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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

HINDU AMERICAN FOUNDATION,  
INC.,

Plaintiff,

v.

KEVIN KISH,

Defendant.

No. 2:22-cv-01656-DAD-JDP

ORDER GRANTING DEFENDANT’S  
MOTION TO DISMISS

(Doc. No. 8)

This matter is before the court on defendant’s motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) on the grounds that plaintiff lacks standing and under Federal Rule of Civil Procedure 12(b)(6) on the grounds that plaintiff’s complaint fails to state a claim upon which relief can be granted. (Doc. No. 8.) On August 24, 2023, the court took the matter under submission pursuant to Local Rule 230(g). (Doc. No. 19.) For the reasons explained below, the court will grant defendant’s motion to dismiss, in part.

**BACKGROUND**

On September 20, 2022, plaintiff Hindu American Foundation, Inc. initiated this action seeking declaratory and injunctive relief against Kevin Kish, in his official capacity as the director of the California Civil Rights Department (“Department”), for allegedly violating the constitutional rights of all Hindu Americans. (Doc. No. 1.)

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1 In its complaint, plaintiff alleges as follows. The Department is pursuing enforcement  
2 actions brought under the California Fair Employment and Housing Act (“FEHA”) that are  
3 wrongly asserting “that a caste system and caste-based discrimination are integral parts of Hindu  
4 teachings and practices.” (*Id.* at 2.) In those enforcement actions, the Department purportedly  
5 “alleges that a caste system is ‘a strict Hindu social and religious hierarchy,’ which requires  
6 discrimination by ‘social custom and legal mandate’ and that Hindu Americans, therefore, adhere  
7 to this strict and discriminatory religious hierarchy in violation of the FEHA.” (*Id.*) According to  
8 plaintiff, it is “the largest and most respected Hindu educational and advocacy institution in North  
9 America” and it has consistently maintained throughout its history that a caste system or  
10 discrimination based on caste is not a legitimate part of Hindu beliefs, teachings, or practices;  
11 vehemently opposes all types of discrimination; and “takes great exception to the State of  
12 California defaming and demeaning all of Hinduism by attempting to conflate a discriminatory  
13 caste system with the Hindu religion.” (*Id.*) Plaintiff specifically identifies only one enforcement  
14 action that the Department initiated in the Santa Clara County Superior Court.<sup>1</sup> (*Id.* at ¶ 9.)

15 Plaintiff also alleges that through its enforcement action the Department is seeking to  
16 “adopt a legal definition of Hinduism that incorrectly includes caste, a caste system and caste-  
17 based discrimination.” (*Id.* at ¶ 13.) In doing so, the Department is “attempting to define  
18 Hinduism against the beliefs of an overwhelming number of its own adherents” and “in direct  
19 violation of the constitutional right[s] . . . of all Hindu Americans.” (*Id.* at ¶¶ 14–15.) In fact,  
20 according to plaintiff, by wrongly seeking to define Hinduism to include a caste system, the  
21 Department is encouraging discrimination on the basis of caste because employers could be  
22 required, in accordance with state and federal law, to accommodate a religious belief that

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23  
24 <sup>1</sup> Plaintiff purports to attach a copy of the Department’s complaint filed in the Santa Clara  
25 County Superior Court as Exhibit A to its complaint in this action, but the Exhibit A attached is  
26 actually a complaint filed by the Department in the United States District Court for the Northern  
27 District of California. (Doc. Nos. 1 at ¶ 9; 1-1.) The attached federal complaint was brought  
28 against Cisco Systems, Inc. (“Cisco”) as well as two individual supervisors and alleges unlawful  
employment practices on the bases of religion, ancestry, national origin/ethnicity, and race/color.  
(Doc. No. 1-1 at ¶ 1.) The correct complaint that was filed in Santa Clara County Superior Court  
is included in defendant’s unopposed request for judicial notice, addressed below. (Doc. No. 10.)

1 embraces caste discrimination. (*Id.* at ¶¶ 16–22.) The result, plaintiff alleges, is that employers  
2 “might arguably be required to accommodate” employee requests to avoid working with, being  
3 supervised by, or supervising a person perceived to be of the “wrong” caste. (*Id.* at ¶¶ 21–22.)  
4 Thus, according to plaintiff, by “wrongly tying Hindu beliefs and practices to the abhorrent  
5 practice of caste-discrimination” the Department is undermining the laudable goal of stopping  
6 caste-based discrimination while also violating the constitutional rights of all Hindu Americans.  
7 (*Id.* at 3.)

8 Based on these allegations, plaintiff brings three claims against defendant under 42 U.S.C.  
9 § 1983 for: (1) violation of the Free Exercise Clause of the First Amendment; (2) denial of  
10 procedural due process (without reference to a provision of the U.S. Constitution); and (3)  
11 violation of the Equal Protection Clause of the Fourteenth Amendment. (Doc. No. 1 at ¶¶ 23–47.)  
12 As to each of its three claims, plaintiff alleges that it has “associational standing to bring this  
13 claim on behalf of its Hindu American members.” (*Id.* at ¶¶ 24, 32, 43.) In terms of relief,  
14 plaintiff seeks an order (i) declaring that the Department’s actions, as described in its complaint,  
15 violate the First Amendment, due process, and equal protection rights of Hindu Americans, and  
16 (ii) enjoining the Department from: (a) “engaging in any act or practice that seeks to define  
17 Hinduism as including a caste system or any other belief or practice”; (b) “bringing any religious  
18 discrimination action based on the premise that Hindu belief and practice includes a caste  
19 system”; and (c) “ascribing religious or moral beliefs or practices to persons or groups who  
20 expressly disclaim any such beliefs or practices.” (*Id.* at 12.)

21 On February 2, 2023, defendant filed a motion to dismiss plaintiff’s complaint pursuant to  
22 Rules 12(b)(1) and 12(b)(6) and a request for judicial notice. (Doc. Nos. 8, 10.) On June 29,  
23 2023, plaintiff filed its opposition to defendant’s pending motion and its own request for judicial  
24 notice. (Doc. No. 15, 16.) Defendant filed his reply on August 4, 2023. (Doc. No. 18.)

