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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KAREN FISS,  
  
Plaintiff,  
  
v.  
  
CALIFORNIA COLLEGE OF THE ARTS,  
  
Defendant.

Case No.: 4:24-cv-3415-HSG

**PLAINTIFF'S MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
OPPOSITION TO DEFENDANT'S  
MOTION TO DISMISS**

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1 Plaintiff Karen Fiss files this Memorandum in opposition to the Motion of Defendant California  
 2 College of the Arts (“CCA”) to Dismiss this case. The motion should be denied because it both  
 3 misstates the governing law and simply ignores many paragraphs of the Complaint which clearly allege  
 4 the facts which CCA tells this Court are missing from Plaintiff’s pleading.

### 5 THE FACTS AT ISSUE IN THIS CASE

6 Plaintiff Karen Fiss is an art historian, with her doctorate from Yale University and an extensive  
 7 list of publications and professional accomplishments. Amended Complaint (“AC”) ¶¶26-29. She is  
 8 tenured member of the faculty at CCA. AC ¶26. Professor Fiss is a Jew, and the Amended Complaint  
 9 alleges, as fact, that her religious beliefs include a commitment, which Professor Fiss shares with a great  
 10 many other Jews around the world, to the existence of Israel as a Jewish state. ¶30. The Amended  
 11 Complaint further alleges, as a fact, that this commitment forms the basis for Professor Fiss’s ethnic  
 12 identity as a Jew and is an inherited part of her national ancestry. ¶¶19, 31. The Amended Complaint  
 13 alleges that this commitment is recognized by the United States Department of Education, Office of  
 14 Civil Rights, as elements of Jewish ethnic identity and national ancestry. ¶¶21-24, 127-130.

15 The Amended Complaint now before this Court describes in detail both an environment  
 16 completely, and intentionally, hostile to Plaintiff’s religious commitments, national ancestry and ethnic  
 17 identity, and discrete adverse employment actions taken by the CCA administration to punish the  
 18 Plaintiff because she has given voice to that commitment.

19 The environment at CCA described by the Amended Complaint and at issue in this case is  
 20 defined by categorical refusal to allow even public expression of Plaintiff’s beliefs. *See, e.g.*, ¶¶33, 35,  
 21 44-45, 49, 52. Instead, CCA’s official orthodoxy is reflected in a public statement, joined in by  
 22 numerous CCA departments, applauding the rape and murder of 1200 Israelis on October 7, 2023.  
 23 Issued a few days after those atrocities were committed, this public statement announced that  
 24  
 25  
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1 “Decolonization is not a dinner party,” and explained that the abominable acts committed on that day  
2 were necessary to end the existence of the Jewish State of Israel. ¶60-62.

3 Plaintiff filed a complaint within CCA shortly after this public statement was released and  
4 adopted by the CCA departments and faculty. ¶65. CCA delayed responding for weeks, but ultimately  
5 rejected Plaintiff’s complaint. ¶66. Subsequently, a prominent donor to CCA demanded that the  
6 statement be taken down, and because of this demand, it was. ¶¶67-68. But even after that occurred,  
7 CCA concluded that the statement was an entirely innocent exercise of academic freedom. ¶69.

8 The Dinner Party statement was just one of numerous statements, posters, and events at CCA  
9 attacking Plaintiff’s beliefs. Plaintiff’s commitment to Israel was attacked at a faculty meeting with  
10 obscene language that would never be tolerated if it were used in speaking about any other group,  
11 religious belief or nationality. Indeed, the environment at CCA is so toxic, and so relentlessly hostile to  
12 Jewish beliefs, commitments and Jewish identity, that numerous other people have also been injured by  
13 it. The dictionary defines an “environment” as “the circumstances, objects, or conditions by which one  
14 is surrounded: the factors and influences that affect the growth, health, progress, functioning, etc., of  
15 someone or something.” <https://www.merriam-webster.com/dictionary/environment>. The facts  
16 describing the environment at CCA show that no matter where one turns, hostility to Plaintiff’s beliefs  
17 and identity is everywhere. She, and those who share her identity and commitments are indeed  
18 “surround[ed]” by such enmity.

