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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND  
REHABILITATION,

Defendant.

No. 2:24-cv-00925-DJC-DB

**ORDER**

After the experience of the COVID-19 pandemic, Defendant California Department of Corrections and Rehabilitation (“CDCR”) began more rigorously enforcing state laws requiring respirators to be used when Correctional Officers are exposed to airborne diseases such as COVID-19 and the chemical agents that are often used to respond to inmate disturbances, cell extractions, and on less frequent occasions, riots. As a result of the type of respirators CDCR selected to meet its needs, Correctional Officers donning a respirator are not permitted to wear most types of beards, as the California Division of Occupational Safety and Health (“Cal/OSHA”) guidelines do not allow facial hair that breaks the seal of the respirator on the user’s face. Because, in CDCR’s view, all Correctional Officers must be

1 prepared to don a respirator as part of their job duties, CDCR prohibits all  
2 Correctional Officers from maintaining most types of beards.

3 Defendant's facial hair policy is in conflict with the sincerely held religious  
4 beliefs of some of its Correctional Officers, who maintain beards as an expression of  
5 their faith. Generally speaking, Title VII of the Civil Rights Act of 1964 prohibits  
6 employers from discriminating against any individual with respect to their religion and  
7 requires employers to provide reasonable accommodations to the religious beliefs of  
8 employees unless doing so would constitute an undue hardship. Recently, the  
9 Supreme Court clarified that to show an undue hardship, an entity must show that the  
10 burden of granting an accommodation would result in a substantial increased cost for  
11 the employer in relation to the conduct of the employer's particular business. *Groff v.*  
12 *DeJoy*, 600 U.S. 447, 470 (2023).

13 Several Correctional Officers, including the Charging Parties in this case,  
14 sought a religious accommodation to permit them to wear a beard while serving as a  
15 Correctional Officer. After being denied an accommodation, the Charging Parties  
16 filed complaints with the Equal Employment Opportunity Commission ("EEOC"),  
17 which began an investigation into CDCR's employment practices. After completing an  
18 initial investigation, the EEOC concluded that a preliminary injunction prohibiting  
19 CDCR from requiring Correctional Officers to shave in violation of their religious  
20 beliefs was necessary, and the Attorney General brought this action in order to  
21 prevent further harm to the Charging Parties while the EEOC completes its  
22 investigation and reaches a final disposition of the charges.

23 Having reviewed the evidence in this case, the Court concludes that Defendant  
24 has not presented sufficient evidence to support its contention that allowing *any*  
25 Correctional Officer to maintain a beard in *any* position across its institutions would  
26 constitute an undue hardship. The Court does not reach this conclusion lightly: CDCR  
27 is rightly concerned about placing its Correctional Officers and inmates at  
28 unnecessary risk of contracting COVID-19 or other airborne diseases, and

1 Correctional Officers must be able to use respirators in response to the use of  
2 chemical agents when required by state law. CDCR has not demonstrated, however,  
3 that it would be an undue hardship to modify its policy decision to require all  
4 Correctional Officers to be able to respond to the use of chemical agents. Nor has it  
5 established that all Correctional Officers must be able to wear a respirator in all  
6 situations to avoid exposure to airborne diseases like COVID-19.

7 In support of its position that all Correctional Officers be able to respond to  
8 inmate disturbances that involve chemical agents, Defendant points to the fact that in  
9 2023 alone, there were 5,000 use-of-force incidents where chemical agents were  
10 used. But this argument ignores the fact that for many of these incidents, respirators  
11 weren't used because Correctional Officers were responding to an unplanned  
12 situation that required an immediate use of force, such as two inmates fighting.  
13 Defendant does not provide any information on how often respirators were actually  
14 used in 2023. Given that at least two of the Charging Parties have *never* used a  
15 respirator despite having worked at CDCR for eight and six years respectively, some  
16 specific evidence of how often respirators are actually used in CDCR institutions is  
17 necessary for Defendant to show that exempting some Correctional Officers would  
18 result in substantial increased costs.

19 Similarly, while respirators may be used in some prison facilities to protect  
20 against airborne diseases such as COVID-19, Defendant fails to offer any evidence  
21 about the frequency with which respirators are used for this purpose. It is certainly the  
22 case that *some* Correctional Officers are required to use a respirator in some portions  
23 of the prisons, such as medical facilities, or in response to an outbreak of an infectious  
24 disease. But without important information, such as how often this occurs, the Court  
25 cannot conclude it is reasonable to require all Correctional Officers to shave at all  
26 times.

27 It may well be that it would be an undue hardship for CDCR to grant an  
28 exception to its facial hair policy for each of the Correctional Officers who request it.

1 Its categorical refusal to allow *any* exemption to that policy on the grounds that it  
2 would be an undue hardship, however, is not supported by the evidence. CDCR must  
3 meaningfully engage in the process required by Title VII to accommodate its  
4 Correctional Officers in the exercise of their religious beliefs. Accordingly, the Court  
5 will grant Plaintiff's requested relief.

### 6 **BACKGROUND**

7 Defendant enforces a policy prohibiting all Correctional Officers in Defendant's  
8 employ from having certain types of facial hair that prevent the respirators CDCR uses  
9 from creating a complete seal to the face of the user or interfere with valve functions  
10 of the respirators. (Mot. (ECF No. 8) at 5; Opp'n (ECF No. 17) at 6.) This policy is  
11 designed to limit Correctional Officers' exposure to chemical agents and Aerosol  
12 Transmissible Diseases ("ATDs") – such as COVID-19 – when the use of a respirator is  
13 required. Under Defendant's policies, all Correctional Officers must be able to wear a  
14 respirator, such that it is necessary, in Defendant's view, that Correctional Officers  
15 shave facial hair that would interfere with the seal or valve functions of the respirators.  
16 (*Id.*)

17 Prior to the COVID-19 pandemic, Defendant did not strictly enforce a facial hair  
18 requirement and had granted religious accommodations to a number of Correctional  
19 Officers, permitting them to wear beards as part of their religious practice. In part due  
20 to a settlement with Cal/OSHA, Defendant modified its policies in 2022 to the current  
21 facial hair policy. (Opp'n at 3.) On September 22, 2022, CDCR issued a  
22 memorandum wherein Correctional Officers were informed they would need to be  
23 able to pass a "fit test" to ensure that any facial hair did not affect the seal of a  
24 respirator to the face or the valve functions of a respirator. (Sienko Decl. (ECF No. 8-2)  
25 Ex. 6.) The memorandum also informed Correctional Officers that previously  
26 submitted and granted religious accommodation requests would need to be  
27 resubmitted and reevaluated.

28

1 Between May and September 2023, the United States Equal Employment  
2 Opportunity Commission received charges from a number of individuals currently or  
3 previously employed by Defendant as Correctional Officers alleging that Defendant  
4 had engaged in religion-based discrimination by enforcing the facial hair policy. This  
5 included Mubashar Ali, Ravinder Dhaliwal, Jatinder Dhillon, Amarpreet Pannu, Adam  
6 Quattrone, Rajdeep Singh, Satvir Singh, and Manroop Singh Sohal (collectively, the  
7 “Charging Parties”). The EEOC is presently investigating these charges. On February  
8 6, 2024, the EEOC notified the United States Attorney General that “prompt judicial  
9 action” in the form of injunctive relief was necessary pending a final determination as  
10 to the Charging Parties’ complaints. (Mot. at 10.) On March 11, 2024, Plaintiff notified  
11 Defendant of the eight charges from the Charging Parties and requested that  
12 Defendant immediately cease enforcement of the policy. (*Id.*) On March 21, 2024,  
13 Defendant denied Plaintiff’s request to cease enforcement. (*Id.*)

14 Plaintiff filed the present suit and the subsequent motion for preliminary relief  
15 with the express purpose of obtaining preliminary relief until the EEOC issues a final  
16 disposition of the charges. This motion is fully briefed (Mot. (ECF No. 8); Opp’n (ECF  
17 No. 17); Reply (ECF No. 20); Sur-Reply (ECF No. 25-1)<sup>1</sup>) and the Court heard oral  
18 argument on June 6, 2024 (see ECF No. 28).

### 19 **LEGAL STANDARD**

20 Title VII, Section 706 of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5,  
21 empowers the EEOC to prevent employers from engaging in unlawful employment  
22 practices. Under Section 706, individuals who are subject to discriminatory practices  
23 may file charges of such discrimination with the EEOC. 42 U.S.C. § 2000e-5(b). If,  
24 after a preliminary investigation of a charge, the EEOC determines that “prompt  
25 judicial action is necessary to carry out the purposes of [the Civil Rights Act],” the

26 \_\_\_\_\_  
27 <sup>1</sup> At oral argument the Court overruled Defendant’s Objections to the evidence submitted in support of  
28 Plaintiff’s Sur-Reply but permitted Defendant’s Sur-Reply. Accordingly, the Court grants Defendant’s  
request to submit Sur-Reply. The Proposed Sur-Reply filed at ECF No. 25-1 will be deemed filed and  
added to the Docket as Defendant’s Sur-Reply.

1 EEOC may “bring an action for appropriate temporary or preliminary relief pending  
2 final disposition of such charge.” 42 U.S.C. § 2000e-5(f)(2). Where, as is the case here,  
3 the employer is a government agency, this is done by the Attorney General instead of  
4 the EEOC itself. *Id.* Subsection (f)(2) of Section 706 also provides that preliminary  
5 relief under that section “be issued in accordance with rule 65 of the Federal Rules of  
6 Civil Procedure.” *Id.*

7 The Supreme Court recently issued a decision in *Starbucks Corp. v. McKinney*,  
8 --- U.S. ---, 2024 WL 2964141 (2024), in which the Court made clear that “[w]hen  
9 Congress empowers courts to grant equitable relief, there is a strong presumption  
10 that courts will exercise that authority in a manner consistent with traditional principles  
11 of equity.” *Id.* at \*4. In the context of preliminary relief, this means courts must apply  
12 the full four-part test described in *Winter v. Natural Resource Defense Council*, 555  
13 U.S. 7 (2008). The only exception is where there has been “a clear command from  
14 Congress” to depart from the traditional *Winter* factors. *Starbucks Corp.*, 2024 WL  
15 2964141 at \*4.

