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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BRIANNA BOLDEN-HARDGE,

Plaintiff,

v.

OFFICE OF THE CALIFORNIA
STATE CONTROLLER, et al.,

Defendants.

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

ORDER

Before the Court are cross-motions for summary judgment brought by Brianna Bolden-Hardge ("Plaintiff") and the Office of the California State Controller and seven of its employees (collectively, "Defendants") on the issue of liability. Pl.'s Mot., ECF No. 50; Defs.' Mot., ECF No. 89. The motions are fully briefed. See Pl.'s Opp'n, ECF No. 102; Defs.' Reply, ECF No. 106. Defendants also bring a Motion to Exclude Certain Expert Opinions. See Mot. to Exclude, ECF No. 84; Opp'n to Mot. to Exclude, ECF No. 98; Reply for Mot. to Exclude, ECF No. 99. A hearing on these motions was held in this Court on August 26, 2025. For the reasons stated at the August 26 hearing and below, the Court denies Defendants' motion to exclude, and grants in part and denies in part the parties' cross-motions for summary judgment.

1 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

2 A recitation of the entire factual background is unnecessary
3 given the parties intimate familiarity with this case. The
4 pertinent summary is as follows: Plaintiff began working for the
5 Franchise Tax Board ("FTB") in 2011. Gleiberman Decl., Ex. 1,
6 Bolden-Hardge Dep. 20:2-20, ECF No. 51-1. In 2017, Plaintiff was
7 hired for a position with the State Controller's Office ("SCO").
8 Id. 69:15-70:6. Before she could start her new position with
9 SCO, Plaintiff was asked to sign an oath that the California
10 Constitution requires public employees to take (hereinafter, "the
11 Oath"). Id. 74:20-76:10. The Oath states:

12 I, _____, do solemnly swear (or affirm) that I will
13 support and defend the Constitution of the United
14 States and the Constitution of the State of California
15 against all enemies, foreign and domestic; that I will
16 bear true faith and allegiance to the Constitution of
17 the United States and the Constitution of the State of
California;

18 Cal. Const. art. XX, § 3.

19 Plaintiff told SCO employees that her religious beliefs
20 prevented her from signing the Oath. Bolden-Hardge Dep. 76:24-
21 78:21. After discussing the issue with an SCO employee,
22 Plaintiff wrote an addendum that she proposed attaching to the
23 signed Oath (hereinafter, "the Proposed Addendum"). Id. 79:4-18.
24 The Proposed Addendum stated:

25 I, [Plaintiff], vow to uphold the Constitutions of the
26 United States and that of the State of California while
27 working in my role as an employee of the [SCO]. I will
28 be honest and fair in my dealings and neither dishonor
the Office by word nor deed. By signing this oath, I
understand that I shall not be required to bear arms,
engage in violence, nor participate in political or

1 military affairs. Additionally, I understand that I am
2 not giving up my right to freely exercise my religion,
3 nor am I denouncing my religion by accepting this
4 position.

5 Gleiberman Decl., Ex. 1E. SCO did not allow Plaintiff to attach
6 the Proposed Addendum to the Oath and thereafter rescinded her
7 offer of employment because she would not sign the Oath without
8 accommodation. Id. Ex. 1F.

9 Plaintiff brought suit in federal court against SCO and the
10 State Controller of California. Complaint, ECF No. 1. Upon
11 Defendants' motion, the Court dismissed with prejudice all
12 claims. ECF No. 14. The Ninth Circuit reversed. ECF No. 25;
13 see also Bolden-Hardge v. Off. of California State Controller, 63
14 F.4th 1215 (9th Cir. 2023). Upon remand, Plaintiff filed an
15 amended complaint against SCO and seven of its employees,
16 including the State Controller of California.¹ First Amended
17 Complaint ("FAC"), ECF No. 29. The parties now bring cross-
18 motions for summary judgment as to all claims.

19 II. OPINION

20 A. Legal Standard

21 Summary judgment is appropriate when the record, read in the

22 ¹At the August 26, 2025 hearing, the Court was informed that only
23 three of the seven individual defendants named in the FAC have
24 been served. Defendant Cohen is the current State Controller
25 having replaced Defendant Betty Yee, the former State Controller.
26 Defendant Gerald Anderson was the Chief of Human Resources for
27 the State Controller's Office at all times pertinent to this
28 case. While Plaintiff brought two claims against these three
individuals in their official and individual capacities for
alleged violations of the Federal and State Constitutions, no
evidence has been presented that would permit any claims to go
forward against them. Accordingly, these three individual
Defendants are dismissed without prejudice.

1 light most favorable to the non-moving party, indicates "that
2 there is no genuine dispute as to any material fact and the
3 movant is entitled to judgment as a matter of law." Fed. R. Civ.
4 P. 56(a). A genuine dispute of fact exists only if "there is
5 sufficient evidence favoring the nonmoving party for a jury to
6 return a verdict for that party." Anderson v. Liberty Lobby,
7 Inc., 477 U.S. 242, 249 (1986). If the nonmoving party fails to
8 make this showing, "the moving party is entitled to a judgment as
9 a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 323
10 (1986).