19 The adverse employment actions include finding Plaintiff guilty of harassing a student because  
20 Professor Fiss spoke to the student—who is from Kuwait—and informed the student of facts about  
21 Kuwait, and its treatment of Palestinians, which the student frankly said she did not want to hear. *See*  
22 *generally*, ¶¶78-106. The student had demanded that Fiss write to her congressman to demand an  
23 immediate cease-fire in Gaza—that is, to demand that Israel cease immediately to defend itself from  
24 Hamas, which committed the atrocities of October 7. ¶80. It was in response to this demand that

1 Professor Fiss entered into the conversation with the student that resulted in the discussion about  
 2 Kuwait, which ended when the student said she had no interest in learning anything she didn't already  
 3 know about the region: "I like [my] echo chamber." AC ¶88.

4 The student responded to this conversation by filing a complaint against Professor Fiss, claiming  
 5 harassment. In contrast to CCA's announcement that academic freedom protected those who publicly  
 6 call for the murder of Jews in Israel, CCA determined that Plaintiff's conversation with this student – in  
 7 which Fiss did not raise her voice or use foul language or demand anything of the student in any way—  
 8 was a violation of the student's rights. Fiss was reprimanded. Her personnel file was altered to include  
 9 the warning that if she repeated this conduct, she could be further disciplined or fired. She was required  
 10 to submit to "training" on harassment and discrimination.

11 The Amended Complaint alleges in detail the impact on the Plaintiff of this hostile environment  
 12 in which she works and of the punitive discipline imposed upon her because she expressed views of  
 13 which CCA does not approve. Both the hostility of the environment and adverse employment action,  
 14 the Amended Complaint shows in detail, have adversely affected the terms of Plaintiff's employment  
 15 and have effectively driven her almost completely off the CCA campus. She comes when she has to  
 16 now, and leaves as soon as she can, because she knows that while she is there she is on enemy territory.  
 17 *See, e.g.,* ¶¶43, 52, 53, 134.

## 18 ARGUMENT

### 19 I. PLAINTIFF HAS ADEQUATELY ALLEGED DISCRIMINATORY TREATMENT IN 20 VIOLATION OF TITLE VII

21 CCA's attack on Plaintiff's Title VII claim completely ignores the Amended Complaint's  
 22 allegations that the Plaintiff was sanctioned, punished and threatened – and that she remains threatened –  
 23 with dismissal because she spoke to a Kuwaiti student and told the student things the young woman did  
 24 not know about her country and the Middle East. These punishments included required reeducation and  
 25 not know about her country and the Middle East. These punishments included required reeducation and  
 26

1 the threat that if the Professor Fiss engages in the same conduct “again, you will remain subject to  
2 further disciplinary action that could result in discharge for cause.”

3 Among those employment decisions that can constitute an adverse employment action are  
4 termination, dissemination of a negative employment reference, issuance of an undeserved negative  
5 performance review and refusal to consider for promotion. See O'Day v. McDonnell Douglas  
6 Helicopter Co., 79 F.3d 756, 763 (9th Cir. 1996) (termination); Hashimoto v. Dalton, 118 F.3d 671, 676  
7 (9th Cir. 1997) (negative reference); Yartsoff v. Thomas, 809 F.2d 1371, 1376 (9th Cir. 1987) (negative  
8 performance reviews); Ruggles v. California Polytechnic State Univ., 797 F.2d 782, 786 (9th Cir. 1986)  
9 (refusing to consider for promotion).  
10

11 Thus, the law is clear that the discipline imposed on Plaintiff is sufficient injury to form the basis  
12 of a Title VII claim:

13 in addition to the obvious impact having such a warning in Plaintiff's file might have on  
14 her future promotion prospects, the warning was a form of progressive discipline that had  
15 a material adverse effect on the terms and [\*19] conditions of Plaintiff's employment. See  
16 Van v. Black Angus Steakhouses, LLC, 2018 U.S. Dist. LEXIS 198102, 2018 WL 6069815,  
17 at \*7 (N.D. Cal. Nov. 20, 2018) (finding that there was a genuine dispute of fact regarding  
18 whether "formal warnings to Plaintiff that discipline or termination could result if she did  
19 not improve her performance"—which "could be construed as forms of progressive  
20 discipline"—constituted adverse employment action); Fonseca, 374 F.3d at 847 (reversing  
summary judgment for defendant in discrimination case on the basis that the "warning  
letter . . . constitute[d] an adverse employment action").