16 Section 706(f)(2) does not contain a clear command from Congress to depart  
17 from *Winter*. In fact, as already noted, it expressly states that “[a]ny temporary  
18 restraining order or other order granting preliminary or temporary relief shall be  
19 issued in accordance with rule 65 of the Federal Rules of Civil Procedure.” 42 U.S.C.  
20 § 2000e-5(f)(2). Given that Section 706(f)(2) does not provide a clear command to  
21 apply a different standard, the Court must fully consider the traditional four-factor test  
22 described in *Winter*. The *Winter* test requires that a party seeking preliminary  
23 injunctive relief show (1) they are likely to succeed on the merits, (2) that they are likely  
24 to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of  
25 equities tips in their favor, and (4) that an injunction is in the public interest. See  
26 *Starbucks Corp.*, 2024 WL 2964141 at \*4. The Court will consider each factor in turn.

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1 **DISCUSSION**

2 **I. Likelihood of Success on the Merits**

3 Plaintiff brings this action based on Defendant’s alleged failure to  
4 accommodate the Charging Parties’ religious beliefs in violation of Section 703(a)(1)  
5 of Title VII. See 42 U.S.C. § 2000e-2(a)(1). That subsection makes it unlawful for  
6 employers “to fail or refuse to hire or to discharge any individual, or otherwise to  
7 discriminate against any individual with respect to his compensation, terms,  
8 conditions, or privileges of employment, because of such individual's race, color,  
9 religion, sex, or national origin.” *Id.* Unlawful employment practices include the  
10 failure to reasonably accommodate an employee’s religious beliefs, practices, and  
11 observances unless doing so would constitute an undue hardship. 42 U.S.C.  
12 § 2000e(j) (defining religion); see also *Groff*, 600 U.S. at 453-54.

13 In analyzing a Title VII failure-to-accommodate claim, courts in the Ninth Circuit  
14 apply a burden shifting framework. See *Berry v. Dep’t of Soc. Servs.*, 447 F.3d 642,  
15 655 (9th Cir. 2006). This requires that a plaintiff “must first set forth a prima facie case  
16 that: (1) he had a bona fide religious belief, the practice of which conflicts with an  
17 employment duty; (2) he informed his employer of the belief and conflict; and (3) the  
18 employer discharged, threatened, or otherwise subjected him to an adverse  
19 employment action because of his inability to fulfill the job requirement.” *Id.* (internal  
20 quotations and citations omitted). After the plaintiff meets this prima facie  
21 requirement, the burden then shifts back to the defendant to show that they “initiated  
22 good faith efforts to accommodate reasonably the employee's religious practices or  
23 that it could not reasonably accommodate the employee without undue hardship.”  
24 *Peterson v. Hewlett-Packard Co.*, 358 F.3d 599, 606 (9th Cir. 2004).

25 **A. Prima Facie Case**

26 Plaintiff has met its initial burden in presenting a prima facie failure-to-  
27 accommodate case for all Charging Parties.  
28

1 Each of the Charging Parties has submitted declarations to the Court in which  
2 they represent that they have sincerely held religious beliefs that require them to  
3 maintain facial hair. (Ali Decl. (ECF No. 8-3) ¶ 1; Dhaliwal Decl. (ECF No. 8-4) ¶ 1;  
4 Dhillon Decl. (ECF No. 8-5) ¶ 1; Pannu Decl. (ECF No. 8-6) ¶ 1; Quattrone Decl. (ECF  
5 No. 8-7) ¶ 1; R. Singh Decl. (ECF No. 8-8) ¶ 1; S. Singh Decl. (ECF No. 8-9) ¶ 1; Sohal  
6 (ECF No. 8-10) ¶ 1.) "An assertion of a sincere religious belief is generally  
7 accepted . . ." *Keene v. City and County of San Francisco*, No. 22-16567, 2023 WL  
8 3451687, at \*2 (9th Cir. May 15, 2023) (citing *Thomas v. Review Bd.*, 450 U.S. 707, 714  
9 (1981) and *Doe v. San Diego Unified Sch. Dist.*, 19 F.4th 1173, 1176 n.3 (9th Cir.  
10 2021)). Defendant does not contest the sincerity of the Charging Parties' religious  
11 beliefs, nor does the Court have any cause to doubt them.<sup>2</sup>

12 Defendant does not contest that the Charging Parties each made Defendant  
13 aware of their religious beliefs and the conflict between those beliefs and their  
14 employment duty. All but one of the Charging Parties assert that they submitted  
15 requests for religious accommodations to permit them to maintain their facial hair, in  
16 some cases submitting multiple such requests. (Ali Decl. ¶¶ 4, 9.b; Dhaliwal Decl.  
17 ¶¶ 3, 6.a, 6.c; Pannu Decl. ¶ 7.c; Quattrone Decl. ¶¶ 4, 8; R. Singh Decl. ¶¶ 3, 6, 16; S.  
18 Singh Decl. ¶¶ 6.a, 8; Sohal Decl. ¶ 5.a.<sup>3</sup>) The sole Charging Party who did not submit  
19 a request for religious accommodation, Jatinder Dhillon, states that he requested his  
20 attorney submit a letter to "CDCR Assistant Secretary/General Counsel on my behalf  
21 reiterating my request of an accommodation to the clean-shaven policy . . ." based on

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22  
23 <sup>2</sup> During argument, Defendant's counsel also suggested that permitting religious accommodations  
24 from the facial hair requirement would result in more Correctional Officers claiming their religious  
25 beliefs prevent them from shaving. The implication of the statement appeared to be that these  
26 individuals would falsely claim religious beliefs in order to avoid the respirator requirement. This claim  
27 appears to be entirely without basis. This is an inappropriate suggestion without concrete evidence of  
28 such a risk and the statement represents a concerning approach to requested religious  
accommodations in a case where the Charging Parties all appear to have genuinely held religious  
beliefs.

<sup>3</sup> Due to an apparent drafting error, the Declaration of Charging Party Manroop Singh Sohal contains  
repeated paragraph numbers. (See Sohal Decl. at 1-2.) To avoid confusion, the Court refers to  
paragraphs from this declaration by what would be the appropriate paragraph number, not what  
appears in the declaration.



1 his religious beliefs. (Dhillon Decl. ¶ 12; Dhillon Decl. Ex. 33.) The requests for  
2 accommodation described by the Charging Parties – as well as those attached by  
3 several of the Charging Parties as exhibits to their declarations (see Ali Decl. Ex. 18 &  
4 20; Dhaliwal Decl. Ex. 24 & 25; Pannu Decl. Ex. 35; Quattrone Decl. Ex. 43; R. Singh  
5 Decl. Ex. 47; S. Singh Decl. Ex. 52 & 53; Sohal Decl. Ex. 55) – are sufficient to show the  
6 Charging Parties each informed Defendant of their religious beliefs and conflict. See  
7 *Berry*, 447 F.3d at 655 (finding an employee informed their employer of their religious  
8 beliefs and conflict by requesting to be relieved from a restriction on discussing  
9 religion with clients).<sup>4</sup>

10 Each of the Charging Parties claims that they were threatened with or suffered  
11 adverse employment actions because of their inability to fulfill the job requirement.  
12 (Ali Decl. ¶ 11; Dhaliwal Decl. ¶¶ 6.b, 8, 10; Dhillon Decl. ¶ 6.c; Pannu Decl. ¶¶ 13-15;  
13 Quattrone Decl. ¶¶ 10, 12; R. Singh Decl. ¶¶ 7, 18; S. Singh Decl. ¶ 6.b; Sohal Decl.  
14 ¶ 5.d, 7.) The threatened or actual action taken against the Charging Parties differ in  
15 kind and severity including being sent home from work and told not to return until  
16 they had shaved (see, e.g., Ali Decl. ¶ 11), being told to either withdraw the  
17 accommodation request or take a demotion (see, e.g., Dhaliwal Decl. ¶ 6.b), and  
18 being threatened with termination (see, e.g., S. Singh Decl. ¶ 6.b). However, all of the  
19 alleged actions, whether threatened or actual, fall within the realm of adverse  
20 employment action. See *Berry*, 447 F.3d at 655 (finding a prima facie showing of  
21 adverse employment action was satisfied based on a supervisor “instructing” an  
22 employee “not to pray with or proselytize to clients”). Defendant, again, does not  
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25 <sup>4</sup> Each of the Charging Parties took different steps in seeking an accommodation. As such, there may  
26 be technical issues with the way in which some of the accommodation requests were presented to  
27 CDCR. However, in each case it is clear CDCR was made aware of each Correctional Officer’s desire to  
28 wear a beard as a religious accommodation. In any event, the similarity of CDCR’s responses, as well as  
the existence of what appears to be guidance from CDCR’s Office of Civil Rights on this issue, (see, e.g.,  
Aviles Decl. Ex. E; Ourique Decl. (ECF No. 17-6), Ex. A at 4-5 [ECF No. 17-6 at 8-9]), convinces the Court  
that the Plaintiff has set forth a prima facie case of an unlawful employment practice.

1 contest that the Charging Parties were threatened with or suffered actual adverse  
2 employment actions.

3 Plaintiff has clearly shown that they can meet their burden to establish a prima  
4 facie Title VII failure-to-accommodate case as they have presented evidence that the  
5 Charging Parties had bona fide religious beliefs that conflicted with the facial hair  
6 policy, that the Charging Parties informed Defendant of their beliefs and the policy  
7 conflict, and that the Charging Parties faced adverse employment actions.

### 8 **B. Good Faith Efforts to Accommodate or Undue Hardship**

9 Given that Plaintiff has shown the existence of a prima facie case, the burden  
10 then shifts to Defendant. Defendant must show that it “initiated good faith efforts to  
11 accommodate reasonably the employee’s religious practices or that it could not  
12 reasonably accommodate the employee without undue hardship.” *Berry*, 447 F.3d at  
13 655. The Defendant is unable to make either showing in this case.