### 25 **REQUESTS FOR JUDICIAL NOTICE**

26 Both defendant and plaintiff filed unopposed requests for judicial notice in support of their  
27 motion to dismiss and opposition brief, respectively. (Doc. Nos. 10, 16.)

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1 “Judicial notice under Rule 201 permits a court to notice an adjudicative fact if it is ‘not  
2 subject to reasonable dispute.’” *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 999 (9th  
3 Cir. 2018) (quoting Fed. R. Evid. 201(b)). “A fact is ‘not subject to reasonable dispute’ if it is  
4 ‘generally known,’ or ‘can be accurately and readily determined from sources whose accuracy  
5 cannot reasonably be questioned.’” *Id.* (quoting Fed. R. Evid. 201(b)(1)–(2)). The court “must  
6 take judicial notice if a party requests it and the court is supplied with the necessary information.”  
7 Fed. R. Evid. 201(c)(2).

8 In defendant’s unopposed request for judicial notice, he requests that the court take notice  
9 of the following five documents: (1) the Department’s state court complaint against Cisco  
10 Systems, Inc., and of its two supervisors (collectively “Cisco”), which was filed in the Santa  
11 Clara County Superior Court on October 16, 2020 (*CRD v. Cisco Systems, Inc., et al.*, Case No.  
12 20-cv-372366) (“Santa Clara action”), and is referenced in plaintiff’s complaint (Doc. No. 1 at ¶  
13 9); (2) plaintiff’s motion to intervene and its proposed complaint in intervention, which were filed  
14 in the Santa Clara action on January 7, 2021; (3) plaintiff’s filed IRS Form 990 for Tax Year 2019  
15 as published by the IRS (retrieved from the IRS’s website on January 16, 2023); (4) plaintiff’s  
16 filed IRS Form 990 for Tax Year 2020 as published by the IRS (retrieved from the IRS’s website  
17 on January 16, 2023); and (5) plaintiff’s filed IRS Form 990 for Tax Year 2021 as published by  
18 the IRS (retrieved from the IRS’s website on January 16, 2023). (Doc. No. 10.)

19 In plaintiff’s unopposed request for judicial notice, it requests that the court take notice of  
20 the following three documents: (1) non-party Catholic League’s filed IRS Form 990 for Tax Year  
21 2019 as published by the IRS (retrieved from the IRS’s website on June 28, 2023); (2) the IRS’s  
22 instructions for Form 990 Return of Organization Exempt Form Income Tax for Tax Year 2019,  
23 which are posted on the IRS’s website (retrieved from the IRS’s website on June 28, 2023); and  
24 (3) the IRS’s instructions for Form 990 Return of Organization Exempt Form Income Tax for Tax  
25 Year 2022, which are posted on the IRS’s website (retrieved from the IRS’s website on June 28,  
26 2023). (Doc. No. 16.)

27 The court will grant both defendant’s and plaintiff’s unopposed requests to notice all of  
28 the documents described above, which are properly the subject of judicial notice as public

1 records, court documents, and government documents obtained from the IRS’s official public  
2 website. *See Lemoon v. Cal. Forensic Med. Grp., Inc.*, 575 F. Supp. 3d 1212, 1230 (N.D. Cal.  
3 2021) (“[A] court may judicially notice court documents that are already in the public record or  
4 have been filed in other courts.”) (citing *Holder v. Holder*, 305 F.3d 854, 866 (9th Cir. 2002));  
5 *Full Circle of Living & Dying v. Sanchez*, No. 2:20-cv-01306-KJM-KJN, 2023 WL 373681, at \*2  
6 (E.D. Cal. Jan. 24, 2023) (taking judicial notice of handbook obtained from a state government  
7 website because it fell “within the realm of public records and government documents available  
8 from reliable sources on the Internet, which includes websites run by governmental agencies”)  
9 (citations, internal quotation marks, and brackets omitted); *Africare, Inc. v. Xerox Complete*  
10 *Document Sols. Maryland, LLC*, 436 F. Supp. 3d 17, 45 n.21 (D.D.C. 2020) (taking judicial  
11 notice of revenue statements from a party’s IRS Tax Form 990).

12 In addition to its request for judicial notice, defendant contends that the complaint filed in  
13 the Santa Clara action should be considered as incorporated by reference into plaintiff’s  
14 complaint. (Doc. No. 10 at 3.) “The doctrine of incorporation by reference is distinct from  
15 judicial notice.” *Al -Ahmed v. Twitter, Inc.*, 603 F. Supp. 3d 857, 866 (N.D. Cal. 2022). “[T]he  
16 requirements for the documents that are relied on by the complaint to be incorporated is that: ‘(1)  
17 the complaint refers to the document; (2) the document is central to the plaintiff’s claim; and (3)  
18 no party questions the authenticity of the copy attached to the 12(b)(6) motion.’” *Id.* (quoting  
19 *Marder v. Lopez*, 450 F.3d 445, 448 (9th Cir. 2006)). Documents that are incorporated by  
20 reference “may be considered as ‘part of the complaint,’ without converting the Rule 12(b)(6)  
21 motion into one for summary judgment . . . [and] may be assumed to be true for purposes of  
22 deciding a Rule 12(b)(6) motion.” *Id.* (quoting *United States v. Ritchie*, 342 F.3d 903, 908 (9th  
23 Cir. 2003)).

24 Here, the state court complaint filed in the Santa Clara action is directly referenced in  
25 plaintiff’s complaint by its case number; it is central to plaintiff’s action because the allegations  
26 contained within that state court complaint purportedly caused plaintiff to initiate the present  
27 action; and defendant’s request to deem that document incorporated by reference into plaintiff’s  
28 complaint is unopposed, nor is there any other reason to doubt the authenticity of the publicly

1 filed court document. (Doc. Nos. 1 at ¶¶ 9–10; 10-1 at 5–23.) Accordingly, defendant’s request  
 2 is granted. The court will consider the complaint filed by the Department in the Santa Clara  
 3 action as incorporated by reference into plaintiff’s complaint filed in this action.