11 B. Requests for Judicial Notice

12 Under Federal Rule of Evidence 201, a district court may
13 take judicial notice of a fact that is "not subject to reasonable
14 dispute because it can be accurately and readily determined from
15 sources whose accuracy cannot reasonably be questioned." Fed. R.
16 Evid. 201(b)(2). A court "may take judicial notice of a record
17 of a state agency not subject to reasonable dispute." City of
18 Sausalito v. O'Neill, 386 F.3d 1186, 1223 n.2 (9th Cir. 2004).

19 The parties each submit an unopposed request for judicial
20 notice ("RJN") relating to matters of state record. Pl.'s RJN,
21 ECF No. 52; Defs.' RJN, ECF No. 92. Because these documents are
22 proper for judicial notice, the Court grants the requests.

23 C. Motion to Exclude Expert Opinions

24 Defendants bring a Motion to Exclude Certain Expert Opinions
25 of Dr. Paul Finkelman and Dr. Matthew Schmalz. ECF No. 85.
26 Plaintiff argues that this motion was improperly filed, citing
27 the Pretrial Scheduling Order (ECF No. 39) and Local Rule 260.
28 See Opp'n to Mot. to Exclude at 1-3. The Court disagrees, as

1 nothing in either authority cited by Plaintiff prohibits
2 Defendants from bringing the present motion. As Defendants
3 observe, courts in this District routinely hear motions to
4 exclude expert testimony that are concurrently filed with motions
5 for summary judgment. See Reply for Mot. to Exclude at 2. As
6 such, Defendants' motion is properly before the Court.

7 At the outset, the Court denies as moot the motion as to Dr.
8 Finkelman because the Court did not find his opinions to be
9 particularly helpful or relevant in reaching its decision
10 regarding the cross-motions for summary judgment. Dr. Schmalz's
11 testimony on the other hand, is critical to Plaintiff's Title VII
12 disparate impact claim and the motion to exclude portions of his
13 testimony needs to be resolved.

14 A motion to exclude expert testimony can be brought at the
15 summary judgment stage. See Lust v. Merrell Dow Pharmaceuticals,
16 Inc., 89 F.3d 594, 597 (1996). Courts apply the standard
17 outlined in Federal Rule of Evidence 702, which permits testimony
18 by experts qualified by "knowledge, skill, experience, training,
19 or education" to testify "in the form of an opinion or otherwise"
20 based on "scientific, technical, or other specialized knowledge"
21 if that knowledge will "help the trier of fact to understand the
22 evidence or to determine a fact in issue." Fed. R. Evid. 702.
23 An expert's testimony must be "based on sufficient facts or
24 data," "the product of reliable principles and methods," and the
25 application of "the principles and methods to the facts of the
26 case." Id.

27 "Rule 702 embodies the twin concerns of reliability and
28 helpfulness." Stilwell v. Smith & Nephew, Inc., 482 F.3d 1187,

1 1192 (9th Cir. 2007) (cleaned up). “Whether testimony is helpful
2 within the meaning of Rule 702 is in essence a relevancy
3 inquiry.” Hemmings v. Tidyman’s Inc., 285 F.3d 1174, 1184 (9th
4 Cir. 2002). “The test for reliability, however, is not the
5 correctness of the expert’s conclusions but the soundness of his
6 methodology.” Stillwell, 482 F.3d at 1192 (cleaned up). To be
7 reliable, the expert’s testimony must have “a reliable basis in
8 the knowledge and experience of the relevant discipline. The
9 district court must assess whether the reasoning or methodology
10 underlying the testimony is scientifically valid and properly can
11 be applied to the facts in issue, with the goal of ensuring that
12 the expert employs in the courtroom the same level of
13 intellectual rigor that characterizes the practice of an expert
14 in the relevant field.” United States v. Ruvalcaba-Garcia, 923
15 F.3d 1183, 1189 (9th Cir. 2019) (cleaned up).

16 The Court “not only has broad latitude in determining
17 whether an expert’s testimony is reliable, but also in deciding
18 how to determine the testimony’s reliability.” Hangarter v.
19 Provident Life & Acc. Ins. Co., 373 F.3d 998, 1017 (9th Cir.
20 2004) (citation omitted) (emphasis original). “After an expert
21 establishes admissibility to the judge’s satisfaction, challenges
22 that go to the weight of the evidence are within the province of
23 a fact finder, not a trial court judge. A district court should
24 not make credibility determinations that are reserved for the
25 jury.” Pyramid Techs., Inc. v. Hartford Cas. Ins. Co., 752 F.3d
26 807, 814 (9th Cir. 2014).