#### 14 **1. Reasonable Accommodations**

15 To satisfy Title VII, an accommodation of an individual’s religious practices must  
16 “reasonably preserve that employee's employment status, i.e., compensation, terms,  
17 conditions, or privileges of employment.” *Am. Postal Workers Union, S.F. Loc. v.*  
18 *Postmaster Gen.*, 781 F.2d 772, 776 (9th Cir. 1986). This burden “lies with the  
19 employer”, meaning the *employer* must propose an accommodation. *EEOC v.*  
20 *Townley Eng’g & Mfg. Co.*, 859 F.2d 610, 615 (9th Cir. 1988). “Where an employer  
21 proposes an accommodation which effectively eliminates the religious conflict faced  
22 by a particular employee, however, the inquiry under Title VII reduces to whether the  
23 accommodation reasonably preserves the affected employee's employment status.”  
24 *Am. Postal Workers Union*, 781 F.2d at 776-77.

25 The record shows that initially, many of the Charging Parties were expressly  
26 informed that Defendant could not provide any accommodations for them. (Ali Decl.  
27 Ex. 21, at 1 [ECF No. 8-3 at 21] (“[I]t has been determined that [CDCR] is unable . . . to  
28 identify a reasonable accommodation that does not create an undue hardship . . .”);

1 Dhaliwal Decl. Ex. 25, at 2 [ECF No. 8-4 at 12] (“cannot accommodate”); Pannu Decl.  
2 Ex. 35, at 3 [ECF No. 8-6 at 12] (“[W]e were unable to provide an accommodation for  
3 the classification of Correctional Peace Officer[.]”).) On or about November 2, 2022,  
4 CDCR’s Office of Civil Rights issued internal guidance on accommodations that could  
5 be considered in responding to requests for exemption from the facial hair  
6 requirement. (See Aviles Decl. (ECF No. 17-2) at 3; Aviles Decl. Ex. E.) After this  
7 guidance was issued, Charging Parties making religious accommodation requests  
8 were offered “reassignment/transfer and/or demotion” as an accommodation and, in  
9 some cases, a limited leave of absence. (See, e.g., Ali Decl. Ex. 23; Pannu Decl. Ex. 39;  
10 R. Singh Decl. Ex. 49.)

11 Defendant contends that reassignment, transfer, or demotion represent  
12 reasonable accommodations for the Charging Parties and that Defendant remains  
13 willing to provide them those purported accommodations. (Opp’n at 9-10.)  
14 Defendant claims that it was the Charging Parties’ decision to disengage from the  
15 interactive process that resulted in Defendant’s inability to provide reasonable  
16 accommodations. (*Id.* at 11.) However, for a proposed accommodation to satisfy Title  
17 VII, the accommodation must “reasonably preserve that employee’s employment  
18 status, i.e., compensation, terms, conditions, or privileges of employment.” *Am. Postal*  
19 *Workers Union*, 781 F.2d at 776.

20 A demotion would plainly not preserve the Charging Parties’ employment  
21 status. Further, while it is theoretically possible that a “reassignment/transfer” could  
22 serve as a reasonable accommodation, this would likely only be true if the Charging  
23 Parties were transferred to another position within the Peace Officer classification  
24 given that non-Peace Officer positions apparently provide lower pay, lesser retirement  
25 benefits, and other less favorable conditions of employment. (See Mot. at 6; see also  
26 Ali Decl. ¶ 14; Dhaliwal Decl. ¶ 6.b; Pannu Decl. ¶ 19; Quattrone Decl. ¶ 14; R. Singh  
27 Decl. ¶ 22; S. Singh Decl. ¶ 7.) The loss of such compensation and privileges of  
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1 employment would represent a change in the Charging Parties' employment status.  
2 See *Am. Postal Workers Union*, 781 F.2d at 776.

3 The Charging Parties understood the transfers offered to be to non-Peace  
4 Officer positions. (See, e.g., Ali Decl. ¶ 14; Sohal Decl. ¶ 5.d; Quattrone ¶ 14.) In  
5 some instances, a Charging Party was directed to the "Cal Careers" website to  
6 determine what available positions they were interested in but, when the Charging  
7 Party investigated, they did not find any Peace Officer positions and/or were rejected  
8 from the available Peace Officer positions. (Pannu Decl. ¶ 18-19; Pannu Decl. Ex. 39;  
9 Dhaliwal Decl. ¶ 8; Dhaliwal Ex. 27.)

10 Defendant's suggestion that there *might* be Peace Officer positions available is  
11 insufficient. Defendant provides no guarantee that these positions are available to the  
12 Charging Parties, instead simply suggesting that such a transfer is *possible* based on a  
13 single instance where an individual was successfully transferred to a Parole Officer  
14 position. (Opp'n at 23.) This singular transfer does not establish that such positions  
15 are actually available for the Charging Parties. As is tacitly noted in one declaration  
16 submitted by Defendant with their Opposition, the ability to transfer to such a position  
17 is limited due to the need for a Peace Officer position to be vacant, the individual to  
18 be appropriately qualified for the position, and for the vacant position to not result in  
19 a pay increase for the individual. (See Mack Decl. (ECF No. 17-16) ¶ 5 ("*If qualified,*  
20 *that CO could be transferred to a different, vacant peace-officer job with different*  
21 *essential functions, such as Parole Agent or Special Agent so long as the transfer does*  
22 *not result in a pay increase.*" (emphasis added).) Moreover, as noted above, in some  
23 instances, the Charging Parties investigated the vacant positions and discovered that  
24 Peace Officer positions were not available. (See, e.g., Pannu Decl. ¶ 18-19; Pannu  
25 Decl. Ex. 39; Dhaliwal Decl. ¶ 8; Dhaliwal Decl. Ex. 27.)

26 Defendant's suggestion that the Charging Parties did not receive reasonable  
27 accommodations because they disengaged from the interactive process is not  
28

1 supported by the record in most instances.<sup>5</sup> Once Defendant made it clear to a  
2 Charging Party that they would only be offered a demotion or transfer/reassignment  
3 that would represent a change in employment status, that individual's continued  
4 involvement in that process is immaterial as it could not result in a reasonable  
5 accommodation.

6 In short, while theoretically in some situations Defendant might have positions  
7 into which the Charging Party could be transferred that would maintain that  
8 individual's employment status, Defendant makes no showing that such options are  
9 actually available. It is clear that in reality the offered accommodations represented a  
10 change in employment status as Defendant was unwilling to provide Charging Parties  
11 with accommodations that were not a demotion or transfer to a non-Peace Officer  
12 position. Defendant does not represent that any other efforts were made to  
13 accommodate the Charging Parties. As such, Defendant did not initiate good faith  
14 efforts to accommodate reasonably the Charging Parties religious practices.<sup>6</sup> See  
15 *Berry*, 447 F.3d at 655.

## 16 **2. Undue Hardship**

17 Having failed to accommodate the Charging Parties' religious practices,  
18 Defendant must show that providing reasonable accommodations would create  
19 undue hardship for CDCR. 42 U.S.C. § 2000e(j). It has not done so.

20 The Supreme Court recently clarified the standard for undue hardship under  
21 Title VII in *Groff v. DeJoy*, 600 U.S. 447 (2023). There, the Court explained that to

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22 <sup>5</sup> Examining the declarations submitted by both parties, it seems that Charging Party Satvir Singh may  
23 have prematurely disengaged from the interactive process by failing to speak with the Equal  
24 Employment Opportunity Coordinator at his institution after he submitted his initial religious  
25 accommodation request, despite the Coordinator attempting to meet with Charging Party Satvir Singh  
26 and his counsel. (See Shepherd Decl. (ECF No. 17-12) ¶ 5; see also S. Singh Decl.)

27 <sup>6</sup> Plaintiff also proposed a number of alternative respirators as another possible accommodation.  
28 However, on review of the evidence provided, the Court is satisfied that Defendant has met their  
burden in showing that the respirators provided would not be a suitable accommodation as they would  
not meet the safety requirements for usage in a correctional environment. (See generally Weissman  
Decl. (ECF No. 17-10).) However, the Court encourages Defendant to continue evaluating alternative  
respirators in the event that one may be suitable, which could obviate the need for other changes that  
could otherwise be required by this Order.

1 establish undue hardship “an employer must show that the burden of granting an  
2 accommodation would result in *substantial increased costs* in relation to the conduct  
3 of its particular business.” *Id.* at 470 (emphasis added). The Court advised that undue  
4 hardship in the context of Title VII “means what it says, and courts should resolve  
5 whether a hardship would be substantial in the context of an employer’s business in  
6 the common-sense manner that it would use in applying any such test.” *Id.* at 471.  
7 “[C]ourts must apply the test in a manner that takes into account all relevant factors in  
8 the case at hand, including the particular accommodations at issue and their practical  
9 impact in light of the nature, size and operating cost of an employer.” *Id.* at 470. The  
10 Court also noted that to satisfy Title VII, employers cannot simply examine the  
11 reasonableness of “a particular possible accommodation or accommodations” but  
12 must “reasonably accommodate an employee’s practice of religion” which requires  
13 consideration of “other options”. *Id.* at 473.

14 Defendant has not met their burden to show that providing reasonable  
15 accommodations to the Charging Parties would cause undue hardship. At bottom,  
16 Defendant’s argument is that because all Correctional Officers can, at any time, be  
17 required to work in any section of a prison or in any posting, they thus may need to  
18 don a respirator in response to the usage of chemical agents or risk of encountering  
19 ATDs. Therefore, Defendant argues all Correctional Officers must be able to use a  
20 respirator at all times. As discussed below, however, Defendant has not presented  
21 sufficient evidence that it would constitute a substantial burden to exempt the  
22 Charging Parties from responding to controlled uses of force and/or prison riots in  
23 which chemical agents are used. Moreover, while the Court can envision situations in  
24 which it would be an undue hardship to exempt the Charging Parties from wearing a  
25 respirator in response to an outbreak of an airborne disease, such as during the recent  
26 state of emergency arising from the COVID-19 pandemic, Defendant has not  
27 presented evidence of a current or imminent outbreak, or that it would constitute an  
28

1 undue hardship to reassign Correctional Officers in the event of a more limited  
2 outbreak.