Gholson v. Beacon Health Options, Inc., U.S. Dist. LEXIS 69564 (C.D. Cal. Apr. 20, 2023)

21 Ignoring the relevant allegations of the Amended Complaint, CCA asserts that Plaintiff has failed  
22 to claim that similarly situated employees who are not Jews were treated more favorably. The But  
23 Plaintiff's claim alleges exactly that, both in those precise words and with numerous specific examples.  
24 Defendant's brief simply ignores numerous the allegations, starting with the clear statement in ¶151 that  
25 “Defendant treated Plaintiff differently from, and worse than, the way it treated others who do not share  
26 Plaintiff's ancestral, ethnic and religious commitments.”  
27  
28



1 The AC explains in detail that this disparity in treatment consisted of disciplining Plaintiff for  
 2 speaking to a Middle Eastern student about her country and telling her things she did not know (and did  
 3 not want to hear), ¶149a, while at the same time numerous professors used compulsory class time to  
 4 convey to students their own opinions about the war between Israel and her neighbors in which Israel's  
 5 conduct, and existence, were denounced as crimes against humanity. All of the latter conduct was  
 6 protected by CCA as the exercise of academic freedom. Thus, as the Amended Complaint alleges,  
 7 viewpoints aligned with the CCA-approved antisemitic orthodoxy—even full-throated glorification of  
 8 the horrific murders of Jews—are shielded under the pretext of academic freedom, [while] dissenting  
 9 perspectives are met with censorship and punishment. ¶46. Similarly, the obscene denunciation of  
 10 Plaintiff's beliefs at official CCA faculty meetings was not disciplined.

12 Many of the persons espousing the CCA approved view, who were treated more favorably than  
 13 Plaintiff, are identified by name in ¶61, along with a discussion of the more favorable treatment they  
 14 were accorded. This makes clear that CCA is simply wrong in arguing, Br. at 7, that "Plaintiff  
 15 [improperly] fails to plead that there are any similarly situated non-Jewish employees who were treated  
 16 more favorably than Plaintiff." Plaintiff has alleged exactly that, has named many people accorded the  
 17 more favorable treatment, and has described the more favorable treatment in extensive detail.

## 19 **II. PLAINTIFF HAS ADEQUATELY ALLEGED INJURY FROM A HOSTILE WORK** 20 **ENVIRONMENT**

21 CCA's attack on Plaintiff's hostile work environment claim fails for essentially the same reason:  
 22 CCA simply ignores the paragraphs of the Complaint that plead the things CCA tells this Court plaintiff  
 23 has not pled. Thus, CCA is wrong in arguing that:

24 Plaintiff has failed to plead that she was subjected to verbal conduct of a religious or ethnic  
 25 nature in any of these circumstances. The Instagram post does not address Judaism or  
 26 Zionism. Although it addresses Israel, Plaintiff does not plead that all Jews are Israeli or  
 27 that she is Israeli. It therefore cannot be concluded from the pleadings that the Instagram  
 28 post addressed Plaintiff's religion, ancestry, or national origin.

1 In advancing this argument Defendant ignores the Amended Complaint's allegations about the  
 2 behavior of academics who issued public statements praising Hamas's murder of 1200 Jews in Israel on  
 3 October 7, AC ¶¶60-62, as well the Plaintiff's allegations that numerous art professors used class time to  
 4 advance to students their own political opinions denouncing Israel and the entire idea of a Jewish state.  
 5 AC ¶¶15, 32, 50. The AC alleges that this behavior was not only not punished – all such acts were  
 6 officially declared to be protected exercises of academic freedom. AC ¶¶66, 111.