27 In this case, Dr. Schmalz was retained by Plaintiff to
28 “provide expert analysis and possible testimony concerning the

1 beliefs and practices of Jehovah's Witnesses concerning oaths."
2 Musell Decl., Ex. C, Schmalz Decl. ¶ 2, ECF No. 98-1. Dr.
3 Schmalz is a Professor of Religious Studies at the College of the
4 Holy Cross. Id. ¶ 1. He has published multiple research papers
5 and essays on Jehovah's Witnesses. Id. ¶¶ 16-18. When Dr.
6 Schmalz began teaching about this religious group, he "could not
7 find any course within any curriculum in the United States that
8 even briefly mentioned Jehovah's Witnesses." Id. ¶ 12. Dr.
9 Schmalz has served as "the academic expert commentator for
10 programs on television/digital platforms that have reported on
11 Jehovah's Witnesses," "provided expert commentary on Jehovah's
12 Witnesses for national media outlets," and is currently serving
13 as an expert consultant on pending legal cases "to provide
14 context on Watchtower beliefs and practices and the internal
15 dynamics shaping Jehovah's Witness life."² Id. ¶¶ 19-20.

16 Defendants do not contest that Dr. Schmalz's testimony is
17 helpful, as it goes to the core of the disparate impact claim.
18 Defendants also do not substantively argue that Dr. Schmalz is
19 unqualified. While they state that Dr. Schmalz has not published
20 research on Jehovah's Witnesses since 1998, they do not explain
21 why this gap in time precludes him from being qualified to opine
22 on matters in this case. See Mot. to Exclude at 13. Instead,
23 Defendants' principal argument is that portions of Dr. Schmalz's
24 opinions are so unreliable, speculative or constitute improper
25 legal conclusions that they must be excluded. The Court

26
27 ²Dr. Schmalz uses "Watchtower" to refer to the religious
28 organization and "Jehovah's Witnesses" to refer to the members of
the organization. Schmalz Decl. ¶ 5. The Court follows suit.

1 disagrees.

2 The Court finds that Dr. Schmalz's opinions are "based on
3 sufficient facts or data" to survive Defendants' motion to
4 exclude. See Fed. R. Evid. 702. The primary issue regarding
5 this testimony in support of Plaintiff's Motion for Summary
6 Judgment is how much weight it should be given, not whether it is
7 admissible. As noted above, once admissibility has been
8 established to the judge's satisfaction, challenges to the weight
9 of the evidence are decided by a jury, not the judge.

10 The Court denies Defendants' motion to exclude portions of
11 Dr. Schmalz's testimony in support of Plaintiff's Motion for
12 Summary Judgment without prejudice to Defendants renewing their
13 motion should Dr. Schmalz seek to testify at trial.

14 D. Title VII

15 1. Applicability to State Oaths

16 Defendants first argue that Title VII does not apply to
17 state oaths. Defs.' Mot. at 11-16. The Court disagrees. As
18 Plaintiff points out, the Ninth Circuit in this case implicitly
19 held that Title VII applies to state oaths because it held that
20 Plaintiff plausibly pleaded a Title VII claim as to the Oath.
21 See Pl.'s Mot. at 4-5. Moreover, the Ninth Circuit has elsewhere
22 applied Title VII to a state oath. In Lawson v. Washington, a
23 Jehovah's Witness was hired as a cadet by the Washington State
24 Patrol. 296 F.3d 799, 802 (9th Cir. 2002). The plaintiff
25 resigned because he believed that saluting the flag and taking an
26 oath of allegiance to the State of Washington conflicted with his
27 religious beliefs. Id. at 802-803. Upon appeal of a summary
28 judgment order, the Ninth Circuit held that the plaintiff's

1 religious beliefs conflicted with the Washington State Patrol's
2 employment requirements. Id. at 804. By finding that the
3 plaintiff satisfied the first part of a failure to accommodate
4 claim brought under Title VII, the Ninth Circuit implicitly found
5 that Title VII applied to state oaths. See id. at 805. Given
6 this binding precedent, the Courts holds that Title VII applies
7 to state oaths.

8 2. Failure to Accommodate

9 The parties move for summary judgment as to Plaintiff's
10 failure to accommodate claim under Title VII of the Civil Rights
11 Acts of 1964. FAC ¶¶ 62-73. This claim is analyzed under a two-
12 part framework. "First, the employee must establish a prima
13 facie case by proving that (1) he had a bona fide religious
14 belief, the practice of which conflicted with an employment duty;
15 (2) he informed his employer of the belief and conflict; and
16 (3) the employer threatened him with or subjected him to
17 discriminatory treatment, including discharge, because of his
18 inability to fulfill the job requirements." Heller v. EBB Auto
19 Co., 8 F.3d 1433, 1438 (9th Cir. 1993). Second, "[o]nce an
20 employee establishes a prima facie case, the burden of proof then
21 shifts to the employer under the second part of the framework to
22 'establish that it initiated good faith efforts to accommodate
23 the employee's religious practices' or that it could not
24 reasonably accommodate the employee without undue hardship."
25 Lawson, 296 F.3d at 804 (quoting Heller, 8 F.3d at 1438).