3 Fundamentally, because Defendant has relied on highly generalized arguments  
4 that all Correctional Officers must be able to wear a respirator at all times and in all  
5 assignments, Defendant has refused to grapple with the specific circumstances of the  
6 individual Charging Parties. Its failure to engage in a meaningful assessment of the  
7 options available to accommodate the individual Charging Parties is fatal to its  
8 opposition.

9 **i. Necessity of Universal Respirator Requirement**

10 Plaintiff represents that 590 Correctional Officers previously held religious  
11 accommodations from the facial hair requirement. (Mot. at 9.) This is only a small  
12 percentage of the total Correctional Officer population of over 20,000.<sup>7</sup> While  
13 Defendant may be correct that due to its size and safety concerns CDCR is unique  
14 from other penal systems, it is Defendant's burden to show that accommodating such  
15 a small fraction of the Correctional Officer population "would result in substantial  
16 increased costs in relation to the conduct of its particular business." *Groff*, 600 U.S. at  
17 470. Defendant's undue hardship argument is mainly based on its present policy that  
18 all Correctional Officers be able to don respirators. However, Defendant has not  
19 provided sufficient evidence to establish that all Correctional Officers they employ  
20 must be able to use a respirator.

21 Defendant currently requires that all Correctional Officers be able to wear a  
22 respirator at all times. (Opp'n at 2.) Defendant claims that this universal respirator  
23 requirement is necessary due to the usage of chemical agents in CDCR institutions  
24 and to protect inmates and CDCR staff from exposure to ATDs. (*Id.*) As Defendant  
25 notes, Cal/OSHA regulations require that employees who are exposed to chemical  
26

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27 <sup>7</sup> Though an exact number has not been provided, at oral argument, Plaintiff represented there are  
28 approximately 21,800 Correctional Officers employed by Defendant. Defendant did not contest the  
accuracy of this estimate.

1 agents must be provided with respirators when necessary to protect the health and  
2 safety of the employee. (Savala Decl. (ECF No. 17-4) ¶ 3 (citing Cal. Code. Reg., tit. 8,  
3 § 5144).) Cal/OSHA also requires CDCR to maintain an Aerosol Transmissible  
4 Diseases Exposure Control Plan that specifies the job classifications in which  
5 employees have occupational exposure to ATDs, and which assignments or tasks  
6 require respiratory protection. (Savala Decl. ¶ 4 (citing Cal. Code Regs., tit. 8, §  
7 5199).) Defendant has designated all Correctional Officers as having exposure to  
8 both chemical agents and ATDs. (Savala Decl. ¶ 8.)

9 For employees exposed to chemical agents or, in certain circumstances, to  
10 ATDs, California law requires the use of respirators that meet the requirements of 42  
11 C.F.R. pt. 84 and that have been approved for that purpose by the National Institute  
12 for Occupational Safety and Health (“NIOSH”). See Cal. Code Regs., tit. 8, § 5199(b)  
13 (defining respirator); (see *also* Savala Decl. ¶ 4.) Additionally, due to the type of  
14 respirator selected by CDCR, under Cal/OSHA regulations there cannot be facial hair  
15 “between the sealing surface of the facepiece and the face or that interferes with valve  
16 function.” Cal. Code Regs., tit. 8, § 5144(g)(1)(A); (see *also* Savala Decl. ¶ 12.)  
17 Because Defendant has designated all Correctional Officers as being subject to  
18 exposure to chemical agents and ATDs, and because the respirator Defendant has  
19 selected is not compatible with most types of facial hair, CDCR implemented a policy  
20 limiting the facial hair of all Correctional Officers. (*Id.* at 5.) Defendant’s consistent  
21 position has been that no Correctional Officer may wear the kinds of beards that are  
22 required by the Charging Parties’ faith.

23 No one disputes the importance of protecting Correctional Officers from  
24 exposure to chemical agents and ATDs. As Defendant notes, in addition to the global  
25 toll taken by the COVID-19 pandemic of which the Court is painfully aware, within  
26 CDCR specifically 49 employees and 263 inmates have died of COVID-19. (Weissman  
27 Decl. ¶ 6.) Moreover, the Court does not doubt the health impacts on Correctional  
28 Officers who are exposed to the concentrations of chemical agents that trigger the



1 required use of a respirator. If the question was whether requiring Correctional  
2 Officers to be exposed to ATD outbreaks and high concentrations of chemical agents  
3 without the appropriate use of respirators constituted an undue hardship, the Court  
4 would have no hesitation in concluding that it does. CDCR must be able to operate its  
5 prisons in a manner that complies with federal and state law regarding exposure to  
6 diseases and harmful chemicals.

7         However, despite claiming that it is necessary for all Correctional Officers to be  
8 able to don respirators and relying on the necessity of this policy as a basis to deny  
9 the Charging Parties accommodations, Defendant fails to provide evidence  
10 establishing that this requirement is truly necessary. The mere fact of this policy –  
11 which was adopted by Defendant as one of a myriad of options to comply with state  
12 law – does not establish that it is required nor that deviation from this system would  
13 result in substantial increased costs, and thus undue hardship. Rather than present  
14 specific evidence supporting this policy, Defendant only provides conclusory  
15 statements suggesting that “it would be impossible for CDCR to adequately staff  
16 prisons and respond to emergencies if even one on-duty COs is not able to respond”  
17 (see Opp’n at 19) and supports this with a few declarations providing similarly  
18 conclusory statements (see, e.g., Lemon Decl. (ECF No. 17-15) ¶¶ 12, 16.a). Based on  
19 the evidence provided, it is not apparent that the usage of chemical agents and the  
20 risk of ATD exposure justifies the implementation of a respirator requirement for all  
21 Correctional Officers. The Court will examine the types of situations identified by  
22 Defendant as those in which a Correctional Officer may be exposed to chemical  
23 agents, and then turn to exposure to ATDs.

24                   **a. Use-of-Force Involving Chemical Agents**

25         One of Defendant’s core contentions is that all Correctional Officers must be  
26 able to don respirators to respond to use-of-force incidents involving chemical agents  
27 at CDCR institutions. Defendant notes there were over 5,000 uses of chemical agents  
28 in CDCR prisons in 2023 (see Opp’n at 3). However, Defendant does not provide any

1 information about the nature of the use-of-force incidents connected with those uses  
2 of chemical agents, not all of which require the use of a respirator.

3 Correctional Lieutenant Todd Manes notes that in his personal experience, use-  
4 of-force incidents can “range[] from stopping self-harm or simple one on one fights to  
5 responding . . . to attempted murders, murders, large-scale fighting and up to Code  
6 Three riots[,]” and that in the “vast majority” of these incidents “some form of chemical  
7 agent was used.” (Manes Decl. (ECF No. 17-14) ¶ 4.) This illustrates the breadth of  
8 situations in which chemical agents might be used and why a generalized claim that  
9 chemical agents are used in CDCR institutions does not justify the need for a universal  
10 respirator requirement. When the situations in which chemical agents are used are  
11 examined individually, it is apparent why the context for the use-of-force is relevant  
12 and why the use of chemical agents in CDCR institutions alone is insufficient to  
13 support undue hardship.

14 *First, where the use of chemical agents is in immediate response to a nearby*  
15 *inmate disturbance, respirators will not be utilized by Correctional Officers. Some*  
16 *portion of the over 5,000 incidents noted by Defendant involve an immediate action*  
17 *by Correctional Officers in response to nearby inmate disturbances such as a fight*  
18 *between two inmates. (See Lemon Decl. ¶ 6.) As Defendant’s counsel conceded at*  
19 *oral argument, where chemical agents are used in that context, a respirator would not*  
20 *be utilized by the Correctional Officer who deployed the chemical agent. (See Manes*  
21 *Decl. ¶ 5 (noting that in the declarant’s experience “controlled use-of-force” was the*  
22 *most common reason Correctional Officers would need to use gas masks).) This is*  
23 *consistent with the Declaration of Gina Savala, who notes that Cal/OSHA has set*  
24 *permissible exposure limits and that chemical agents used in “riot/disturbance control*  
25 *or cell extractions . . . will often fully saturate an environment with one of these*  
26 *chemicals . . . .” (Savala Decl. ¶ 10.) The implication of her declaration is that there are*  
27 *uses of chemical agents that would not result in concentrations of chemicals over*  
28

1 Cal/OSHA's exposure limits and thus not require respirators,<sup>8</sup> which is in line with  
2 counsel's position during argument. As such, it would be irrelevant if a Correctional  
3 Officer deploying a chemical agent in an immediate response situation was unable to  
4 wear a respirator. Thus, this specific kind of usage of chemical agents does not justify  
5 the requirement for all Correctional Officers to be able to wear respirators. And while  
6 CDCR does not break down its figure of the 5,000 uses of chemical agents, common  
7 sense would suggest that a substantial portion of them constitute this kind of  
8 immediate response.

9 *Second, where Correctional Officers are responding after an immediate use-of-*  
10 *force, they may need to wear respirators for protection.* While Defendant's counsel  
11 conceded that the rapid deployments of chemical agents discussed previously would  
12 not involve the use of a respirator, counsel stressed that the response *after* such a use-  
13 of-force would require the use of a respirator. However, Defendant provides no  
14 information on these response scenarios such as the number of Correctional Officers  
15 that need to respond in this post-use-of-force context, the posts from which  
16 Correctional Officers would respond, the frequency of these incidents, or any other  
17 details that would be relevant in determining whether exempting some Correctional  
18 Officers from the current universal respirator requirement would create undue  
19 hardship. Similar to the controlled use-of-force incidents discussed next, it seems  
20 highly likely that there is at least *some* delay in the response that would allow  
21 supervisors to make a decision about who would respond to the incident and who  
22 would be assigned to other roles. Absent information about how these situations  
23 unfold, it is impossible for the Court to determine whether the need to respond after a  
24 sudden use of chemical agents justifies imposing a respirator requirement on all  
25 Correctional Officers.

