Once again, other state agencies have refused to insist on the oath or its
6 language without addendum or other accommodation. And because Bolden-Hardge’s proposed
7 addendum was the only one presented that would eliminate the conflict, the SCO was, at a
8 minimum, obligated to adopt it.

9 73. As a result of the SCO’s violation of FEHA in failing to explore a reasonable alternative
10 accommodation, failing to grant Bolden-Hardge’s requested accommodation, and rescinding her
11 job offer, Bolden-Hardge suffered lost income and other economic and non-economic damages.

12 **FOURTH CLAIM FOR RELIEF**

13 **Violation of the First Amendment to the U.S. Constitution**
14 **(via 42 U.S.C. § 1983)**
15 **Against All Defendants**

16 74. Bolden-Hardge realleges and incorporates by reference all the above paragraphs of this
17 Complaint.

18 75. The First Amendment forbids the government from “prohibiting the free exercise” of
19 religion. U.S. Const. amend. I. Violations of the First Amendment are actionable against the
20 government or any person acting “under color of state law” under 42 U.S.C. § 1983. *Campbell v.*
Wash. Dep’t of Soc. & Health Servs., 671 F.3d 837, 842 & n.5 (9th Cir. 2011).

21 76. In *Sherbert v. Verner*, 374 U.S. 398 (1963), the Supreme Court held that, absent a
22 compelling interest pursued in a way least restrictive to religious exercise, a state may not force a
23 person to violate their sincerely held religious beliefs in order to secure employment.

24 77. To create this ultimatum, *Sherbert* observed, would force the affected party “to choose
25 between following the precepts of her religion and forfeiting benefits, on the one hand, and
26 abandoning one of the precepts of her religion in order to accept work, on the other hand.
27 Governmental imposition of such a choice puts the same kind of burden upon the free exercise of
28 religion as would a fine imposed against [the plaintiff] for her Saturday worship.” *Id.* at 404.

1 78. The SCO’s ultimatum for Bolden-Hardge—to obtain employment only by violating her
2 religious beliefs—violates *Sherbert* because it forces her into this impermissible choice.

3 79. Furthermore, the SCO violated Bolden-Hardge’s First Amendment rights for the
4 additional reason that, by insisting on the oath requirement, it infringed upon her combined rights
5 of free exercise of religion and free speech. As the Supreme Court has explained, even where there
6 is a “neutral, generally applicable law,” the First Amendment can nonetheless be violated where
7 that law infringes on both “religiously motivated action” and the “freedom of speech.” *Emp. Div.,
8 Dep’t of Hum. Res. v. Smith*, 494 U.S. 872, 881 (1990).

9 80. Forcing Bolden-Hardge to affirm a loyalty oath is compelled speech, infringing on both
10 her religious and speech rights. “[T]he First Amendment guarantees ‘freedom of speech,’ a term
11 necessarily comprising the decision of both what to say and what *not* to say.” *Riley v. Nat’l Fed’n
12 of the Blind of N.C., Inc.*, 487 U.S. 781, 796-97 (1988); *see also Wooley v. Maynard*, 430 U.S. 705,
13 714 (1977) (“The right to speak and the right to refrain from speaking are complementary
14 components of the broader concept of ‘individual freedom of mind.’”).

15 81. These protections have extended to preclude forced speech around patriotism and loyalty.
16 *See Barnette*, 319 U.S. at 642. And First Amendment protections likewise apply in the public-
17 employment realm. *See Janus v. Am. Fed’n of State, Cnty., and Mun. Emps., Council 31*, 138 S. Ct.
18 2448, 2463 (2018) (“Compelling individuals to mouth support for views they find objectionable
19 violates that cardinal constitutional command, and in most contexts, any such effort would be
20 universally condemned.”).

21 82. These protections apply with equal force to Bolden-Hardge. Namely, the SCO’s oath
22 requirement forces Bolden-Hardge to affirmatively declare, absent her proposed addendum or other
23 accommodation, that she owes primary and arms-bearing allegiance to the state in a manner
24 contrary to her deeply held religious beliefs.