26 a. Conflict

27 In this case, the Ninth Circuit held that Plaintiff's
28 "burden to allege a conflict with religious beliefs is fairly

1 minimal.” Bolden-Hardge, 63 F.4th at 1223. The court relied
2 upon the Supreme Court’s decision in Thomas v. Review Board of
3 Indiana Employment Security Division, where the Court held in the
4 context of free exercise and employment that when the plaintiff
5 draws a line that they cannot cross due to religious beliefs, “it
6 is not for us to say that the line he drew was an unreasonable
7 one.” 450 U.S. 707, 715 (1981). Rather, the Court held, “The
8 narrow function of a reviewing court in this context is to
9 determine whether there was an appropriate finding that
10 petitioner terminated his work because of an honest conviction
11 that such work was forbidden by his religion.” Id. at 716
12 (emphasis added).

13 Plaintiff maintains that there are four conflicts between
14 her religious beliefs and taking the Oath without accommodation:
15 (1) the Oath’s “true faith and allegiance” provision “presents an
16 actionable conflict with [Plaintiff’s] religious belief that her
17 allegiance is first and foremost to God”; (2) the Oath’s
18 requirement to “‘defend . . . against all enemies, foreign and
19 domestic’ presents a conflict with [Plaintiff’s] religious
20 beliefs against pledging to bear arms”; (3) the Oath conflicts
21 with Plaintiff’s “religious beliefs about maintaining political
22 neutrality”; and (4) “signing the unaccommodated Oath without
23 ‘any mental reservation,’ as it provides, would have further
24 violated [Plaintiff’s] religious beliefs where, based on the
25 foregoing concerns as well as her religious needs for a clear
26 conscience as a Jehovah’s Witness, she had reservations.” Pl.’s
27 Mot. at 15-16.

28 The Court finds that there is no genuine dispute that

1 Plaintiff's religious beliefs conflict with the "true faith and
2 allegiance" provision. Plaintiff's expert Dr. Schmalz opined
3 that "the requirement to 'bear true faith and allegiance'
4 presents a conflict with a typical Jehovah's Witness' most basic
5 loyalty to Jehovah God – a fundamental precept guiding Watchtower
6 belief and practice." Schmalz Decl. ¶ 71. He therefore
7 concluded that "Plaintiff's approach to the Oath is
8 characteristic of how all or substantially all Jehovah's
9 Witnesses would approach the matter." Id. ¶ 74. Plaintiff also
10 testified she can "uphold" bearing allegiance to the federal
11 and state constitutions, but her "primary allegiance can't be to
12 anything or anyone except for God." Bolden-Hardge Dep. 167:12-
13 16; see also id. 169:6-10 ("I still need to make sure that my
14 primary allegiance is always to God."). Moreover, as the Ninth
15 Circuit observed, "Jehovah's Witnesses have repeatedly challenged
16 similar oath requirements as inconsistent with their religious
17 beliefs." Id. at 1223 n.5. For example, a court in this
18 District held that the religious beliefs of a Jehovah's Witness
19 conflicted with the Oath's "true faith and allegiance" provision.
20 Bessard v. California Cmty. Colleges, 867 F. Supp. 1454, 1462
21 (E.D. Cal. 1994). This evidence and caselaw establish that
22 Plaintiff's beliefs reflect an "honest conviction." See Bolden-
23 Hardge, 63 F.4th at 1223.

24 In response, Defendants present two arguments. First, they
25 state that Plaintiff's conflict was not an "honest conviction"
26 because she had worked in state government for six years without
27 renouncing her religion, including when she signed the Oath
28 without accommodation in 2011. Defs.' Reply at 6. This evidence

1 does not demonstrate that Plaintiff's conviction was dishonest.
2 Indeed, when Plaintiff was presented with the Oath in 2011, she
3 expressed concerns to an FTB employee. Bolden-Hardge Dep. 46:9-
4 48:18. Plaintiff was told "get the paperwork done" and sign the
5 Oath. Id. Plaintiff represents that because there were at least
6 20 other new employees in the room with her and everyone had to
7 complete many forms, she "just completed the paperwork." Id.
8 Accordingly, the context around Plaintiff signing the Oath in
9 2011 underscores the honesty of her conviction that there are
10 conflicts between her religious views and the Oath.

11 Defendants' second argument is that the federal oath and
12 other state oaths involve similar language to California's oath,
13 such that workers "do not relinquish their religion, but they do
14 need to commit to follow the law." Defs.' Mot. at 17.
15 Defendants further contend that Plaintiff conceded the Oath did
16 not state "primary" allegiance, which Defendants suggest means
17 there is no conflict between her religious beliefs and the Oath.
18 Id. at 4. However, these arguments would require the Court to
19 consider whether it was reasonable for Plaintiff to believe that
20 there was a conflict between her religion and the Oath. The
21 Ninth Circuit, and the Supreme Court precedent upon which it
22 relied, clearly held that the Court cannot second-guess the
23 reasonableness of Plaintiff's alleged conflict. See Bolden-
24 Hardge, 63 F.4th at 1223. Rather, the Court only assesses
25 whether Plaintiff has presented an "honest conviction," which the
26 undisputed evidence establishes she has done.

27 Because it is undisputed that Plaintiff communicated this
28 conflict to Defendants, and that Defendants rescinded Plaintiff's

1 job offer because she would not sign the Oath without
2 accommodation, Plaintiff has established a prima facie case of
3 failure to accommodate. See Heller, 8 F.3d at 1438; Bolden-
4 Hardge Dep. 76:24-78:21; Gleiberman Decl., Exs. 1E, 1F. As such,
5 the Court need not analyze Plaintiff's other alleged conflicts.
6 See Bolden-Hardge, 63 F.4th at 1224.