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27 <sup>8</sup> Because of the generalized nature of CDCR's declarations, it is unclear what concentration of chemical  
28 agents occurs during an immediate response to an inmate disturbance, but it is clear that respirators  
are not used during this kind of immediate response.

1           Third, in “controlled use-of-force” incidents such as cell extractions, the response  
2 is planned, allowing flexibility in determining which Correctional Officers are involved.

3 Respirators are most often necessary when chemical agents are deployed in the  
4 controlled use-of-force context (e.g., cell extractions). (See Manes Decl. ¶ 5.) Notably,  
5 this is the usage of chemical agents for which Defendant has significant flexibility in  
6 how Correctional Officers are assigned. Defendant relies heavily on the declaration of  
7 Correctional Lieutenant Manes in discussing the use of chemical agents and  
8 respirators in CDCR institutions. During the 16 years he has been posted at California  
9 State Prison, Sacramento, the only times that Correctional Lieutenant Manes donned a  
10 gas mask was during controlled use-of-force incidents.<sup>9</sup> (Manes Decl. ¶ 5.)

11 Significantly, despite stating that he has “responded to approximately 200 incidents  
12 where force was use [sic]” and that “some form of chemical agents was used” during  
13 the “vast majority” of these incidents<sup>10</sup>, Correctional Lieutenant Manes notes that the  
14 only time he needed to wear a respirator was in controlled use-of-force incidents at  
15 California State Prison, Sacramento, and one other time in response to a riot at Salinas  
16 Valley State Prison. (*Id.* ¶¶ 4-5.) Correctional Lieutenant Manes also states that in

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18 <sup>9</sup> Specifically, Lieutenant Manes states: “In my career, I have much experience with COs using (and  
19 requirements for using) tight-fitting respirators with face seals (aka “gas masks”) when chemical agents  
20 are used. For example, SVSP issued gas masks to the employees, while other prisons have gas masks  
21 located at centralized locations to be used when needed. During my time working at SVSP, I donned  
22 my gas mask one time during a riot that happened in the gym and involved a large amount of chemical  
23 agents deployed to restore order. The gas mask made it easier and safer to perform my duties during  
24 the riot, because I was not affected at all by the chemical agents, which can cause debilitating effects, as  
discussed below. At CSP-SAC, masks were available in the control booths or facility control areas.  
There, the times that I donned a gas mask was during controlled use of force (e.g., during a cell  
extraction to move a combative inmate out of the cell) where chemical agents were being utilized. That  
is the most common reason that most of the staff at CSP-SAC use gas masks. And, at times during  
bigger riots, I observed staff using a gas mask when areas were saturated with chemical agents.”  
(Manes Decl. ¶ 5.)

25 <sup>10</sup> Correctional Lieutenant Manes states: “In my career I have been involved in approximately 200  
26 incidents where force was use, as either an onsite responder, Code One, Code Two, or Code Three  
27 responder, Response Supervisor, or Incident Commander. These incidents ranged from stopping self-  
28 harm or simple one on one fights, to responding with use of force to attempted murders, murders,  
large-scale fighting, and up to Code Three riots (involving 100 or more people engaged in violence). In  
the vast majority of the force used during all these incidents some form of chemical agents was used.  
At CDCR, we teach COs that distance is safety, and using chemical agents can allow COs to begin  
effective use of force at a distance.” (Manes Decl. ¶ 4.)

1 responding to these incidents supervisors will form a “response team” which involves  
2 “select[ing] available COs for assignment from an array of CO posts . . . .” (Manes  
3 Decl. ¶ 3.)

4 The Court does not doubt that the use of respirators in these circumstances is  
5 critical and required by state law. However, Defendant has not established that it  
6 would be an undue hardship to not assign individuals who are unable to wear  
7 respirators for religious beliefs to controlled use-of-force incidents. As the name  
8 suggests, these situations appear to be at least somewhat “controlled”. Correctional  
9 Officers are “called on to participate” in these incidents and redirected from another  
10 post to assist. (Lemon Decl. ¶ 6.) The formation of a response team, as was  
11 mentioned by Correctional Lieutenant Manes, means that supervisors have the  
12 capacity to select, or not select, Correctional Officers for involvement.<sup>11</sup> Those not  
13 selected would have no need to wear respirators. Thus, the usage of chemical agents  
14 in the controlled use-of-force context cannot be used to justify the requirement that all  
15 Correctional Officers be able to wear a respirator.

16 *Fourth, though a large number of Correctional Officers may be required to don*  
17 *respirators when riots occur, these incidents appear rare, and, similar to controlled use-*  
18 *of-force incidents, their response is at least somewhat planned.* Defendant argues that  
19 during a large-scale riot, chemical agents would be used and a significant number of  
20 Correctional Officers would be required to respond, many of whom would be  
21 exposed to chemical agents and required to don a respirator. Again, however,  
22 Defendant fails to offer any information indicating how often these large-scale  
23 incidents happen, how many Correctional Officers may be impacted, or what other  
24 assignments may exist for Correctional Officers during these kinds of events.

25 Indeed, the evidence suggests these events are rare, such that it would not be  
26 an undue hardship to ensure that individuals who cannot use respirators for religious  
27

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28 <sup>11</sup> There is no indication that these response teams are chosen based on seniority.

1 purposes are assigned different tasks that would not require them to use a respirator  
2 during such an event. For instance, despite being provided by Defendant as the  
3 primary declarant on the need for respirators during use-of-force incidents involving  
4 chemical agents and working in CDCR institutions for roughly 19 years, Correctional  
5 Lieutenant Manes has worn a respirator one time in connection with a riot. (Manes  
6 Decl. ¶¶ 1, 5.) Similarly, Charging Party Ali, in his six years as a Correctional Officer,  
7 has never even heard a code 3 incident (i.e., a riot) called.<sup>12</sup> (Ali Decl. ¶¶ 22-23.) And  
8 Correctional Officer Quattrone, who has been employed as a peace officer with CDCR  
9 for eight years, has never worn a gas mask-type respirator as part of his duties.  
10 (Quattrone Decl. ¶ 17.)

11 As in the cell extraction context, the response to riots also appears to be  
12 organized, with Correctional Officers redirected from other posts to assist with riot  
13 control and formed into a “riot-response team”. (Lemon Decl. ¶¶ 6, 9; Manes Decl.  
14 ¶ 7.) All the information provided by Defendant suggests that these incidents are rare  
15 and, when they do occur, there are still Correctional Officers at the institution who do  
16 not need to wear respirators. (See Manes Decl. ¶ 12 (stating that there are posts, such  
17 as “outer-perimeter gun posts or tower posts” that are not “exposed to chemical  
18 agents during the usual course of their duties”); see also Ali Decl. ¶ 25 (“I am aware of  
19 peace officer work assignments at CHCF where officers are never required to respond  
20 to incidents that require a gas mask. These positions may be in certain  
21 areas . . . where officers are not allowed to leave their post to respond to code 3  
22 incidents.”).) Defendant has not given sufficient evidence that providing  
23 accommodations to the limited number of Correctional Officers who previously  
24 sought them would jeopardize the ability of institutions to respond to riots. As such, it  
25 is not apparent that the potential for riot response justifies Defendant’s requirement  
26 that all Correctional Officers be able to safely wear respirators.

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27  
28 <sup>12</sup> Significantly, Officer Ali has also never been called upon to assist with a code two incident, which includes some cell extractions. (Ali Decl., ¶¶ 22-23.)

\* \* \* \*

1  
2 In the context of chemical agents used in connection with a use-of-force  
3 incident, Defendant has not established that its requirement that all Correctional  
4 Officers be required to wear a respirator is justified. In situations where chemical  
5 agents are deployed, either respirators would not be used or the use-of-force is  
6 planned such that some Correctional Officers at the institution would not be required  
7 to wear a respirator. Defendant has not presented evidence that shows there are  
8 situations where all Correctional Officers need to be able to don respirators. Thus, the  
9 presence of a universal respirator requirement is not justified by the use of chemical  
10 agents and, as such, deviation from that requirement would not establish a substantial  
11 increase in cost such that it would constitute an undue hardship.

#### 12 **b. Aerosol Transmissible Diseases**

13 Undoubtedly, Defendant's renewed emphasis on complying with Cal/OSHA  
14 regulations governing the use of respirators, resulting in the rescission of the religious  
15 and medical accommodations that had previously been afforded the Charging  
16 Parties, was a direct result of CDCR's experiences during the COVID-19 pandemic. As  
17 stated above, Defendant has a significant interest in ensuring that its employees and  
18 inmates are not exposed to Aerosol Transmissible Diseases which the use of  
19 respirators is designed to prevent. However, Defendant's claim that a *universal*  
20 respirator requirement is justified by the need to respond to outbreaks of ATDs in  
21 CDCR institutions and the wider community is unsupported by the evidence  
22 presented.

23 N-95 respirators<sup>13</sup> are not used by Correctional Officers in the standard day-to-  
24 day operations of CDCR institutions. (See Lemon Decl. ¶¶ 12, 16; Dhillon Decl. ¶ 15;  
25 Pannu Decl. ¶ 28.) The use of these respirators appears generally limited to "various

26 \_\_\_\_\_  
27 <sup>13</sup> The gas-mask style respirators used to protect Correctional Officers from chemical agents differ in  
28 function from the N-95 respirators used to prevent exposure to ATDs. (See Savala Decl. ¶ 8.) However,  
both respirator types are affected by Cal/OSHA guidelines on the sealing of respirators and facial hair.  
(*Id.* ¶ 12.)