#### 4 **LEGAL STANDARD<sup>2</sup>**

5 “Federal courts are courts of limited jurisdiction and are presumptively without  
 6 jurisdiction over civil actions.” *Howard Jarvis Taxpayers Ass’n v. Cal. Secure Choice Ret. Sav.*  
 7 *Program*, 443 F. Supp. 3d 1152, 1156 (E.D. Cal. 2020) (citing *Kokkonen v. Guardian Life Ins.*  
 8 *Co.*, 511 U.S. 375, 377 (1994)), *aff’d*, 997 F.3d 848 (9th Cir. 2021). Federal courts “possess only  
 9 that power authorized by Constitution and statute, which is not to be expanded by judicial  
 10 decree.” *Kokkonen*, 511 U.S. at 377 (internal citations omitted). Subject matter jurisdiction is  
 11 required; it cannot be forfeited or waived. *Howard Jarvis Taxpayers Ass’n*, 443 F. Supp. 3d at  
 12 1156. Indeed, “[i]f the court determines at any time that it lacks subject-matter jurisdiction, the  
 13 court must dismiss the action.” Fed. R. Civ. P. 12(h)(3).

14 Rule 12(b)(1) of the Federal Rules of Civil Procedure provides that a party may  
 15 “challenge a federal court’s jurisdiction over the subject matter of the complaint.” *Nat’l Photo*  
 16 *Grp., LLC v. Allvoices, Inc.*, No. 3:13-cv-03627-JSC, 2014 WL 280391, at \*1 (N.D. Cal. Jan. 24,  
 17 2014). “A Rule 12(b)(1) jurisdictional attack may be facial or factual. In a facial attack, the  
 18 challenger asserts that the allegations contained in a complaint are insufficient on their face to  
 19 invoke federal jurisdiction.” *Safe Air for Everyone v. Meyer*, 373 F.3d 1035, 1039 (9th Cir. 2004)  
 20 (citing *White v. Lee*, 227 F.3d 1214, 1242 (9th Cir. 2000)). A party making a facial attack does  
 21 not submit supporting evidence with the motion because jurisdiction is challenged based solely on  
 22 the pleadings. *Howard Jarvis Taxpayers Ass’n*, 443 F. Supp. 3d at 1156; *see also Diva*  
 23 *Limousine, Ltd. v. Uber Techs., Inc.*, 392 F. Supp. 3d 1074, 1084 (N.D. Cal. 2019) (“[C]ourts do  
 24 not consider evidence outside the pleadings when deciding a facial attack.”) (citation omitted).  
 25 Important for purposes of resolving the pending motion, it has been recognized that “[t]he district  
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27 <sup>2</sup> This order does not address the legal standard governing consideration of motions to dismiss  
 28 brought under Rule 12(b)(6) because, as explained below, the court does not reach defendant’s  
 12(b)(6) arguments.

1 court resolves a facial attack as it would a motion to dismiss under Rule 12(b)(6): [a]ccepting the  
2 plaintiff’s allegations as true and drawing all reasonable inferences in the plaintiff’s favor, the  
3 court determines whether the allegations are sufficient as a legal matter to invoke the court’s  
4 jurisdiction.” *Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014). However, the court need  
5 not assume the truth of legal conclusions cast in the form of factual allegations. *Warren v. Fox*  
6 *Family Worldwide, Inc.*, 328 F.3d 1136, 1139 (9th Cir. 2003).

7 “By contrast, in a factual attack, the challenger disputes the truth of the allegations that, by  
8 themselves, would otherwise invoke federal jurisdiction.” *Safe Air for Everyone*, 373 F.3d at  
9 1039. In ruling on a party’s factual attack, district courts “may review evidence beyond the  
10 complaint without converting the motion to dismiss into a motion for summary judgment.” *Id.*  
11 The movant may “rely on affidavits or any other evidence properly before the court,” and the  
12 party opposing the motion must then “present affidavits or any other evidence necessary to satisfy  
13 its burden of establishing that the court, in fact, possesses subject matter jurisdiction.” *St. Clair v.*  
14 *City of Chico*, 880 F.2d 199, 201 (9th Cir. 1989) (citing *Thornhill Publ’g Co. v. Gen. Tel. & Elec.*  
15 *Corp.*, 594 F.2d 730, 733 (9th Cir. 1979)).

16 Here, the court construes defendant’s motion as posing a facial attack under Rule 12(b)(1)  
17 because in it defendant contends that the allegations of plaintiff’s complaint are insufficient for  
18 purposes of Article III standing. (Doc. No. 8 at 15–24.) Although defendant does rely on  
19 documents outside of the complaint, the only such documents are the subject of defendant’s  
20 request for judicial notice (Doc. No. 10), which are ordinarily considered by the court when it is  
21 analyzing the face of the complaint. *See Carpenter v. OneWest Bank, FSB*, No. 12-cv-00895-  
22 MMM-OP, 2012 WL 13012420, at \*2 (C.D. Cal. Apr. 25, 2012) (“Even when deciding a facial  
23 attack, however, a court can look beyond the complaint to consider documents that are proper  
24 subjects of judicial notice.”) (collecting cases); *see also Leite*, 749 F.3d at 1121 (“The district  
25 court resolves a facial attack as it would a motion to dismiss under Rule 12(b)(6).”); *Skilstaf, Inc.*  
26 *v. CVS Caremark Corp.*, 669 F.3d 1005, 1016 n.9 (9th Cir. 2012) (explaining that matters  
27 properly the subject of judicial notice may be considered along with the complaint when deciding  
28 a Rule 12(b)(6) motion).

## ANALYSIS

As noted, defendant brings the pending motion to dismiss pursuant to Rules 12(b)(1) and 12(b)(6), arguing that plaintiff's entire complaint is subject to dismissal. (Doc. No. 8 at 10–11.) Because the portion of defendant's motion to dismiss brought under Rule 12(b)(1) raises questions with respect to this court's subject matter jurisdiction over this action, the court will first address that aspect of defendant's motion. *See* Fed. R. Civ. P. 12(h)(3) ("If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.").