7 b. Undue Hardship

8 The burden of proof shifts to Defendants to establish they
9 "could not reasonably accommodate the employee without undue
10 hardship." See Lawson, 296 F.3d at 804. To establish an undue
11 hardship, "an employer must show that the burden of granting an
12 accommodation would result in substantial increased costs in
13 relation to the conduct of its particular business." Groff v.
14 DeJoy, 600 U.S. 447, 470 (2023). Defendants do not present
15 sufficient evidence to allow a jury to find that the Proposed
16 Addendum constituted an undue hardship.

17 Defendants first argue that it would suffer a hardship "due
18 to deviation from the public's lawful expectations" because the
19 public expects state officials to follow the law, which is an
20 expectation facilitated by the Oath. Defs.' Mot. at 19-21. But
21 Plaintiff's accommodation included her signing the Oath, and
22 nothing in the Proposed Addendum would undermine the public's
23 expectation that she would follow the law. As such, Plaintiff
24 signing the Oath and attaching the Proposed Addendum would not be
25 a deviation from the public's expectations.

26 Defendants next assert that they would suffer a hardship if
27 they allowed employees to write their own oath. Defs.' Mot. at
28 22. Defendants rely on the California appellate opinion in Smith

1 v. County Engineer of San Diego County, where the court rejected
2 an employee's attempt to add an addendum to the Oath that said,
3 "I take this oath, pledging my loyalty and allegiance to my
4 country, but declaring my supreme allegiance to the Lord Jesus
5 Christ Whom Almighty God has appointed ruler of Nations, and
6 expressing my dissent from the failure of the Constitution to
7 recognize Christ and to acknowledge the Divine institution of
8 civil government." 266 Cal. App. 2d 645, 648 (1968). Smith does
9 not aid Defendants. First and foremost, the Smith court was not
10 considering whether federal law – much less Title VII – required
11 an accommodation, and thus Smith is inapposite from the present
12 action. However, even if Smith were on point, the addendum there
13 was categorically different from the Proposed Addendum here. The
14 Smith court rightfully held that the employee's addendum was
15 "gratuitously injecting his religious beliefs into the
16 governmental process, the very subject into which the organic law
17 forbids inquiry by government." See id. at 656. Plaintiff's
18 Proposed Addendum, on the other hand, only seeks to clarify the
19 Oath's meaning and is not "gratuitously injecting [Plaintiff's]
20 religious beliefs into the governmental process." See id.

21 Defendants also posit that the only reasonable accommodation
22 available for a religious belief is the ability to "affirm" an
23 oath rather than "swear" it. Defs.' Mot. at 23. But Plaintiff's
24 conflict is not with swearing an Oath; rather, her conflict lies
25 with the contents of the Oath itself. Moreover, Defendants'
26 contention is unsupported by law. Because the Ninth Circuit in
27 this case already held that Plaintiff pleaded a plausible Title
28 VII claim, it implicitly held that federal law allows for

1 reasonable accommodations other than affirming the Oath. See
2 Bolden-Hardge, 63 F.4th at 1222 n.4.

3 Defendants' final argument is that they would experience
4 hardship "due to the impact on other employees" because granting
5 Plaintiff's requested accommodation would require them to violate
6 the law and, therefore, their oaths. Defs.' Mot. at 21-22. To
7 support this position, Defendants submit the declaration of
8 Gerard Anderson, a Defendant in this action, because he is the
9 Chief of HR at SCO. See id. at 22. Anderson states that because
10 SCO determined it could not accommodate Plaintiff, he "felt that
11 granting Plaintiff's request" would violate his "oath to uphold
12 the law." Anderson Decl. ¶ 5, ECF No. 94. However, Defendants'
13 contention is not grounded in the law. The California
14 Constitution only states that public officers and employees
15 "shall" take the Oath before entering office. Cal. Const. art.
16 XX, § 3. Defendants point to no legal authority – in the state
17 constitution or elsewhere – that SCO is prohibited from allowing
18 Plaintiff to attach the Proposed Addendum.

19 Defendants' argument is further weakened by the practice of
20 other state agencies. Indeed, after SCO rescinded her job offer,
21 Plaintiff returned to the FTB, which granted the exact request in
22 this case by allowing her to attach the Proposed Addendum to the
23 Oath. Bolden-Hardge Decl. 57:1-58:9. The State Personnel Board
24 also allows employees to "attach a statement" to a signed Oath
25 stating that their "religious beliefs prohibit their bearing
26 arms." Gleiberman Decl., Ex. 22, ECF No. 55-22. That other
27 state agencies allow employees to include addendums suggests that
28 such accommodation does not violate state law.