1 circumstances and assignments” where contact with inmates with ATDs is necessary or  
2 when a Correctional Officer is in a medical setting such as a hospital or clinic. (Lemon  
3 Decl. ¶ 12; see Pannu Decl. ¶ 28; Quattrone Decl. ¶ 18; Sohal Decl. ¶ 14.) As stated  
4 by CDCR Deputy Director of the Office of Employee Health Management Randolph  
5 Weissman, “CDCR adopted a policy . . . to require that every CO be able to wear a  
6 tightfitting respirator *in an ATD-exposure environment . . .*” (Weissman Decl. ¶ 7  
7 (emphasis added).) The evidence presented by Defendant appears to indicate that  
8 these ATD-exposure environments are limited to specific locations and duties within  
9 individual institutions. Defendant has not explained why every Correctional Officer  
10 must be able to work in these environments. While it would certainly be  
11 administratively easier for Defendant to not have to consider who can and who cannot  
12 work in an ATD-exposure environment, administrative inconvenience does not  
13 constitute an undue hardship.

14        Though Defendant partially relies on their settlement with Cal/OSHA and  
15 subsequent approval of CDCR’s ATD Exposure Control Plan as justification for the  
16 requirement that all Correctional Officers be able to wear respirators in ATD-exposure  
17 environments, Defendant states that the settlement “required that prison staff *with*  
18 *occupational risks of exposure to ATDs* be respirator-fit tested and wear tight-fitting  
19 respirators . . . .” (Opp’n at 3 (emphasis added).) It appears that as part of Defendant’s  
20 Agreement with Cal/OSHA, Defendant was required to assess and identify specific  
21 activities where Correctional Officers would face exposure to ATDs. (Savala Decl. ¶ 7.)  
22 It also appears that many, if not all, institutions were required to develop their own  
23 ATD Exposure Control Plan specific to the needs of the individual institution. (Savala  
24 Decl. ¶¶ 6, 7.) Defendant, however, decided that it would designate *all* Correctional  
25 Officers as facing exposure to ATDs. While Cal/OSHA approved this designation,  
26 there is no information in the record to suggest that Cal/OSHA required this specific

27 ////

28 ////



1 designation, or that that law requires it.<sup>14</sup> Specifically, Defendant has provided no  
 2 justification why Correctional Officers not located in specific ATD-exposure  
 3 environments or with no risk of exposure to ATDs would need to comply with the  
 4 respirator requirement. Although Defendant contends that “COs *may* be tasked with  
 5 working around and transporting inmates with ATDs[.]” (Opp’n at 6 (emphasis added))  
 6 and thus need to be able to wear a respirator, this reasoning is conclusory and does  
 7 not provide any meaningful justification for why every Correctional Officers must be  
 8 able to perform these tasks. Defendant fails to provide evidence as to why exempting

9 \_\_\_\_\_  
 10 <sup>14</sup> Defendant cites three regulatory provisions as requiring the ATD Exposure Control Plan and the  
 Respiratory Protection Program as adopted by CDCR, Sections 5199, 5144 and 3203 from Title 8 of the  
 California Code of Regulations.

11 Section 5199 concerns ATDs and required protection policies and procedures in various  
 settings. See Cal. Code Regs., tit. 8, § 5199. The Declaration of Gina Savala, provided by Defendant,  
 12 only states that CDCR could face fines under Section 5199 if CDCR stopped enforcing fit testing  
 requirements for employees. (Savala Decl. ¶ 14.) Subsection (g)(4) describes the times an employee  
 13 must wear a respirator. See Cal. Code Regs., tit. 8, § 5199(g)(4). These include where the employee:  
 (A) Enters an [Airborne Infection Isolation] room or area in use for [Airborne Infection Isolation];  
 14 (B) Is present during the performance of procedures or services for an [Airborne Infectious  
 Disease] case or suspected case;  
 15 (C) Repairs, replaces, or maintains air systems or equipment that may contain or generate  
 aerosolized pathogens;  
 16 (D) Is working in an area occupied by an [Airborne Infectious Disease] case or suspected case,  
 during decontamination procedures after the person has left the area and as required by  
 17 subsection (e)(5)(D)9;  
 (E) Is working in a residence where an [Airborne Infectious Disease] case or suspected case is  
 18 known to be present;  
 (F) Is present during the performance of aerosol generating procedures on cadavers that are  
 19 suspected of, or confirmed as, being infected with aerosol transmissible pathogens;  
 (G) Is performing a task for which the Biosafety Plan or Exposure Control Plan requires the use  
 20 of respirators; or  
 (H) Transports an [Airborne Infectious Disease] case or suspected case within the facility or in an  
 21 enclosed vehicle (e.g., van, car, ambulance or helicopter) when the patient is not masked.

22 *Id.* None of these bases appears, on their own, to require all Corrections Officers to be able to don  
 respirators except to the extent that these tasks are designated as requiring a respirator in the Exposure  
 Control Plan. The Court notes that subsection (d), which provides guidance on Exposure Control Plans,  
 23 only generally provides that the plan should provide “[a] list of all job classifications in which employees  
 have occupational exposure” without any further requirement as to what those positions entail. Section  
 24 5199(a)(1)(E) does also identify “Correctional facilities and other facilities that house inmates or  
 detainees” as having an *increased* risk for transmission of ATDs, but the regulation provides no  
 25 indication that this designates all Correctional Officers as facing exposures to ATDs.

26 Section 5144 discusses respiratory protection, requires employers to implement a respiratory  
 protection program, and imposes requirements for the selection, usage, and implementation of  
 respirators in the workplace. See Cal. Code Regs., tit. 8, § 5144. No portion of Section 5144 requires  
 27 certain employees to be designated as at risk for ATD exposure. See *id.* Similarly, nothing in Section  
 3203, which concerns the implementation of an Injury and Illness Prevention Program, requires such  
 28 designations. See Cal. Code Regs., tit. 8, § 3203.

1 some Correctional Officers from working in these ATD-exposure environments would  
2 present an undue hardship.

3 Defendant raises concerns about situations where outbreaks in a CDCR  
4 institution or the surrounding community would necessitate a warden mandating  
5 respirators for all Correctional Officers at a specific institution. In that scenario,  
6 permitting a Correctional Officer to not be in compliance with the facial hair policy  
7 might present an undue hardship. However, the specter of such an outbreak, without  
8 more, is insufficient to establish that all Correctional Officers must be able to wear  
9 respirators at the present time. Were that situation to arise, Defendant would be able  
10 to engage in an individualized assessment of the available options to accommodate  
11 those requesting religious exemptions and whether providing an accommodation in  
12 that circumstance would cause undue hardship. As it stands, Defendant has  
13 presented no evidence that this is a present issue for any institution, let alone those  
14 where the Charging Parties are located.

## 15 **ii. Seniority and Impacts on Co-Workers**

### 16 **a. The Seniority System Does Not Establish Undue Hardship**

17 While Defendant argues that an alteration to the respirator requirement would  
18 result in a violation of the seniority system in place at CDCR as part of the collective  
19 bargaining agreement, Defendant fails to show that full compliance with the seniority  
20 system and providing reasonable accommodations to the Charging Parties are  
21 mutually exclusive. The Supreme Court has held that Title VII does not require an  
22 employer to “carve out a special exception to its seniority system” in order to  
23 accommodate an employee where doing so would violate the collective bargaining  
24 agreement. *See Trans World Airlines, Inc v. Hardison*, 432 U.S. 63, 83 (1977).  
25 However, *Trans World Airlines* does not stand for the proposition that where a  
26 seniority system is in place, reasonable accommodations cannot be provided. In  
27 *Trans World Airlines*, the individual requesting a religious accommodation worked in a  
28 role that needed to always be filled, even at the expense of other duties. *Id.* at 66-67.

1 The individual was denied an accommodation when he requested time off to observe  
2 the sabbath as “[his] job was essential and on weekends he was the only available  
3 person on his shift to perform it.” *Id.* at 68. The Court found that the employer “could  
4 not be faulted” for failing to find an accommodation for the individual as doing so  
5 would have necessarily required violating the collective-bargaining contract and the  
6 seniority rights of other employees. *Id.* at 78–79.

7 Defendant has not presented evidence that providing religious  
8 accommodations to the facial hair requirement would necessarily require violating the  
9 seniority system in place for Correctional Officers. In the chemical agent context, the  
10 evidence provided by Defendant only establishes that respirators are utilized in  
11 controlled use-of-force and riot contexts where supervisors select response teams. As  
12 noted by the declarations provided by Defendant, “response supervisors” pull  
13 Correctional Officers from other postings to respond. (See Manes Decl. ¶¶ 3, 6;  
14 Lemon Decl. ¶ 6.) There is no indication in the declarations submitted by Defendant  
15 that this selection is based on the seniority system.

16 In regard to ATDs, the evidence presented shows that outside of specific  
17 outbreaks, the roles and locations where masking is typically required are limited.  
18 (See *Id.* ¶ 12; see also Pannu Decl. ¶ 28; Quattrone Decl. ¶ 18; Sohal Decl. ¶ 14.)  
19 These postings are presumably subject to the seniority system, meaning that  
20 Correctional Officers already know when choosing to avoid or fill those roles that a  
21 respirator will be required. While a less senior Correctional Officer might be required  
22 to fill one of these roles despite not wishing to, in which case an accommodation  
23 might not be available for that specific officer, the fact that these roles exist and are  
24 subject to the seniority system does not mean that *all* Correctional Officers and *all*  
25 positions must be subject to this same requirement.<sup>15</sup>

26 \_\_\_\_\_  
27 <sup>15</sup> As discussed below, part of the issue is that CDCR has not actually engaged individual employees in  
28 an interactive process on an individualized basis, but rather has denied any accommodation within the  
Correctional Officer role as a blanket policy. As such, it is unknown whether individual employees  
cannot be accommodated due to their lack of senior status.