### A. Motion to Dismiss Pursuant to Rule 12(b)(1): Article III Standing

"[T]hose who seek to invoke the jurisdiction of the federal courts must satisfy the threshold requirement imposed by Article III of the Constitution by alleging an actual case or controversy." *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983); *see also Matter of E. Coast Foods, Inc.*, 66 F.4th 1214, 1218 (9th Cir. 2023) (explaining that "standing is an 'essential and unchanging' requirement . . . [thus] a party must establish an Article III case or controversy before we exert subject matter jurisdiction") (citations omitted); *City of Oakland v. Lynch*, 798 F.3d 1159, 1163 (9th Cir. 2015) ("A suit brought by a plaintiff without Article III standing is not a 'case or controversy,' and an Article III federal court therefore lacks subject matter jurisdiction over the suit.") (quoting *Cetacean Cmty. v. Bush*, 386 F.3d 1169, 1174 (9th Cir. 2004)). An actual case or controversy will be held to exist when a plaintiff establishes standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

Standing, in turn, "requires that (1) the plaintiff suffered an injury in fact, i.e., one that is sufficiently 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical,' (2) the injury is 'fairly traceable' to the challenged conduct, and (3) the injury is 'likely' to be 'redressed by a favorable decision.'" *Bates v. United Parcel Serv., Inc.*, 511 F.3d 974, 985 (9th Cir. 2007) (*en banc*) (citing *Lujan*, 504 U.S. at 560–61). "Standing must be shown with respect to each form of relief sought, whether it be injunctive relief, damages or civil penalties." *Id.* "[T]o establish standing to pursue injunctive relief . . . [plaintiff] must demonstrate a real and immediate threat of repeated injury in the future." *Chapman v. Pier 1*



1 *Imports (U.S.) Inc.*, 631 F.3d 939, 946 (9th Cir. 2011) (citation and internal quotations omitted).

2 “To determine whether organizational standing requirements have been satisfied, [courts]  
3 ‘conduct the same inquiry as in the case of an individual: Has the plaintiff alleged such a  
4 personal stake in the outcome of the controversy as to warrant his invocation of federal-court  
5 jurisdiction?’” *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 662 (9th Cir. 2021) (quoting  
6 *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 378–79 (1982)). “[W]here the plaintiff is an  
7 organization, the standing requirements of Article III can be satisfied in two ways. Either the  
8 organization can claim that it suffered an injury in its own right or, alternatively, it can assert  
9 ‘standing solely as the representative of its members.’” *Students for Fair Admissions, Inc. v.*  
10 *President & Fellows of Harvard Coll.*, \_\_\_ U.S. \_\_\_, 143 S. Ct. 2141, 2157 (2023) (citation  
11 omitted); *see also E. Bay Sanctuary Covenant*, 993 F.3d at 662 (“Organizations can assert  
12 standing on behalf of their own members, or in their own right.”) (internal citations omitted);  
13 *Rodriguez v. City of San Jose*, 930 F.3d 1123, 1134 (9th Cir. 2019) (“[A]bsent a member with  
14 standing, . . . an organizational plaintiff ‘may have standing in its own right to seek judicial relief  
15 from injury to itself and to vindicate whatever rights and immunities the association itself may  
16 enjoy.’”) (citation omitted).

17 Here, plaintiff alleges in its complaint that it has organizational standing on behalf of its  
18 members and argues in its opposition to the pending motion that it also has standing to bring this  
19 action based on an injury to itself. (Doc. Nos. 1 at ¶¶ 24, 32, 43; 15 at 7–10.) Accordingly, the  
20 court will address both of plaintiff’s theories as to its standing to bring this action.

21 1. Whether Plaintiff Has Organizational Standing on Behalf of its Members

22 To invoke organizational standing on behalf of its members, the plaintiff must allege facts  
23 demonstrating that: “(1) its members would otherwise have standing to sue in their own right; (2)  
24 the interests it seeks to protect are germane to the organization’s purpose; and (3) neither the  
25 claim asserted nor the relief requested requires the participation of individual members in the  
26 lawsuit.” *Am. Unites for Kids v. Rousseau*, 985 F.3d 1075, 1096 (9th Cir. 2021) (citing *Hunt v.*  
27 *Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 343 (1977)).

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1           “Implicit in the first prong of this test is the requirement that an organization must  
2 generally have ‘members’ to bring suit on their behalf.” *Or. Moms Union v. Brown*, 540 F. Supp.  
3 3d 1008, 1013 (D. Or. May 20, 2021). However, a formal membership is not always required for  
4 organizational standing: a plaintiff-organization that does not allow for membership may have  
5 standing, “so long as ‘the organization is sufficiently identified with and subject to the influence  
6 of those it seeks to represent as to have a personal stake in the outcome of the controversy.’” *Am.*  
7 *Unites for Kids*, 985 F.3d at 1096 (internal citations omitted) (quoting *Or. Advoc. Ctr. v. Mink*,  
8 322 F.3d 1101, 1111 (9th Cir. 2003)). “Courts look at whether the individuals the organization  
9 purports to represent possess ‘the indicia of membership’ to satisfy the purposes undergirding the  
10 concept of associational standing.” *Or. Moms Union*, 540 F. Supp. 3d at 1013 (quoting *Or.*  
11 *Advoc. Ctr.*, 322 F.3d at 1111). For example, the Ninth Circuit has found that a non-membership  
12 organization had standing because it “serve[d] a specialized segment of Oregon’s community:  
13 the disabled in general, including the mentally ill and, more specifically, incapacitated criminal  
14 defendants. Those groups [were] the primary beneficiaries of [plaintiff’s] activities, ‘including  
15 the prosecution of this kind of litigation,’” which sought to expedite the transfer of mentally  
16 incapacitated defendants from jails to state hospitals for evaluation and treatment. *Or. Advoc.*  
17 *Ctr.*, 322 F.3d at 1111–12 (quoting *Hunt*, 432 U.S. at 344).

18           In defendant’s pending motion, he argues that plaintiff lacks standing because it has no  
19 members, pointing to a dearth of allegations discussing its members in the complaint and  
20 plaintiff’s tax records that have been judicially noticed. (Doc. No. 8 at 16–17.) In its opposition,  
21 plaintiff argues that formal membership is not required for standing and that it “represents the  
22 interest of Hindu Americans throughout the United States, including those working at Cisco” as  
23 well as its “board members, employees, leadership and advisory council members, donors,  
24 newsletter readers and scholars residing in California. . . .” (Doc. No. 15 at 10–12.) In his reply,  
25 defendant concedes that the Ninth Circuit has found organizational standing in cases even where  
26 the organization in question had no formal membership, but contends that plaintiff has not alleged  
27 facts indicating that it is “sufficiently identified with and subject to the influence of” a non-

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1 member constituency, nor has it even identified an individual belonging to that constituency.  
2 (Doc. No. 18 at 8–9.)