8 There is no quantitative formula to determine whether conduct was severe and pervasive.  
 9 Instead, a plaintiff must show that discrimination in her workplace was "sufficiently severe and  
 10 pervasive to alter the conditions of the victim's employment and create an abusive working  
 11 environment." [\*Harris v. Forklift Sys., Inc.\*, 510 U.S. 17, 20, 114 S. Ct. 367, 126 L. Ed. 2d 295 \(1993\)](#).  
 12 Severity and pervasiveness are “alternative possibilities: some harassment may be severe enough to  
 13 contaminate an environment even if not pervasive; other, less objectionable, conduct will contaminate  
 14 the workplace only if it is pervasive.” [\*Castleberry v. STI Grp.\*, 863 F.3d 259, 264 \(3d Cir. 2017\)](#). Often,  
 15 “the severity and pervasiveness evaluation is particularly unsuited [even] for summary judgement [sic]  
 16 because it is 'quintessentially a question of fact.'” *Id.* at 429 (quoting [\*O'Shea v. Yellow Tech. Servs.,\*](#)  
 17 [\*Inc.\*, 185 F.3d 1093, 1098 \(10th Cir. 1999\)](#)) (see also [\*Hayut v. State Univ. of New York\*, 352 F.3d 733,](#)  
 18 [\*745 \(2d Cir. 2003\)\*](#)) (“Generally speaking, this analysis is fact-specific and, therefore, as in this case, is  
 19 best left for trial.”)

21 Ignoring the force of such allegations, CCA attempts unsuccessfully to escape the force of  
 22 Plaintiff's many detailed claims regarding the hostility of the CCA campus to Plaintiff's religious  
 23 beliefs, national ancestry and ethnic identity, on the ground that the hostility was not limited to Plaintiff  
 24 herself but was directed as well to others, including other faculty, students and even members of the  
 25 public. But this argument fails for two reasons.

1 First, the Amended Complaint does indeed allege numerous actions that were directed  
 2 specifically at the Plaintiff; these actions alone are more than sufficient to create a hostile environment,  
 3 and these actions directly injured the Plaintiff. These actions include, most importantly, the imposition  
 4 of discipline, and the continuing threat of termination, in response to Plaintiff's speaking to students to  
 5 convey a message with which the student disagreed.

6  
 7 In addition, Plaintiff was affected directly by the "Decolonization is not a dinner party" post and  
 8 the College's full-throated endorsement of that post and its murderous message.<sup>1</sup>

9 The remaining incidents also contributed to, and illustrate, the hostile environment that surrounds  
 10 the Plaintiff. All of these events occurred within the last academic year, giving the lie to CCA's claim  
 11 that they are not "temporally proximate," Br. at 9. All manifest precisely the same hostility to the  
 12 commitment to Israel that has been directed at Plaintiff.

13 The Ninth Circuit has quite recently rejected the approach taken by CCA in its attack on  
 14 Plaintiff's complaint:  
 15

16 Notably, individual targeting is not required to establish a Title VII violation. See [Reynaga](#)  
 17 [v. Roseburg Forest Prods.](#), 847 F.3d 678, 687 (9th Cir. 2017). "It is enough," we have held,  
 18 "if such hostile conduct pollutes the victim's workplace, making it more difficult for her to  
 19 do her job, to take pride in her work, and to desire to stay on in her position." [Steiner v.](#)  
 20 [Showboat Operating Co.](#), 25 F.3d 1459, 1463 (9th Cir. 1994). "When the workplace is  
 21 permeated with discriminatory intimidation, ridicule, and insult, that is sufficiently severe  
 22 or pervasive to alter the conditions of the victim's employment and create an abusive  
 23 working environment, Title VII is violated." [Harris](#), 510 U.S. at 21 (internal quotation  
 24 marks and citations omitted). [\[\\*\\*8\]](#)

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25 <sup>1</sup> CCA seeks to diminish the importance of Plaintiff's injury from this post by asserting that it was  
 26 ultimately taken down. This ignores the Amended Complaint's clear allegations that the post remained  
 27 up for months; that it was only taken down because it irritated a wealthy donor, and long after Plaintiff's  
 28 own complaint about it had been explicitly rejected; and that, even after the donor's objection had been  
 received, CCA convinced itself that the post's call for the murder of Jewish Israelis was a protected  
 exercise of academic freedom. AC ¶69.