25 83. Finally, and as this court has held, the SCO’s refusal to provide Bolden-Hardge a religious
26 accommodation to its oath requirement—even if the oath is otherwise established by state law—
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1 cannot be justified by a compelling state interest when applied to her, much less one that could not
2 be served by a means less restrictive of religious exercise. *Bessard*, 867 F. Supp. at 1464-45.

3 84. As a result of Defendants' violations of the First Amendment, Bolden-Hardge suffered
4 lost income and other economic and non-economic damages.

5 **FIFTH CLAIM FOR RELIEF**

6 **Violation of the California Constitution**
7 **(California Constitution art. I, § 4)**
8 **Against All Defendants**

9 85. California Constitution Article I, Section 4 states in part: "Free exercise and enjoyment
10 of religion without discrimination or preference are guaranteed."

11 86. California courts have understood this provision to mean "any attempt at compulsion by
12 the civil power to be an infringement on liberty of thought, as well as on liberty of action." *Gordon*
13 *v. Bd. of Ed.*, 178 P.2d 488, 493 (Cal. Ct. App. 1947). This general principle applies to religious
14 freedom, on the grounds that "[r]eligious persecution, even in its milder forms, such as
15 disqualifying the members of a particular sect for public office, is . . . inconsistent with the
16 conception of individual freedom . . . which modern thought has embraced." *Id.* at 493.

17 87. In free-exercise cases under the state constitution, the California Supreme Court has
18 adopted the test articulated in *Sherbert*, 374 U.S. 398. See *Vernon v. City of Los Angeles*, 27 F.3d
19 1385, 1392 (9th Cir. 1994); *People v. Woody*, 394 P.2d 813, 815-16 (Cal. 1964).

20 88. According to the California Supreme Court, the *Sherbert* analysis "calls for a
21 determination of, first, whether the application of the statute imposes any burden upon the free
22 exercise of the [affected party's] religion, and second, if it does, whether some compelling state
23 interest justifies the infringement." *Woody*, 394 P.2d at 816. State action that passes this test "must
24 also meet the further requirements that (1) no action imposing a lesser burden on religion would
25 satisfy the government's interest and (2) the action does not discriminate between religions, or
26 between religion and nonreligion." *Vernon*, 27 F.3d at 1392-93, quoting *Molko v. Holy Spirit Ass'n*,
27 762 P.2d 46, 57 (Cal. 1988).

28 89. The SCO's rescission of Bolden-Hardge's job offer caused a burden on the free exercise
of her religion without a compelling interest. See *Bessard*, 867 F. Supp. at 1464-45. Furthermore,

1 the SCO's action was not the least restrictive course of action. Among other possibilities, the SCO
2 could have accepted Bolden-Hardge's offer to sign the oath with the proposed addendum. And the
3 SCO's action also discriminates between religions, namely religions—like Jehovah's Witnesses—
4 that oppose oath swearing or the taking up of arms and those that do not.

5 90. The California Constitution has long been held to authorize a private right of action for
6 declaratory or injunctive relief for violation of its terms. *See Katzberg v. Regents of U. of Cal.*, 58
7 P.3d 339, 343 (Cal. 2002).

8 91. Bolden-Hardge was disqualified by Defendants for public employment because of her
9 religious beliefs, in violation of the California Constitution.

10 92. As a result of Defendants' violations of the California Constitution, Bolden-Hardge
11 suffered the loss of employment opportunities and infringement on her religious freedom.

12 93. Declaratory and injunctive relief is needed for this claim to effectuate the "[f]ree exercise
13 and enjoyment of religion" guaranteed to Bolden-Hardge by that Constitution. To do otherwise
14 would marginalize these fundamental constitutional protections and provide no course of action to
15 a former job applicant whose rights have been violated.