3 In its complaint, plaintiff alleges that it is “the largest and most respected Hindu  
4 educational and advocacy institution in North America,” “acts to protect the religious freedoms of  
5 Hindu Americans, and all Americans of faith,” “is not affiliated with any other religious or  
6 political organization,” and “works with a wide range of people and groups that are committed to  
7 promoting dignity, mutual respect, and pluralism, working across all sampradaya (Hindu religious  
8 traditions) regardless of race, color, national origin, citizenship, ancestry, gender, sexual  
9 orientation, age and/or disability.” (Doc. No. 1 at 2, ¶ 5.) In this regard, plaintiff appears to  
10 allege that it represents “all Hindu Americans” and “all Americans of faith” (*id.* at 3, ¶ 15), yet  
11 there are no allegations in the complaint indicating that plaintiff represents Hindus (or anyone  
12 else) employed at Cisco, nor are there any allegations describing or identifying plaintiff’s “board  
13 members, employees, leadership and advisory council members, donors, newsletter readers and  
14 scholars residing in California.”<sup>3</sup>

15 Due to these pleading deficiencies, the court concludes that plaintiff’s complaint fails to  
16 allege facts that, if proven, would show that plaintiff is “sufficiently identified with and subject to  
17 the influence” of the individuals it seeks to represent in this lawsuit. *Or. Advoc. Ctr.*, 322 F.3d at  
18 1112. Indeed, it is unclear even which specific individuals plaintiff seeks to represent in this  
19 action because its complaint merely alleges that it seeks to protect the constitutional rights of “all  
20 Hindu Americans” and “all Americans of faith.” However, “all Hindu Americans” or “all  
21 Americans of faith” would amount to a constituency that is significantly larger and more diffuse

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23 <sup>3</sup> The board members, employees, advisory council members, donors, and newsletter-readers that  
24 plaintiff seeks to represent are mentioned in the declaration of Suhag A. Shukla, a co-founder,  
25 and the executive director of plaintiff, that was attached to plaintiff’s opposition brief. (Doc. No.  
26 15-1.) However, because this Rule 12(b)(1) motion is a facial attack on the pleadings, that  
27 declaration must be disregarded. *See Timboe v. Clark*, No. 3:20-cv-08719-WHO, 2022 WL  
28 991721, at \*2 (N.D. Cal. Mar. 31, 2022) (disregarding a declaration attached to an opposition  
brief “on a 12(b)(6) motion because it is not part of the complaint or subject to judicial notice”).  
Even if such categories of individuals were described and identified in plaintiff’s complaint, the  
court remains somewhat skeptical that such allegations would remedy the remainder of the  
pleading deficiencies identified below.

1 than those found appropriate for purposes of organizational standing in the cases relied upon by  
2 plaintiff. *See Or. Advoc. Ctr.*, 322 F.3d at 1111–12 (the plaintiff’s constituency defined as  
3 mentally incapacitated criminal defendants in Oregon); *Am. Unites for Kids*, 985 F.3d at 1096–97  
4 (the plaintiff’s constituency defined as public employees, in particular teachers, at the Malibu  
5 campuses of a school district); *Cath. League for Religious & C.R. v. City & Cnty. of San*  
6 *Francisco*, 624 F.3d 1043, 1048, 1063–64 (9th Cir. 2010) (*en banc*) (“*Catholic League*”) (the  
7 plaintiff’s constituency defined as being devout Catholics in San Francisco, which purportedly  
8 was comprised of 6,000 individuals).

9         Moreover, even though plaintiff alleges it is “the largest and most respected Hindu  
10 educational and advocacy institution in North America,” it does not allege what activities, if any,  
11 it engages in that relate to “all Hindu Americans,” how it is funded, what interaction it has with  
12 the Hindu American community, or any facts indicating that it is “sufficiently identified with and  
13 subject to the influence” of all adherents of an entire faith such that it plausibly could represent  
14 them in this lawsuit. *See Meister v. City of Hawthorne*, No. 14-cv-01096-MWF-SH, 2014 WL  
15 3040175, at \*8–9 (C.D. Cal. May 13, 2014) (dismissing an action brought by the advocacy and  
16 service organization “Greater Los Angeles Agency on Deafness, Inc.” (“GLAD”) for lack of  
17 standing because its complaint alleged “only that GLAD seeks to represent deaf and hearing-  
18 impaired persons, but not that any relevant persons have the requisite indicia of membership to  
19 confer standing on GLAD”); *cf. Or. Advoc. Ctr.*, 322 F.3d at 1111–12 (holding that the plaintiff-  
20 organization created and primarily funded by federal statute to advance the rights of individuals  
21 with mental health disabilities could be considered to represent the mentally incapacitated  
22 criminal defendants in Oregon whose constitutional rights the plaintiff-organization sought to  
23 vindicate). Relatedly, plaintiff also has failed to explain how “all Hindu Americans”—or  
24 whatever constituency it seeks to represent—constitute a “specialized segment” of the community  
25 affected by the complaint filed in the Santa Clara action, nor does plaintiff’s complaint identify  
26 how its purported constituency would be the “primary beneficiaries” of this lawsuit. *Cf. Am.*  
27 *Unites for Kids*, 985 F.3d at 1097 (holding that the plaintiff-organization had standing when it  
28 served “a ‘specialized segment’ of the community: public employees concerned about exposure

1 to environmental risk at work” and teachers working on defendants’ school campuses “were the  
2 ‘primary beneficiaries’ of [the plaintiff-organization’s] activities,” including its lawsuit brought  
3 against the defendant school district for environmental contamination on its campuses). Without  
4 factual allegations connecting the plaintiff organization with the particular constituency that it  
5 seeks to represent here, the court cannot plausibly infer that plaintiff is “sufficiently identified  
6 with and subject to the influence of” “all Hindu Americans.”