1        *Sharp v. Activewear, L.L.C.* 69 F.4th 974, 978 (9th Cir. 2023). Moreover, “[w]orkplace conduct  
 2 is to be viewed cumulatively and contextually, rather than in isolation. *Reeves v. C.H. Robinson*  
 3 *Worldwide, Inc.*, 594 F.3d 798, 807 (11th Cir. 2010) (en banc). *Ibid.* CCA’s effort to disaggregate the  
 4 Complaint’s allegations, separating them from one another as well as from the Plaintiff, thus fails.

5        As *Sharp* makes clear, defendant’s argument fails because it ignores the fact that Plaintiff’s  
 6 injury comes from the hostility of the environment. Plaintiff has pled in elaborate detail how that  
 7 hostility affected her, and how it has prevented her from doing her job and even impeded her ability to  
 8 be on campus. AC ¶¶53, 116-124.

9        The allegations regarding CCA’s treatment of others who have also been victimized by the same  
 10 hostility are present to demonstrate the severity and pervasiveness of that hostility. While CCA admits  
 11 that such allegations are necessary, Defendant ignores the fact that all of these matters are actually  
 12 alleged.<sup>2</sup> Plaintiff’s claim is that she was injured by the environment, and that environment was created  
 13 by, and its existence is proven by, the sum of all of these events.

14        The hostile environment at issue in this case was created by all of the acts and statements at  
 15 issue. If, for example, at a faculty meeting, an obscene attack on Plaintiff’s beliefs was permitted with  
 16 no punishment, that fact empowers the people who support such attacks and makes clear that CCA  
 17 approves of such attacks and so will do nothing to stop them or to protect anyone who holds the beliefs  
 18 that Plaintiff holds, and that are the object of such attacks.  
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 23

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24  
 25        <sup>2</sup> CCA also attempts to have its cake and eat it, complaining in the same paragraph that Plaintiff’s claims  
 26 about the hostility of the CCA environment are inadequate because she hasn’t pled pervasiveness – that  
 27 is, that Plaintiff has failed to allege that the hostility manifested itself over an extended period—while at  
 28 the same time also complaining that the allegations fail because not all events occurred at the same time,  
 so they were not “temporally proximate.”

1 These are the things that allow a hostile environment to come into existence and to remain in  
 2 existence. Plaintiff's cognizable injury is caused directly by the hostile environment, not directly by  
 3 each of the actions that helped to create that environment.

4  
 5 **III. PLAINTIFF HAS ADEQUATELY ALLEGED THAT THE DISCRIMINATION AGAINST**  
 6 **HER WAS BASED ON HER RELIGION, NATIONAL ANCESTRY AND ETHNIC**  
 7 **IDENTITY**

8 CCA also completely ignores the AC's allegations when it claims that "CCA's investigation of  
 9 the students' complaints and consequent finding of policy violations was not 'verbal conduct of a  
 10 religious or ethnic nature'" because Plaintiff failed to allege "that CCA representatives used religious or  
 11 ethnic terms when undertaking the investigation or in issuing its findings to Plaintiff."

12 In addition, CCA's argument rests on its refusal to acknowledge the AC's detailed, well-  
 13 supported allegations that Plaintiff's commitment to Israel is her religious belief, a commitment of her  
 14 national ancestry and an element of her ethnic identity. *See* AC ¶¶19, 31. It also rests on CCA's refusal  
 15 to acknowledge the fact, alleged in the Amended Complaint, that the commitment to Israel has been  
 16 recognized by the United States Department of Education, Office of Civil Rights, as an element of Jews'  
 17 national ancestry and ethnic identity. The AC says this clearly:

18 20. As a result, the United States Department of Education, Office of Civil Rights, has  
 19 recognized that discrimination against Zionism and Zionists is a form of antisemitism,  
 20 because it constitutes discrimination against Jews on the basis of their ethnic identity,  
 21 national origin and national ancestry.