1           Additionally, the Supreme Court’s decision in *Trans World Airlines* was based in  
2 part on the fact that the union that had agreed to the seniority system “was unwilling  
3 to entertain a variance over the objections of men senior to Hardison[.]” *Id.* at 79. The  
4 Court specifically noted that the employer in *Trans World Airlines* had sought a  
5 variance from the collective bargaining agreement from the union to accommodate  
6 the employee over the objections of his co-workers. *Id.* 78-79. Here, Defendant has  
7 presented no evidence that they have communicated with the Charging Parties’ union  
8 to determine if the union would be willing to agree to a variance from the current  
9 seniority system to accommodate the Charging Parties. While such an effort might  
10 ultimately be rejected, a showing of undue hardship requires that the employer assess  
11 more than “the reasonableness of a particular possible accommodation or  
12 accommodations” but consider “other options” to accommodate employees. *Groff*,  
13 600 U.S. at 473.

14           Importantly, Defendant has provided limited to no detail about how the  
15 seniority system functions both in theory and in practice. Deputy Associate Director of  
16 CDCR’s General Population Males Mission, Tristan Lemon, indicates that CO posts are  
17 allocated in two ways with the first being a “bid process” where posts are awarded  
18 based on seniority and mandatory overtime is assigned based on reverse seniority if  
19 there are no volunteers. (Lemon Decl. ¶ 13.) But, beyond this information, there is  
20 little detail provided about how the seniority system functions. Defendant provides no  
21 information about the number of bids received for specific positions, the frequency  
22 with which new positions become available, or at what level of granularity the seniority  
23 system operates. Moreover, in addition to the seniority system, Correctional Officers  
24 can be assigned to certain “management posts,” which are not based on seniority but  
25 rather on the needs of specific areas of the prison, as determined by supervisors. (*Id.*  
26 ¶ 14.) Defendant provides no information regarding how many or what type of  
27 positions are governed by this alternative selection process. Defendant includes even  
28 less information on the overtime process and the usage of reverse seniority when that

1 system applies. The lack of information makes it impossible for the Court to assess  
2 whether it would be impossible to provide religious accommodations from the facial  
3 hair requirement without violating the seniority system in place.

4 Defendant's contention that providing religious accommodations from the  
5 facial hair requirement would violate the seniority system is ultimately unsupported by  
6 the evidence. While it would be an undue hardship to require accommodations that  
7 would violate the collective bargaining agreement, the evidence does not suggest  
8 that accommodating the Charging Parties' religious beliefs would necessarily do so.

9 **b. Impacts on Other Co-Workers**

10 At oral argument, Defendant also argued that accommodating the Charging  
11 Parties' requests would result in undue hardship as it would necessitate the Charging  
12 Parties' co-workers to take additional overtime and potentially more dangerous tasks.  
13 Counsel contended that *Bhatia v. Chevron U.S.A., Inc.*, 734 F.2d 1382, 1384 (9th Cir.  
14 1984), prohibits such an accommodation under Title VII. However, *Bhatia* is a pre-  
15 *Groff* case and expressly applies the "de minimis" standard that *Groff* later rejected.  
16 *Id.* Accordingly, it is of little value.

17 Further, in *Groff*, the Supreme Court cautioned against considering the impact  
18 of a religious accommodation on other employees stating:

19 Title VII requires that an employer reasonably  
20 accommodate an employee's practice of religion, not  
21 merely that it assess the reasonableness of a particular  
22 possible accommodation or accommodations. This  
23 distinction matters. Faced with an accommodation request  
24 like *Groff's*, **it would not be enough for an employer to**  
25 **conclude that forcing other employees to work**  
26 **overtime would constitute an undue hardship.**  
27 Consideration of other options, such as voluntary shift  
28 swapping, would also be necessary.

26 *Groff*, 600 U.S. at 473 (emphasis added and internal citations removed). The Court  
27 also noted that "not all impacts on coworkers are relevant, but only coworker impacts  
28 that go on to affect the conduct of the business." *Groff*, 600 U.S. at 472 (cleaned up).

1 It is undoubtedly the case that performing a cell extraction is more dangerous  
2 than working overtime generally, and the Court does not minimize those risks.  
3 However, unlike the cases related to COVID-19 cited by the Defendant (Opp'n at 20  
4 (citing *Bordeaux v. Lions Gate Ent., Inc.*, --- F. Supp. 3d ---, 2023 WL 8108655, at \*13  
5 (C.D. Cal. Nov. 21, 2023))) in which the risk was unrelated to the job for which the  
6 individual was hired, here tasks like cell extractions are an expected part of the job of  
7 a Correctional Officer. An employee doing more of a portion of his job so that the  
8 employer can accommodate a religious observance is not inherently an undue  
9 hardship. While it *could be* an undue hardship if the amount of work being shifted to  
10 other employees was sufficiently significant to affect the conduct of Defendant's  
11 business, see *Groff*, 600 U.S. at 472, Defendant presents absolutely no evidence as to  
12 the scale of that shifted work or the subsequent impact on CDCR's operations.

### 13 **iii. Individual Assessment of Accommodations**

14 Beyond the more generalized arguments of undue hardship, there is no  
15 indication that Defendant ever performed an individualized assessment for any of the  
16 Charging Parties to determine if they could be accommodated in their specific role at  
17 the institution in which they were posted. The Supreme Court's ruling in *Groff* is clear  
18 that before declaring that providing an accommodation for an employee's religious  
19 beliefs creates an undue hardship, an employer must consider other options, not  
20 simply assess "the reasonableness of a particular possible accommodation or  
21 accommodations." 600 U.S. at 473. Defendant's opposition is focused on universal,  
22 state-wide changes to policy. Title VII, by contrast, makes it an unlawful employment  
23 practice for an employer to "discharge any *individual*, or otherwise discriminate  
24 against any *individual* . . . because of such *individual's* . . . religion." 42 U.S.C. § 2000e-  
25 2(a)(1) (emphasis added). Likewise, the employer's duty to show undue hardship is  
26 focused on the individual employee's religious observance or practice. See 42 U.S.C.  
27 § 2000e(k).

28

1           Moreover, which accommodations are available and what would constitute an  
2 undue hardship naturally depends upon the specific circumstances of the individual  
3 Correctional Officer. For example, the declarations provided by two of the Charging  
4 Parties state that the individuals in question had never needed to wear a respirator as  
5 part of their job duties during their eight and six years of respective employment.  
6 (Quattrone Decl. ¶ 17; S. Singh Decl. ¶ 15.<sup>16</sup>) Despite the fact that these Charging  
7 Parties had never needed to don a respirator, Defendant still denied their requests for  
8 accommodations and there is no evidence that there was a meaningful investigation  
9 of the ability to do so. With respect to COVID-19, most of the Charging Parties note  
10 that N-95 respirators are only currently required in “quarantine” areas of their  
11 institutions. (See, e.g., Pannu Decl. ¶ 28; Quattrone Decl. ¶ 18; Sohal Decl. ¶ 14.) And  
12 there is at least some suggestion that certain institutions may have special teams that  
13 respond to incidents requiring the use of chemical gases. (Pannu Decl. ¶ 29.) Despite  
14 this, Defendant universally denied each of the Charging Party’s requests to be  
15 exempted from the facial hair policy, and instead provided the purported  
16 accommodation of transfer/reassignment or demotion.

17           “Title VII requires that an employer reasonably accommodate an employee's  
18 practice of religion, not merely that it assess the reasonableness of a particular  
19 possible accommodation or accommodations.” *Groff*, 600 U.S. at 473. The evidence  
20 presented suggests that Defendant did not consider other available options for the  
21 individuals before it, and thus did not meet its duty to reasonably accommodate each  
22 Charging Party. As such, it is improper for Defendant to conclude that it would be an  
23 undue hardship to accommodate the Charging Parties.

24 ////

25 ////

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27 <sup>16</sup> As it appears Charging Party S. Singh has been terminated for unrelated reasons, Defendant likely no  
28 longer needs to investigate reasonable accommodations for that individual. However, the facts prior to  
his termination remain illustrative for this point.

\* \* \* \*

1  
2 To summarize, Defendant has not presented sufficient evidence from which the  
3 Court can find that providing religious accommodations to the Charging Parties  
4 would create an undue hardship. While *Groff* does not articulate an exact standard, it  
5 does state that to establish undue hardship “an employer must show that the burden  
6 of granting an accommodation would result in substantial increased costs in relation  
7 to the conduct of its particular business.” *Groff*, 600 U.S. at 470. Defendant has not  
8 presented evidence to meet this standard.

9 Accordingly, Plaintiff has established a likelihood of success on the merits as  
10 they can establish a prima facie Title VII case and Defendant has not shown that they  
11 provided reasonable accommodations or that providing accommodations would  
12 create an undue hardship.

## 13 **II. Irreparable Harm**

14 Under the traditional *Winter* factors, to obtain preliminary relief a Plaintiff must  
15 show that “irreparable injury is likely” in the absence of such relief. *California v. Azar*,  
16 911 F.3d 558, 581 (9th Cir. 2018). The injury must be immediate, not a speculative  
17 future injury. *Caribbean Marine Servs. Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir.  
18 1988). “Irreparable harm is . . . harm for which there is no adequate legal remedy,  
19 such as an award of damages.” *Ariz. Dream Act Coal. v. Brewer*, 757 F.3d 1053, 1068  
20 (9th Cir. 2014).

21 Here, the irreparable harm is evident. The Charging Parties requested  
22 accommodations so that they could freely practice their religious beliefs. Instead of  
23 providing reasonable accommodations or actually assessing whether providing  
24 accommodations for the Charging Parties would be an undue hardship, Defendant  
25 denied these requests on the basis of a self-imposed requirement that all Correctional  
26 Officers be able to wear respirators.