7 More importantly, even if the court were to assume plaintiff could assert claims on behalf  
8 of “all Hindu Americans,” plaintiff must still allege facts suggesting that a member of that  
9 constituency “suffers an injury-in-fact that is traceable to the defendant and likely to be redressed  
10 by a favorable decision.” *Associated Gen. Contractors of Am., San Diego Chapter, Inc. v. Cal.*  
11 *Dep’t of Transp.*, 713 F.3d 1187, 1194 (9th Cir. 2013); *see also Summers v. Earth Island Inst.*,  
12 555 U.S. 488, 498 (2009) (explaining that “the law of organizational standing . . . [has] required  
13 plaintiff-organizations to make specific allegations establishing that at least one identified  
14 member had suffered or would suffer harm”). “To establish injury in fact, a plaintiff must show  
15 that he or she suffered ‘an invasion of a legally protected interest’ that is ‘concrete and  
16 particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Spokeo, Inc. v. Robins*,  
17 578 U.S. 330, 339 (2016). The “threatened injury must be *certainly impending* to constitute  
18 injury in fact, and [] allegations of *possible* future injury are not sufficient.” *Clapper v. Amnesty*  
19 *Int’l USA*, 568 U.S. 398, 409 (2013) (internal quotation marks and brackets omitted) (quoting  
20 *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)).

21 Here, plaintiff’s complaint alleges that the Department has asserted in the Santa Clara  
22 action, “that a caste system and caste-based discrimination are integral parts of Hindu teachings  
23 and practices” and “the caste system [is] ‘a strict Hindu social and religious hierarchy,’ which

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1 requires discrimination by ‘social custom and legal mandate.’”<sup>4</sup> (Doc. No. 1 at 2.) Plaintiff  
2 alleges that these assertions “wrongly [tie] Hindu beliefs and practices to the abhorrent practice of  
3 caste-discrimination,” thereby undermining the goal of ending caste-based discrimination and  
4 violating “the First Amendment rights of all Hindu-Americans,” which “can only lead to a denial  
5 of due process and equal protection to Americans based on their religious affiliation and national  
6 origin.” (*Id.*) However, as defendant correctly points out in his pending motion to dismiss, there  
7 are no factual allegations of actual or imminent harm to anyone resulting from the Department’s  
8 allegations in its state court complaint, let alone actual harm to any individuals that plaintiff seeks  
9 to represent in this action. (Doc. No. 8 at 18); *see FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215,  
10 231 (1990) (“[I]t is the burden of the ‘party who seeks the exercise of jurisdiction in his favor  
11 clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the  
12 dispute . . . . If they fail to make the necessary allegations, they have no standing.”) (internal  
13 citations, quotations, brackets omitted).

14 At most, plaintiff alleges a purely hypothetical theory of harm, i.e., “[b]y wrongly  
15 attempting to define Hinduism to include caste, the [Department] would actually require the very  
16 discrimination that it seeks to ban.” (Doc. No. 1 at ¶ 16.) According to plaintiff’s complaint,  
17 “employers *might arguably* be required to accommodate an employee’s request not to work with  
18 someone the employee believes to be of the ‘wrong’ caste” as a religious accommodation under  
19 state and federal law. (*Id.* at ¶ 21) (emphasis added). But the notion that the Department’s  
20 allegations in the state court complaint—a civil rights enforcement lawsuit seeking to stop and

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23 <sup>4</sup> The portion of the complaint filed in the Santa Clara County Superior Court action that plaintiff  
24 is quoting from actually alleges as follows: “As a strict Hindu social and religious hierarchy,  
25 India’s caste system defines a person’s status based on their religion, ancestry, national  
26 origin/ethnicity, and race/color—or the caste into which they are born—and will remain until  
27 death.” (Doc. No. 10-1 at 6) (citing Human Rights Watch & Center for Human Rights and  
28 Global Justice at New York University School of Law, *Hidden Apartheid: Caste Discrimination  
against India’s “Untouchables,”* at 45 (2007)). “At the bottom of the Indian hierarchy is the  
Dalit, typically the darkest complexion caste, who were traditionally subject to ‘untouchability’  
practices which segregated them by social custom and legal mandate.” (*Id.*)

1 prevent caste-based discrimination<sup>5</sup>—would somehow lead other Hindu Americans to make  
2 religious accommodation requests to discriminate against co-workers based on their perceived  
3 caste and that employers might then actually grant those requests due to their interpretation of the  
4 Department’s allegations in the Santa Clara action is both highly speculative and seemingly  
5 implausible. Such an attenuated chain of events without connection to any individual facing this  
6 purported and speculative harm is plainly insufficient to establish standing. *See Summers*, 555  
7 U.S. at 495–96 (finding that a vague plan to visit unnamed National Forests “some day” did not  
8 establish “actual or imminent injury” for purposes of establishing the plaintiff’s standing to  
9 challenge government action affecting a particular forest); *Clapper*, 568 U.S. at 410–11 (finding  
10 that the “respondents’ theory of standing, which relies on a highly attenuated chain of  
11 possibilities, does not satisfy the requirement that threatened injury must be certainly  
12 impending”). Here, plaintiff’s alleged harm is also contrary to the premise of its own complaint,  
13 which is that the Department’s “depiction of the caste system . . . is not based on any universal  
14 understanding among Hindus about their own beliefs and traditions” and is contrary to the beliefs  
15 of “an overwhelming number of [Hinduism’s] own adherents.” (Doc. No. 1 at ¶¶ 12, 14.)

16 In addition, plaintiff has failed to allege any injury that is plausibly connected to the three  
17 constitutional violations that it asserts in its complaint. (Doc. No. 1 at ¶¶ 23–48); *see Or.*  
18 *Prescription Drug Monitoring Program v. U.S. Drug Enf’t Admin.*, 860 F.3d 1228, 1233 (9th Cir.  
19 2017) (“[T]he standing inquiry requires careful judicial examination of a complaint’s allegations  
20 to ascertain whether the *particular plaintiff* is entitled to an adjudication of the *particular claims*  
21 asserted.”) (emphasis in original). First, as to its free exercise claim, plaintiff fails to allege facts  
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23 <sup>5</sup> The Department brought the Santa Clara action on behalf of John Doe who is “Dalit Indian, a  
24 population once known as the ‘Untouchables,’ who are the most disadvantaged people under  
25 India’s centuries-old caste system” and in it alleges that John Doe is “Dalit because of his  
26 religion, ancestry, national origin/ethnicity, and race/color.” (Doc. No. 10-1 at ¶ 1 n.2.) The  
27 Department further alleges in that case that Cisco engaged in unlawful employment practices  
28 against John Doe by subjecting him to disparate employment conditions because of his status as a  
Dalit Indian in violation of the FEHA. (*Id.* at ¶¶ 51–60.) Among other things, the suit alleges  
that Cisco reassigned Doe’s job duties and isolated him from his other colleagues, denied him a  
raise, promotion, and work opportunities, and subjected him to offensive comments, including  
publicizing his caste to co-workers. (*Id.* at ¶¶ 53, 61–71.)