1 Even if the Proposed Addendum somehow violated state law,
2 the California Department of Human Resources – the agency tasked
3 with ensuring that other agencies administer the Oath to their
4 employees – does not have any policies or procedures to enforce
5 the Oath requirement. Id., Ex. 7, Wheeler Dep. 29:14-18, ECF No.
6 55-7; id. Ex. 21, ECF No. 55-21. The Ninth Circuit already held
7 that Defendants could not establish an undue hardship unless they
8 “provide evidence that [they] would in fact face liability for
9 accommodating” Plaintiff. See Bolden-Hardge, 63 F.4th at 1226.
10 Because the agency responsible for enforcing the Oath requirement
11 does not take any steps to ensure compliance by all State
12 agencies, Defendants have failed to provide proof they would face
13 liability for accommodating Plaintiff. See id.

14 Finally, even if the Court assumed that Defendants might
15 face liability for violating state law, they still would not meet
16 their undue hardship burden. As the Ninth Circuit in this case
17 explained, exempting employers from a federal accommodation
18 requirement “solely because the requested accommodation would
19 violate state law would essentially permit states to legislate
20 away any federal accommodation obligation, raising Supremacy
21 Clause concerns.” Bolden-Hardge, 63 F.4th at 1225 (emphasis
22 original).

23 Accordingly, the undisputed evidence shows that Defendants
24 would not have experienced an undue hardship if Plaintiff had
25 been allowed to attach the Proposed Addendum and sign the Oath,
26 as she requested. The Court grants Plaintiff’s motion and denies
27 Defendants’ cross-motion as to the Title VII failure to
28 accommodate claim.

1 3. Disparate Impact

2 Both parties move for summary judgment as to Plaintiff's
3 disparate impact claim under Title VII. FAC ¶¶ 74-80. To
4 establish a prima facie case of disparate impact, a plaintiff
5 must: "(1) show a significant disparate impact on a protected
6 class or group; (2) identify the specific employment practices or
7 selection criteria at issue; and (3) show a causal relationship
8 between the challenged practices or criteria and the disparate
9 impact." Hemmings, 285 F.3d at 1190 (citation omitted). If a
10 plaintiff establishes a prima facie case, then the burden shifts
11 to the employer to "demonstrate that the challenged practice is
12 job related for the position in question and consistent with
13 business necessity." 42 U.S.C. § 2000e-2(k)(1)(A)(i).

14 In this case at the motion to dismiss stage, the Ninth
15 Circuit held that Plaintiff did not need to provide statistics
16 demonstrating a disparate impact because her allegations – which
17 were accepted as true for purposes of the motion – included that
18 the Oath requirement impacted "all or substantially all"
19 Jehovah's Witnesses seeking state employment. Bolden-Hardge, 63
20 F.4th at 1228. At the summary judgment stage, while Plaintiff
21 does not necessarily have to provide statistical evidence, she
22 does need to provide evidence that the disparate impact is
23 "obvious" such that it impacts "all or substantially all"
24 Jehovah's Witnesses. See id.

25 Dr. Schmalz's opinions are the only evidence before the
26 Court that concern how a typical Jehovah's Witness would
27 interpret the Oath. He stated that the requirement to sign an
28 oath with the "true faith and allegiance" provision "would

1 violate the sincerely held religious beliefs of Jehovah's Witness
2 as a group." Schmalz Decl. ¶ 34. Dr. Schmalz furthered that
3 "the requirement to 'bear true faith and allegiance' presents a
4 conflict with a typical Jehovah's Witness' most basic loyalty to
5 Jehovah God – a fundamental precept guiding Watchtower belief and
6 practice." Id. ¶ 71. As such, he concluded that because
7 "Plaintiff's approach to the Oath is characteristic of how all or
8 substantially all Jehovah's Witnesses would approach the matter,"
9 "the categorical refusal by Defendants to provide accommodations
10 in the context of the Oath has the consequence of excluding
11 Jehovah's Witnesses as a group from public employment with the
12 State Controller's Office." Id. ¶¶ 74-76. Dr. Schmalz added
13 that allowing a Jehovah's Witness to sign the Oath with the
14 Proposed Addendum "would not conflict with the sincere religious
15 beliefs of . . . all or substantially all Jehovah's Witnesses as
16 a group." Id. ¶ 79. This evidence arguably supports Plaintiff's
17 argument that her conflict applies to "all or substantially all"
18 Jehovah's Witnesses such that a policy of administering an
19 unaccommodated Oath has an "obvious" disparate impact. See
20 Bolden-Hardge, 63 F.4th at 1228.

21 As discussed above, Defendants challenge Dr. Schmalz's
22 opinions and conclusions as inadmissible. While the Court denied
23 Defendants' motion to strike portions of this evidence, it found
24 that there is a genuine issue as to how much weight it should be
25 given. Any challenge that goes to the weight of evidence is
26 within the province of the fact finder, not the trial judge.
27 This Court may not make credibility determinations reserved for
28 the jury. Pyramid Techs, 752 F.3d 807, 814. There is a genuine

1 issue of material fact as to whether Plaintiff can make a prima
2 facie showing of disparate impact under Title VII. Accordingly,
3 the Court denies both parties' motions for summary judgment on
4 this claim.