22 21. The United States Department of Education, Office of Civil Rights, has issued at least  
 23 two determinations that discrimination against individuals on the basis of their  
 24 commitment to Zionism constitutes discrimination on the basis of shared ancestry, and is  
 25 therefore a violation of Title VI.

26 22. Thus, a letter ruling from the U.S. Department of Education, Office For Civil Rights,  
 27 issued April 3, 2023, to the University of Vermont and State Agricultural College,  
 28 determined that anti-Zionist conduct constitutes a violation of the rights of Jewish students  
 under Title VI because it constitutes discrimination on the basis of shared ancestry and,  
 therefore, national origin discrimination. A true and correct copy of the letter ruling is  
 attached hereto as Exhibit A.

23. That letter identified as “antisemitic” a series of tweets by a University of Vermont faculty member. None of the tweets contained the word “Jew” or Jewish.” Instead, their antisemitic content consisted of repeated denunciations of Zionism and Zionists, such as “its [sic] good and funny” “for me, a TA, to not give Zionists credit for participation;” “why do so many Zionists work for the writing center[?];” “I get the indelible [sic] surge [sic] to cyber bully” when receiving “posts from UVM Zionist Instagram accounts;” and “serotonin rush of bullying Zionists on the public domain.”

24. Similarly, on December 13, 2022, the U.S. Department of Education, Office for Civil Rights issued a Notice advising that impermissible discrimination against Jews “on the basis of national origin (shared ancestry)” would be proven by facts demonstrating that “University-recognized student organizations passed a bylaw against inviting speakers who support ‘Zionism, the state of Israel, and the occupation of Palestine.’” *See* Exhibit B.

Plaintiff also alleged clearly that discrimination against her was on the basis of her commitment to Israel, and that—just as stated by the Department of Education Office of Civil Rights, plaintiff’s own particular commitment to Israel is an element of her particular religious belief, national ancestry and ethnic identity. *See* AC ¶¶20-24.

CCA offers no argument against any of these allegations. It simply pretends they aren’t there, and that pretense forms the basis for CCA’s claim that Plaintiff has not alleged a religious, national or ethnic component to the discrimination against her.

CCA’s argument fails for the additional reason that Plaintiff’s allegations regarding the content of her religious beliefs control—both as a matter of the law governing Motions to Dismiss and more broadly. The 12(b)(6) point is elementary: on a motion to dismiss like the one before this Court now, the Complaint’s allegations are taken as true so long as they’re plausible. Plaintiff’s Amended Complaint set out the centrality of Israel within Plaintiff’s religious beliefs, her ancestral commitments, and her ethnic identity in careful detail, with reference to extensive supporting material. *See* AC ¶¶19, 31. Under *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), these allegations must be assumed to be true for purposes of the instant motion.

1 More broadly, however, Plaintiff's allegations regarding the content of her sincerely held  
 2 religious beliefs cannot be second-guessed by any court. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S.  
 3 682, 724 (2014); *Church of Lukumi v. City of Hialeah*, 508 U.S. 520 (1993).

4 To be clear, Plaintiff is not arguing that the Court, or any party, must accept plaintiff's beliefs as  
 5 in fact true. But it does mean that her religious beliefs must be respected in the sense that she cannot be  
 6 harassed or discriminated against for having such beliefs or for expressing them.

7  
 8 To establish the sincerity of her beliefs Plaintiff's Amended Complaint provides the sources of,  
 9 and evidence for, those beliefs in Jewish texts and Jewish culture. AC ¶19, 31. This is the proper path.  
 10 The trial court opinion in *Lukumi*, for example, reflects an extensive factual record, including oral  
 11 testimony, describing both the history and substance of the religious beliefs and practices there at issue.  
 12 *See Church of Lukumi v. Hialeah*, 723 F.Supp. 1467, 1469-1474 (S.D. Fla. 1989) aff'd 936 F.2d 586  
 13 (11th Cir. 1991), rev'd 508 U.S. 520 (1993). The FAC sets forth the basis for Plaintiff's presentation of  
 14 this factual showing,<sup>3</sup> CCA ignores it all.