16 94. Although Bolden-Hardge seeks all available monetary relief and compensatory damages
17 for each of her other claims in this Complaint, she does not seek monetary relief or compensatory
18 damages for this Fifth Claim for Relief under Article I, Section 4 of the California Constitution.

19 **INJUNCTIVE RELIEF**

20 95. Plaintiff incorporates by reference each and every allegation contained in the preceding
21 paragraphs as though fully stated here.

22 96. Plaintiff seeks injunctive relief.

23 97. No previous application for injunctive relief sought herein has been made to this Court.

24 98. If this Court does not grant the injunctive relief sought herein, Plaintiff will be irreparably
25 harmed.

26 99. No plain, adequate, or complete remedy at law is available to Plaintiff to redress the
27 wrongs addressed herein.

28

DECLARATORY RELIEF

100. Plaintiff incorporates by reference each and every allegation contained in the preceding paragraphs as though fully stated here.

101. An actual controversy has arisen and now exists relating to the rights and duties of the parties in that Plaintiff contends Defendants violated her rights not to be subjected to discrimination and a violation of her rights pursuant to the U.S. Constitution and California Constitution.

102. Defendants have denied these allegations.

103. Declaratory relief is therefore necessary and appropriate.

104. Plaintiff seeks a judicial declaration of the rights and duties of the respective parties.

REQUEST FOR RELIEF

WHEREFORE, Bolden-Hardge incorporates by reference each and every allegation contained in the preceding paragraphs as though fully stated here, and prays that the Court grant the following relief:

(a) Issue a declaratory judgment that the practices complained of in this Complaint are unlawful and violate the U.S. Constitution, the California Constitution, Title VII of the Civil Rights Act, and California's Fair Employment and Housing Act;

(b) Enjoin the SCO from pursuing its policy of making no religious accommodations to its oath requirement for its employees;

(c) Require the SCO to adopt hiring and employment policies that comply with Title VII and FEHA, including their requirement that employers make reasonable accommodations to religious beliefs and practices in general and faith-based objections to loyalty oaths in particular and any other appropriate and legally permissible injunctive relief in accordance with proof;

(d) Award Bolden-Hardge all appropriate and legally available monetary relief, including lost compensation and benefits, in an amount to be determined at trial to make her whole for the loss she suffered as a result of the unlawful conduct alleged in this Complaint;

(e) Award Bolden-Hardge any interest at the legal rate on such damages as appropriate, including pre- and post-judgment interest;

1 (f) Award compensatory damages to Bolden-Hardge to fully compensate her for the pain,
2 suffering, childcare, and other expenses caused by the harmful conduct alleged in this Complaint;

3 (g) Award Bolden-Hardge a reasonable amount of attorney's fees for the work of her
4 attorneys in pursuit of this action and the protection of her rights;

5 (h) Award Bolden-Hardge all costs, disbursements, and expenses she paid or that were
6 incurred on her behalf;

7 (i) Award such additional relief the Court deems just and proper; and

8 (j) Award any other relief as allowed by law.

9 **DEMAND FOR JURY TRIAL**

10 Bolden-Hardge hereby demands a trial by jury of all issues and each and every cause of
11 action so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure and the Civil Rights
12 Act of 1991, 42 U.S.C. § 1981a, and California's Fair Employment and Housing Act.¹

13 Dated: October 19, 2020

14
15 Respectfully submitted,

16 
17 _____

18 James A. Sonne
19 Harvard Law School Religious Freedom Clinic

20 Zeba A. Huq
21 Stanford Law School Religious Liberty Clinic

22 Wendy Musell
23 The Law Offices of Wendy Musell

24 Attorneys for Plaintiff Brianna Bolden-Hardge
25
26

27 _____
28 ¹ Ms. Bolden-Hardge thanks Madg Lhroob and Jason Muehlhoff for their work in preparing this
Complaint as student attorneys for the Harvard Law School Religious Freedom Clinic.