5 E. Plaintiff's Section 1983 Claim is Untimely

6 The parties move for summary judgment as to Plaintiff's
7 Section 1983 claim for violation of the First Amendment. FAC
8 ¶¶ 89-100. Defendants argue that Plaintiff is time-barred from
9 bringing a Section 1983 claim. Defs.' Mot. at 30. The Ninth
10 Circuit held, "Claims brought under 42 U.S.C. § 1983 borrow the
11 forum state's statute of limitations for personal injury actions,
12 as well as the state's tolling rules . . . California's two-year
13 limitations period for personal injury actions . . . applies to
14 [plaintiffs'] § 1983 claims." Holt v. Cnty. of Orange, 91 F.4th
15 1013, 1018 (9th Cir. 2024) (cleaned up). Plaintiff learned on
16 August 4, 2017, that her job offer from SCO had been rescinded.
17 Bolden-Hardge Depo. 104:4-17. Accordingly, Plaintiff needed to
18 commence action by August 4, 2019, to comply with the two-year
19 limitation period. However, Plaintiff did not file suit until
20 October 19, 2020. See Complaint, ECF No. 1.

21 Plaintiff does not contest that her claim is subject to a
22 two-year limitation period or that she failed to timely commence
23 action. She argues, however, that the claim was tolled because,
24 on January 23, 2018, she initiated an Equal Employment
25 Opportunity Commission ("EEOC") proceeding by filing a complaint
26 with the California Department of Fair Employment and Housing.
27 See Pl.'s Opp'n at 19; Gleiberman Decl., Ex. 33, ECF No. 51-3.

28 Plaintiff ignores significant caselaw that all but

1 forecloses her argument. The Supreme Court held that the filing
2 of an EEOC complaint does not toll the running of the statute of
3 limitations for a Section 1981 claim, which is a similar cause of
4 action to a Section 1983 claim. Johnson v. Railway Express
5 Agency, 421 U.S. 454, 466 (1974). The Court elsewhere held that
6 all causes of action under the Civil Rights Acts "exist
7 independent of any other legal or administrative relief that may
8 be available as a matter of federal or state law." Burnett v.
9 Grattan, 468 U.S. 42, 50 (1984). Relying on this precedent, the
10 Ninth Circuit held that the statute of limitations for a Section
11 1981 claim was not tolled during the pendency of a California
12 administrative claim. London v. Coopers & Lybrand, 644 F.2d 811,
13 815 (9th Cir. 1981), overruled on other grounds by Lacey v.
14 Maricopa Cnty., 693 F.3d 896 (9th Cir. 2012).

15 District courts in this Circuit have applied this binding
16 precedent to Section 1983 claims. For example, one district
17 court held, "There is thus no reason that the . . . statute of
18 limitations governing plaintiff's § 1983 claim should be tolled
19 while his EEOC proceeding was pending." Reese v. City of
20 Emeryville Fire Dep't, 746 F. Supp. 987, 988 (N.D. Cal. 1990).
21 The Reese court explained, "To hold otherwise would grant
22 plaintiff the right to allege new causes of action continually,
23 each time asserting the pendency of the previous litigation as
24 tolling any limitations period applicable to the newly alleged
25 claim. Such a result would frustrate policies behind statutes of
26 limitations, which are intended both to encourage plaintiffs to
27 pursue all available legal remedies in a timely manner and to
28 ensure that defendants need not face the uncertainty of

1 indefinite liability.” Id. Other district courts have held that
2 an EEOC proceeding does not toll the limitation period for a
3 Section 1983 claim. See Sutton v. City & Cnty. of San Francisco,
4 No. C 93-1120 BAC, 1993 WL 451506, at *2 (N.D. Cal. Oct. 28,
5 1993) (granting summary judgment to the defendant because Section
6 1983 claim was untimely, as it was not tolled during the pendency
7 of the plaintiff’s EEOC proceeding); Vorgias v. State Bar of
8 California, No. C 05-5039 JF PVT, 2007 WL 295547, at *2 (N.D.
9 Cal. Jan. 30, 2007) (holding that an EEOC complaint did not toll
10 the limitation period for a Section 1983 claim).

11 The Court agrees that the statute of limitations for a
12 Section 1983 claim runs during the pendency of an EEOC
13 proceeding. Because Plaintiff has no other argument for tolling
14 and concedes that her claim is otherwise untimely, the Court
15 grants Defendants’ motion and denies Plaintiff’s motion as to the
16 Section 1983 claim.