15  
 16 **IV. PLAINTIFF HAS ADEQUATELY ALLEGED THAT CCA RECEIVED FEDERAL**  
 17 **FUNDING THAT SUBJECTS THE INSTITUTION, AND ITS TREATMENT OF THE**  
 18 **PLAINTIFF, TO TITLE VI**

19 Plaintiff has also adequately alleged that CCA receives funding that places it, and the actions  
 20 here at issue, under the scope of Title VI. CCA attempts to shield itself behind the rule that a Title VI  
 21 employment discrimination claim must allege that federal assistance supported the program at issue—a  
 22 proposition with which Plaintiff does not quarrel. But CCA ignores the obvious fact that there is no  
 23 individual CCA program at issue in this case. CCA itself identifies no specific program which it claims

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 25  
 26 <sup>3</sup> The purpose of this section is thus to explain what the sources are of Plaintiff's beliefs, commitment  
 27 and identity. The cited paragraph provides the basis for Plaintiff's showing that these are in fact her  
 28 sincerely held beliefs – not, it should be clear, because Plaintiff is asking this Court to determine that  
 Plaintiff's beliefs are true.

1 must be the object of federal funding in order for Plaintiff's claims to be valid. The reality, clearly  
 2 expressed in the Amended Complaint, is that resources from throughout the institution have been  
 3 expended to create the hostile environment here at issue and to take the specific actions, such as the  
 4 discriminatory discipline imposed on Plaintiff, which are at issue here.

5 Thus, the Amended Complaint alleges that numerous departments supported the post in support  
 6 of the murder of Jewish Israelis, and that teachers in numerous departments used class time to denounce  
 7 the Plaintiff's beliefs, commitments, and identity. And what specific program, other than the  
 8 administration of CCA itself, is the object of the resources expended to discipline the Plaintiff for  
 9 speaking to a Middle Eastern student and telling the student things she did not want to hear? CCA does  
 10 not say.<sup>4</sup>

11 Because the entire institution's resources have been expended in creating the environment, and in  
 12 imposing the adverse employment actions, here at issue, Title VI applies so long as the institution itself  
 13 receives federal funds—a fact clearly alleged in the Amended Complaint and which CCA does not  
 14 dispute. Accordingly, the Title VI claim stands.

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23 <sup>4</sup> If such fine distinctions are to be made among the sources of funding for specific offices or personnel  
 24 within CCA, then Plaintiff respectfully requests the opportunity to take discovery to gather this  
 25 information, which is not publicly available. [Laub v. U.S. Dep't of the Interior](#), 342 F.3d 1080, 1093  
 26 (9th Cir. 2003) (“[D]iscovery should ordinarily be granted where pertinent facts bearing on the question  
 27 of jurisdiction are controverted or where a more satisfactory showing of the facts is necessary.”  
 28 (quotation marks omitted)). See also *Fluidigm Corp. v. bioMérieux SA*, No. 19-cv-02716-LHK,  
 2019 U.S. Dist. LEXIS 210944 (N.D. Cal. Dec. 5, 2019).



**V. PLAINTIFF STATES A CLAIM UNDER CALIFORNIA EDUCATION CODE SECTION 66252, BECAUSE THE STATUTE’S EXPLICIT LANGUAGE PROTECTS ALL “INDIVIDUALS,” NOT JUST STUDENTS**

Ignoring the relevant provision of the California statute forming the basis for Count III of the Complaint, CCA asks this Court to dismiss Plaintiff’s claim under California Education Code §66270 on the asserted ground that an earlier section of that law protects only students. But CCA has read only the first line of the statute it cites, and none of the statute is invoked as the basis for Count III.

Subsection (a) of Section 66252 does indeed speak of the right of “students” to participate in education without discrimination. But subsection (c) of that provision, and all of Section 66270, are not so limited. Subsection (c) of Section 66252 provides that:

Harassment on school grounds *directed at an individual* on the basis of personal characteristics or status creates a hostile environment and jeopardizes equal educational opportunity as guaranteed by the California Constitution and the United States Constitution.

*Id.* (emphasis added). And all of Section 66270 provides that “no person” shall be discriminated against on the basis of forbidden characteristics, including religion, ethnicity and national origin. Thus, the relevant command to avoid harassment is explicitly *not* limited to students, but extends to all individuals.