1 showing how “wrongly defin[ing] Hindu Beliefs, teachings and practices to include an abhorrent  
2 practice of discrimination,” (Doc. No. 1 at ¶ 29), burdens, operates against, or otherwise infringes  
3 on the practice of Hinduism by any individual it seeks to represent in bringing this action. *See*  
4 *Sch. Dist. of Abington Twp. v. Schempp*, 374 U.S. 203, 222–23 & 224 n.9 (1963); *see also Kumar*  
5 *v. Koester*, \_\_\_ F. Supp.3d \_\_\_, 2023 WL 4781492, at \*4 (C.D. Cal. July 25, 2023) (finding that  
6 the university professor Hindu plaintiffs lacked standing to assert a free exercise challenge to the  
7 use of “caste” in the university’s anti-discrimination policy because the plaintiffs’ “emphatically  
8 denounce[d] the caste system and reject[ed] the notion that it is part of their religion” and thus the  
9 policy did “not threaten any of Plaintiffs’ rights to practice their religion”).

10 Second, plaintiff’s mischaracterized “procedural due process” claim actually appears to be  
11 a void for vagueness challenge to the Department’s alleged “position” that seeks to “legally  
12 define Hinduism to include belief and practice in caste and a caste system” under the Fourteenth  
13 Amendment’s Due Process Clause. (Doc. No. 1 at ¶¶ 33–34.) “A plaintiff has standing to bring a  
14 pre-enforcement challenge to a vague law on due process grounds where ‘the litigant is chilled  
15 from engaging in constitutionally protected activity.’” *Montclair Police Officers’ Ass’n v. City of*  
16 *Montclair*, No. 2:12-cv-06444-PSG-PLA, 2012 WL 12888427, at \*4 (C.D. Cal. Oct. 24, 2012)  
17 (quoting *Bankshot Billiards, Inc. v. City of Ocala*, 634 F.3d 1340, 1350 (11th Cir. 2011)). Here,  
18 however, plaintiff has not identified any activity that it alleges has been chilled by the  
19 Department’s allegations advanced in its state court complaint against Cisco, let alone a  
20 constitutionally protected activity.

21 Third, in regard to its equal protection claim, plaintiff’s complaint does not allege any  
22 facts plausibly suggesting that defendant “has applied the [FEHA] in a discriminatory manner  
23 against Hindu Americans” but not as to Americans of other faiths because of their faith. (Doc.  
24 No. 1 at ¶ 48.) *See Citizens for Fair Representation v. Padilla*, 815 F. App’x 120, 123 (9th Cir.  
25 2020) (holding that the plaintiff lacked standing to assert an equal protection challenge to  
26 California’s constitutional cap on the number of its state legislative districts as racially  
27 discriminatory because “they have not adequately alleged that some votes are weighted less than

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1 others based on race”).<sup>6</sup> Nor does plaintiff allege a concrete injury stemming from the alleged  
2 discriminatory enforcement of the FEHA against Hindu Americans, except for plaintiff’s general  
3 disagreement with the Department’s allegations in the Santa Clara complaint in which it is  
4 vaguely suggested that a caste system is related to Hinduism. *See Kumar*, 2023 WL 4781492, at  
5 \*3 (finding that Hindu university professors lacked standing to assert an equal protection  
6 challenge to a university’s antidiscrimination policy’s use of the term “caste” when the plaintiffs  
7 merely alleged that “the Policy impermissibly stigmatizes individuals of South Asian descent and  
8 Hindu practitioners” and that “the policy could be enforced unevenly”).

9 Finally, plaintiff’s reliance on the Ninth Circuit’s decision in *Catholic League* does not  
10 serve to remedy the pleading deficiencies with respect to standing identified above. 624 F.3d at  
11 1047–48 (holding that “a Catholic civil rights organization and two devout Catholics [members]  
12 who live in San Francisco” had standing to bring an Establishment Clause challenge to a  
13 resolution adopted by the San Francisco Board of Supervisors denouncing the Archdiocese of San  
14 Francisco’s decision to not place children for adoption in homosexual households). Unlike  
15 *Catholic League*, plaintiff is not asserting an Establishment Clause challenge here, and even if it  
16 was, the specific psychological harm the plaintiffs in *Catholic League* allegedly suffered—  
17 “exclusion or denigration on a religious basis within the political community” based upon  
18 extensive and detailed factual allegations—is absent from the allegations of plaintiff’s complaint.  
19 624 F.3d at 1052–53; *see Schempp*, 374 U.S. at 225 n.9 (“[T]he requirements for standing to  
20 challenge state action under the Establishment Clause, unlike those relating to the Free Exercise  
21 Clause, do not include proof that particular religious freedoms are infringed.”). Moreover, were  
22 plaintiff to allege a psychological injury as did the plaintiffs in *Catholic League*, it does not  
23 appear that it would be sufficiently concrete to confer standing for the type of claims that plaintiff  
24 has asserted here. *See Kumar*, 2023 WL 4781492, at \*3–4 (finding Hindu professors lacked

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27 <sup>6</sup> Citation to this unpublished Ninth Circuit opinion is appropriate pursuant to Ninth Circuit Rule  
28 36-3(b).

1 standing to assert free exercise and equal protection claims where they alleged “abstract stigmatic  
2 injuries” regarding an antidiscrimination policy’s use of the term “caste”).<sup>7</sup>

3 In summary, plaintiff’s complaint fails to allege that: (i) plaintiff has any members or is  
4 “sufficiently identified with and subject to the influence of” a constituency from a specialized  
5 segment of the community that would primarily benefit from this lawsuit; and (ii) any individual  
6 members of such a constituency have suffered or will suffer an injury-in-fact. Plaintiff has thus  
7 failed to allege facts that would satisfy the first prong of organizational standing, i.e., “its  
8 members would otherwise have standing to sue in their own right.” *Am. Unites for Kids*, 985  
9 F.3d at 1096. For this reason, the court need not address the second and third prongs that must  
10 also be satisfied to demonstrate organizational standing. *See Am. ’s Frontline Drs. v. Wilcox*, No.  
11 21-cv-01243-JGB-KK, 2022 WL 1514038, at \*6 (C.D. Cal. May 5, 2022) (“Plaintiffs fail to  
12 allege the first *Hunt* requirement, thus the Court declines to address the remaining two  
13 requirements.”).