17 F. The Court Must Dismiss the Remaining Claims

18 1. Fair Employment and Housing Act

19 The parties move for summary judgment as to Plaintiff’s
20 claim for violation of California’s Fair Employment and Housing
21 Act (“FEHA”). Defendants correctly argue that this claim is
22 barred by the Eleventh Amendment. Defs.’ Mot. at 28. The
23 Supreme Court held, “a claim that state officials violated state
24 law in carrying out their official responsibilities is a claim
25 against the State that is protected by the Eleventh Amendment.”
26 Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 121
27 (1984) (citation omitted). The Court furthered that “this
28 principle applies as well to state-law claims brought into

1 federal court under pendent jurisdiction.” Id. While an
2 individual can sue a state employee for a FEHA violation in state
3 court, the Ninth Circuit held that “a statute consenting to suit
4 in state court does not constitute consent to suit in federal
5 court.” Fordyce v. City of Seattle, 55 F.3d 436, 441 (9th Cir.
6 1995) (citation omitted). Accordingly, the Ninth Circuit held,
7 “California has not waived its immunity to FEHA actions in
8 federal court.” Freeman v. Oakland Unified Sch. Dist., 179 F.3d
9 846, 847 (9th Cir. 1999); see also Mack v. California Dep’t of
10 Corr. & Rehab., 790 F. App’x 846, 848 (9th Cir. 2019) (holding
11 that the district court properly dismissed a FEHA claim against a
12 state agency because the claim was barred by sovereign immunity).

13 Plaintiff points out that Defendants did not raise this
14 issue at the motion to dismiss stage. Pl.’s Opp’n at 7 n.4.
15 However, Defendants were not required to raise this issue in a
16 motion to dismiss. See Doe v. Regents of the Univ. of
17 California, 891 F.3d 1147, 1152-53 (9th Cir. 2018) (holding that
18 defendant did not waive immunity by not raising the argument in a
19 motion to dismiss). Moreover, because Defendants asserted this
20 affirmative defense, the argument was not waived. See Answer at
21 24, ECF No. 34.

22 Plaintiff also contends that the Ninth Circuit allowed her
23 FEHA claim to proceed. Pl.’s Opp’n at 7 n.4. However, because
24 this issue was not previously raised, the Ninth Circuit did not
25 address it. The Ninth Circuit held that Plaintiff “can seek
26 retrospective damages from the Controller’s Office under FEHA
27 because state employers are likewise subject to suits for damages
28 under that state law.” Bolden-Hardge, 63 F.4th at 1221 (citing

1 DeJung v. Superior Ct., 169 Cal. App. 4th 533 (2008)). The Ninth
2 Circuit did not, however, address whether this claim was barred
3 by the Eleventh Amendment. Moreover, DeJung – the California
4 appellate case that the Ninth Circuit cited – only stands for the
5 proposition that public employers are liable for violations of
6 FEHA, and it does not state that California has waived its
7 immunity against FEHA actions in federal court. See 169 Cal.
8 App. 4th at 545.

9 Accordingly, the Court does not have jurisdiction over the
10 FEHA claim. The Court addresses below the proper disposition of
11 this claim. See infra Opinion Part F.3.

12 2. California Constitution

13 Defendants, but not Plaintiff, move for summary judgment as
14 to Plaintiff's claim for violation of the California
15 Constitution. As Defendants observe, see Defs.' Mot. at 35, this
16 claim is also barred because "a claim that state officials
17 violated state law in carrying out their official
18 responsibilities is a claim against the State that is protected
19 by the Eleventh Amendment." See Pennhurst State Sch., 465 U.S.
20 at 121. Relying on Pennhurst State School, the Ninth Circuit
21 held that a federal court deciding state issues "would offend
22 federalism and does not further the interests of federal law."
23 Ulaleo v. Paty, 902 F.2d 1395, 1400 (9th Cir. 1990).

24 Accordingly, the Ninth Circuit affirmed the district court's
25 dismissal of "plaintiffs' pendent claims based on solely state
26 law and the state constitution." Id.

27 Plaintiff does not address this specific argument. See
28 Pl.'s Opp'n at 20, n.15. By failing to respond to Defendants'

1 argument, Plaintiff concedes that this claim is barred. See
2 Mariscal v. Graco, Inc., 52 F. Supp. 3d 973, 984 (N.D. Cal. 2014)
3 (granting summary judgment because the plaintiff conceded the
4 relevant claim by failing to address the defendant's arguments);
5 M.J.L.H. v. City of Pasadena, No. CV 18-3249-JFW(SSx), 2019 WL
6 2249545, at *4 n.9 (C.D. Cal. May 24, 2019) (same). Accordingly,
7 the Court does not have jurisdiction over the California
8 Constitution claim.

9 3. Dismissal is Mandatory as to Both Claims

10 Defendants request summary judgment as to the FEHA and
11 California Constitution claims. Defs.' Mot. at 28, 35. However,
12 because the Court lacks jurisdiction, it must dismiss the claims
13 rather than grant summary judgment. In Freeman v. Oakland
14 Unified School District, the district court granted the
15 defendant's motion for summary judgment because the FEHA claim
16 was barred by the Eleventh Amendment. No. C 96-1539 FMS, 1998 WL
17 310758, at *4 (N.D. Cal. June 8, 1998). Upon appeal, though the
18 Ninth Circuit agreed that the claim was barred, it nonetheless
19 ordered "the district court to modify its decision to specify
20 that [the plaintiff's] FEHA claim is 'dismissed without
21 prejudice.'" Freeman, 179 F.3d at 847. The court explained that
22 because the "Eleventh Amendment is a limit on federal courts'
23 jurisdiction," a claim barred by the Eleventh Amendment must be
24 dismissed "without prejudice to it being re-filed in a court of
25 competent jurisdiction." Id.

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