Eliminating an institution’s discrimination against teachers on the basis any forbidden characteristic is an essential element in ensuring that the education provided by that institution will properly educate students. This case is a vivid example of that fact: Plaintiff was punished for speaking to a student and conveying information that the student did not know—and that CCA apparently wanted to keep the student from learning. That is exactly what a rule barring discrimination in education is supposed to prevent.

**VI. PLAINTIFF PROPERLY STATES A CLAIM UNDER CALIFORNIA GOVERNMENT CODE SECTION 12920**

Plaintiff's claim under California Government Code Section 12920 may proceed because Plaintiff has indeed exhausted her administrative remedies. Plaintiff's Right to Sue letter, obtained from the California Civil Rights Department, is attached hereto as Exhibit A to the declaration of Jerome M. Marcus.

On the merits, Plaintiff's claim is clearly sufficient. Indeed, the statute itself sets forth the following substantive rules that manifestly support Plaintiff's claim:

(b) A single incident of harassing conduct is sufficient to create a triable issue regarding the existence of a hostile work environment if the harassing conduct has unreasonably interfered with the plaintiff's work performance or created an intimidating, hostile, or offensive working environment. In that regard, the Legislature hereby declares its rejection of the United States Court of Appeals for the 9th Circuit's opinion in *Brooks v. City of San Mateo*, 229 F.3d 917 (2000) and states that the opinion shall not be used in determining what kind of conduct is sufficiently severe or pervasive to constitute a violation of the California Fair Employment and Housing Act.

(c) The existence of a hostile work environment depends upon the totality of the circumstances and a discriminatory remark, even if not made directly in the context of an employment decision or uttered by a nondecision maker, may be relevant, circumstantial evidence of discrimination. In that regard, the Legislature affirms the decision in *Reid v. Google, Inc.*, 50 Cal.4th 512 (2010) in its rejection of the "stray remarks doctrine."

[]

(e) Harassment cases are rarely appropriate for disposition on summary judgment. In that regard, the Legislature affirms the decision in *Nazir v. United Airlines, Inc.*, 178 Cal.App.4th 243 (2009) and its observation that hostile working environment cases involve issues "not determinable on paper."

In these statutory directives, the California legislature has set forth standards that mandate denial of CCA's motion to dismiss Plaintiff's claim under Section 12920. Plaintiff has clearly alleged more than a single incident of harassing conduct, yet even one such instance is enough. Moreover, the legislature has directed that harassment cases should not normally be terminated even on summary judgment, which comes after Plaintiff has had the opportunity to take discovery. Here, *a fortiori*, the case is at its threshold, on a Motion to Dismiss.

**VII. PLAINTIFF STATES A CLAIM FOR BREACH OF CONTRACT**

Plaintiff's claim for breach of contract is based on CCA's own internal policy on non-discrimination. As CCA does not dispute, this a private agreement, not a law. It is therefore irrelevant that a promise to comply with the law does not constitute consideration for a contract. Plaintiff is not seeking to enforce a promise to comply with the law; she is enforcing CCA's own promise to comply with its own policy. Whether that policy sets a standard of conduct that is the same as, or more generous than, the one imposed by the law—something that CCA does not discuss in its brief—is irrelevant. The CCA policy is the basis for the contract.

Regardless of whether Plaintiff has properly pled dollar damages, she has clearly pled a valid claim for injunctive relief, including, among other things, removal from her file of the threat to fire her if she ever again tells a student information about the Middle East that the student does not want to hear. CCA does not deny that the request for such injunctive relief is properly pled as a remedy for breach of contract.

**VIII. CONCLUSION**

For the foregoing reasons, Plaintiff requests that the Court deny Defendant's Motion to Dismiss.

Dated: November 5, 2024

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

Filed electronically on November 5, 2024, with the United States District Court for the Northern District of California CM/ECF system.

Notification was therefore automatically sent through the CM/ECF system to:

United States District Court  
Northern District of California

And all counsel of record as recorded on the electronic service list.

Respectfully submitted,

By: /s/ Mark L. Javitch  
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