27 As a result of Defendant’s seeming unlawful employment practices, the  
28 Charging Parties were forced to violate tenants of their faith to continue their



1 employment. (Ali Decl. ¶ 27; Dhaliwal Decl. ¶ 19; Dhillon Decl. ¶ 16; Pannu Decl.  
2 ¶ 30; Quattrone Decl. ¶ 19<sup>17</sup>; R. Singh Decl. ¶ 9; S. Singh ¶ 17;<sup>18</sup> Sohal ¶¶ 13, 20.)  
3 According to the Charging Parties, the inability to maintain a beard as part of their  
4 religious practices has had severe negative effects on their lives and emotional states.  
5 The Charging Parties describe feelings of humiliation and shame (Sohal Decl. ¶ 21.a;  
6 Quattrone Decl. ¶ 19.a; R. Singh Decl. ¶ 25.a; S. Singh Decl. ¶ 19.a), loss of connection  
7 with their faith and community (Sohal Decl. ¶ 21.b; R. Singh Decl. ¶¶ 25.b, 25.d; S.  
8 Singh ¶ 19.c), loss of identity (Ali Decl. ¶ 29.b; Dhaliwal Decl. ¶ 20.a), a sense of  
9 isolation (Ali Decl. ¶ 29.d; Quattrone Decl. ¶ 19.c), feelings of dishonor (Ali Decl.  
10 ¶ 29.b), and more. Most, if not all, of these effects are non-monetary injuries in the  
11 form of emotional, psychological, and spiritual harms. Emotional and psychological  
12 harms are recognized by the Ninth Circuit as being irreparable. *Chalk v. U.S. Dist. Ct.*  
13 *Cent. Dist. of Cal.*, 840 F.2d 701, 710 (9th Cir. 1988). Though in substantially different  
14 circumstances involving distinct claims, the Supreme Court has also recognized that  
15 “[t]he loss of First Amendment freedoms, for even minimal periods of time,  
16 unquestionably constitutes irreparable injury.” *Roman Cath. Diocese of Brooklyn v.*  
17 *Cuomo*, 592 U.S. 14, 19 (2020).

18 Defendant contends that the Charging Parties are not suffering irreparable  
19 harm because they are “in control” of their situation as they can accept non-Peace  
20 Officer positions or stop working. (Opp’n at 23-24.) However, Defendant has  
21 presented no authority that suggests that the Charging Parties must accept lesser  
22 roles (or worse termination) when offered them and thereby knowingly inflicting a  
23 separate set of harms on themselves. Moreover, and perhaps most importantly, such  
24 a rule would functionally eliminate Section 706(f)(2). An employer offering an  
25

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26 <sup>17</sup> Unlike the declarations submitted by other Charging Parties, Charging Party Quattrone’s declaration  
27 does not clearly state that Charging Party Quattrone is continuing to shave but it does indicate that this  
is the case. (See Quattrone Decl. ¶ 19.)

28 <sup>18</sup> As Charging Party S. Singh was terminated from employment with CDCR several months prior to this  
action being filed, it is not apparent that Charging Party S. Singh personally faces irreparable harm.

1 alternative position – no matter how substantial the demotion or change in  
2 employment status – would prevent the EEOC from obtaining preliminary relief as  
3 permitted by Section 706(f)(2) because the employee could accept that position and  
4 thus suffer only monetary injury. Worse, an employee can *always* leave their position.  
5 Thus, for this Court to hold that irreparable harm is not present because the Charging  
6 Parties could simply leave their jobs would mean that preliminary relief under Section  
7 706(f)(2) to prevent the harms of unlawful employment practices is, in reality, *never*  
8 available. Congress expressed a clear intent to provide an avenue for preliminary  
9 relief by including this provision, and the Court declines the invitation to effectively  
10 read that statute out of existence through a wooden application of the *Winter* factors.

11 Given the above, it is clear that Plaintiffs have suffered and continue to suffer  
12 irreparable injury as a result of Defendant’s failure to comply with the requirements of  
13 Title VII.

### 14 **III. Balance of Equities**

15 In determining the balance of equities, a court must “balance the interests of all  
16 parties and weigh the damage to each.” *Stormans, Inc. v. Selecky*, 586 F.3d 1109,  
17 1138 (9th Cir. 2009) (internal citations and quotations omitted). On the evidence  
18 before the Court, the ongoing harm to the Charging Parties outweighs the harm to  
19 Defendant in granting this motion. Congress permitted the usage of preliminary relief  
20 in Title VII actions as a way to preserve the status quo pending the resolution of  
21 administrative proceedings. See *Pac. Press Pub. Ass’n*, 535 F.2d at 1187. Granting  
22 preliminary relief will ensure that the Charging Parties’ rights are protected until the  
23 EEOC issues a final disposition of the charges before them.

24 Defendant argues that granting Plaintiff’s Motion would “create an unsafe  
25 environment in its prisons and endanger the health and safety of prison workers and  
26 inmates[,]” as well as increase costs “which ultimately California’s taxpayers would  
27 bear.” (Opp’n at 23.) As noted above in the discussion of undue hardship, Defendant  
28 has failed to support this argument beyond circular statements and provides no

1 concrete information as to how CDCR would be harmed if it were to grant  
2 accommodations to the Charging Parties. These harms balance weakly against the  
3 harm to the Charging Parties' constitutional rights, especially given Plaintiff's apparent  
4 likelihood of success.

5 The Court is cognizant of the unique position occupied by correctional  
6 institutions such as CDCR. As the Supreme Court has noted, prison administrators are  
7 "accorded wide-ranging deference in the adoption and execution of policies and  
8 practices that in their judgment are needed to preserve internal order and discipline  
9 and to maintain institutional security." *Bell v. Wolfish*, 441 U.S. 520, 547 (1979). On  
10 this basis, courts generally maintain a posture of deference to prison officials as they  
11 are experts within their domain and because "operation of . . . correctional facilities is  
12 peculiarly the province of the Legislative and Executive Branches of our Government,  
13 not the Judicial." *Id.* at 548.

14 Here, however, the latter basis for deference is undercut by the fact that the  
15 party in opposition to CDCR is also an executive branch entity that is specifically  
16 empowered by the legislature to prevent discrimination. Moreover, that the  
17 Defendant is afforded deference does not mean that Defendant can avoid its burden  
18 to show it provided reasonable accommodations or that providing such  
19 accommodations would represent undue hardship. Even afforded the full deference  
20 typically granted to correctional institutions, Defendant has failed to provide sufficient  
21 evidence to show that it provided reasonable accommodations for the Charging  
22 Parties or that providing reasonable accommodations would create an undue  
23 hardship.

24 Given the above, the balance of equities weighs strongly in favor of granting  
25 Plaintiff's Motion.

26 ///

27 ///

28 ///

#### 1           **IV.    Public Interest**<sup>19</sup>

2           The public interest weighs in favor of granting Plaintiff's Motion. "[T]he EEOC is  
3 not merely a proxy for victims of discrimination, but acts also to vindicate the public  
4 interest in preventing employment discrimination." *EEOC v. Federal Exp. Corp.*, 558  
5 F.3d 842, 852 (9th Cir. 2009) (internal citations and quotations removed); see *Gen. Tel.  
6 Co. of the Northwest, Inc. v. EEOC*, 446 U.S. 318, 324 (1980) ("When the EEOC acts,  
7 albeit at the behest of and for the benefit of specific individuals, it acts also to  
8 vindicate the public interest in preventing employment discrimination."). "(C)laims  
9 under Title VII involve the vindication of a major public interest . . . ." *Franks v.*  
10 *Bowman Transport Co.*, 424 U.S. 747, 778 n.40 (1976) (quoting Section-By-Section  
11 Analysis, accompanying the Equal Employment Opportunity Act of 1972 Conference  
12 Report, 118 Cong. Rec. 7166, 7168 (1972)).

13           Here, the EEOC has acted, in accordance with its mandate, to prevent potential  
14 discrimination. While the EEOC has not made a final determination, the filing and  
15 pursuit of Title VII claims still vindicates an important public interest in preventing  
16 discrimination. See *Franks*, 424 U.S. at 778 n.40. Moreover, while Plaintiff may not  
17 have brought free exercise claims on behalf of the charging parties (see Reply at 15  
18 n.2), as noted by Plaintiff, the allegations implicate constitutional rights (see Mot. at 24)  
19 and it is in the public interest to protect against violations of constitutional rights,  
20 *Riley's Am. Heritage Farms v. Elsasser*, 32 F.4th 707, 731 (9th Cir. 2022).

21           On the issue of public interest, Defendant only briefly mentions the need to  
22 maintain workplace safety, especially given that CDCR institutions are responsible for  
23 the safety of both its employees and inmates. (Opp'n at 21.) The Court is sensitive to  
24 the safety concerns mentioned. However, as noted above, Defendant has not  
25 provided evidence to justify the respirator requirement on any basis, including on

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26 \_\_\_\_\_  
27 <sup>19</sup> While the general rule is that "[w]hen the government is a party [to litigation], [the] last two [*Winter*]  
28 factors merge," *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014), the fact that *both*  
parties here are government entities makes the application of this rule less clear. The Court therefore  
considers the balance of equities and the public interest separately, though they ultimately overlap.

1 grounds of employee and inmate safety. As such, a generalized safety concern is  
2 insufficient to outweigh the strong public interests in favor of granting Plaintiff's  
3 Motion.

4 Accordingly, granting Plaintiff's Motion appears to be in the public interest and  
5 this factor weighs in favor of granting Plaintiff's Motion.

6 **CONCLUSION**

7 As determined above, each of the *Winter* factors weighs in favor of granting  
8 Plaintiff's Motion. Accordingly, the Court GRANTS Plaintiff's Motion for a Preliminary  
9 Relief pending the EEOC's resolution of the claims brought by the Charging Parties in  
10 this case.

11 For the reasons stated, IT IS HEREBY ORDERED that:

- 12 1. Plaintiff's Motion for Preliminary Relief (ECF No. 8) is GRANTED;
- 13 2. Defendant is ordered to comply with the Preliminary Injunction being  
14 simultaneously filed with this Order (ECF No. 33); and
- 15 3. The parties are ordered to file a Joint Status Report within 14 days of the  
16 EEOC's resolution of the claims brought by the Charging Parties.

17  
18 Dated: June 20, 2024

19   
20 THE HONORABLE DANIEL J. CALABRETTA  
21 UNITED STATES DISTRICT JUDGE  
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