14 Accordingly, defendant’s motion to dismiss the complaint for failure to adequately allege  
15 Article III standing predicated on organizational standing will be granted.

16 2. Whether Plaintiff Has Standing on Behalf of Itself

17 An organization has standing on its own behalf if it can show: (1) that the defendant’s  
18 actions have frustrated its mission; and (2) that it has spent resources counteracting that  
19 frustration of mission. *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1018 (9th Cir. 2013); *see*  
20 *also E. Bay Sanctuary Covenant*, 993 F.3d at 663. “Of course, organizations cannot ‘manufacture  
21 the injury by incurring litigation costs or simply choosing to spend money fixing a problem that  
22 otherwise would not affect the organization at all[.]’” *E. Bay Sanctuary Covenant*, 993 F.3d at  
23 663 (quoting *La Asociacion de Trabajadores de Lake Forest v. Lake Forest*, 624 F.3d 1083, 1088  
24 (9th Cir. 2010)). Rather, an organizational plaintiff must “show they ‘would have suffered some

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26 <sup>7</sup> Additionally, the undersigned observes that plaintiff’s complaint is clearly distinguishable from  
27 that before the court in *Catholic League* because the individual plaintiffs in that case were  
28 members of the organizational plaintiff and resided in the “political community” affected by the  
resolution that they alleged caused them religious-based exclusion and denigration within that  
political community. *Cf. Catholic League*, 624 F.3d at 1048.

1 other injury’ had they ‘not diverted resources to counteracting the problem.’” *Id.* at 974 (quoting  
2 *La Asociacion*, 624 F.3d at 1088). Thus, “[a]n organization may sue only if it was *forced* to  
3 choose between suffering an injury and diverting resources to counteract the injury.” *La*  
4 *Asociacion*, 624 F.3d at 1088 n.4 (emphasis added).

5 Although plaintiff’s complaint alleges it has “associational standing” to bring its claims  
6 “on behalf of its Hindu American members,” plaintiff has argued in its opposition to the pending  
7 motion to dismiss that it also has “direct standing” to bring its claims against defendant. (Doc.  
8 Nos. 1 at ¶ 43; 15 at 7–10.) As defendant correctly points out in his reply brief, however,  
9 plaintiff’s complaint is devoid of any allegations addressing how “the Department’s alleged  
10 mischaracterizations in a state court pleading against a third party” have caused or threatened  
11 injury to plaintiff’s mission or what steps it has been forced to take to avoid such harm. (Doc.  
12 No. 18 at 12); *see also La Asociacion*, 624 F.3d at 1088 n.4. In fact, plaintiff’s complaint does  
13 not even clearly allege what its mission is. (*See* Doc. No. 1 at ¶ 5.) At most, plaintiff argues in  
14 its opposition brief that its “board members, employees, leadership and advisory council  
15 members, donors, newsletter readers and scholars residing in California have been directly  
16 harmed by the [Department’s] actions, *requiring significant redeployment of [plaintiff] resources*  
17 *and personally subjecting them to the emotional and spiritous injuries of [the Department’s] gross*  
18 *mischaracterization of Hindu teachers.”* (Doc. No. 15 at 11) (emphasis added). These assertions  
19 are not alleged in plaintiff’s complaint, and in any event, are entirely conclusory. *See Our Watch*  
20 *With Tim Thompson, v. Bonta*, \_\_\_ F. Supp.3d \_\_\_, 2023 WL 4600117, at \*6 (E.D. Cal. July 18,  
21 2023) (dismissing a complaint for lack of standing where the plaintiff-organization challenging  
22 the constitutionality of a state law failed to allege “what plaintiff’s regular activities are and how  
23 [the state law’s] enactment specifically impacts the organization’s functions”). Thus, plaintiff’s  
24 attempt to invoke an alternative theory of standing through its opposition brief is unavailing.<sup>8</sup>

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26 \_\_\_\_\_  
27 <sup>8</sup> If plaintiff intends to pursue this theory of standing in a first amended complaint, it is directed  
28 to review this court’s decision in *Our Watch With Tim Thompson*, 2023 WL 4600117, at \*5–10,  
in which the undersigned addressed the law governing a plaintiff-organization’s direct standing to  
bring suit in some detail.

1           Accordingly, defendant’s motion to dismiss the complaint for failure to allege Article III  
2 standing predicated on plaintiff’s direct standing will also be granted.

3           Because the court concludes that plaintiff lacks Article III standing to bring this action and  
4 that defendant’s motion to dismiss pursuant to Rule 12(b)(1) must be granted, the court need not  
5 reach defendant’s arguments in support of his motion to dismiss pursuant to Rule 12(b)(6).  
6 Accordingly, defendant’s motion to dismiss pursuant to Rule 12(b)(6) will be denied as having  
7 been rendered moot by this order.

8       **B.     Leave to Amend**

9           Plaintiff has indicated that it desires leave to file a first amended complaint in the event  
10 that the court grants defendant’s motion to dismiss. (Doc. No. 15 at 10 fn.2 & 16 n.3.) “Courts  
11 are free to grant a party leave to amend whenever ‘justice so requires,’ and requests for leave  
12 should be granted with ‘extreme liberality.’” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 972 (9th  
13 Cir. 2009) (citations omitted). There are several factors a district court considers in determining  
14 whether to grant leave to amend, including undue delay, the movant’s bad faith or dilatory  
15 motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice  
16 to the opposing party, and futility. *Brown v. Stored Value Cards, Inc.*, 953 F.3d 567, 574 (9th  
17 Cir. 2020) (citing *Foman v. Davis*, 371 U.S. 178, 182 (1962)).

18           Although the court is somewhat skeptical that plaintiff will be able to remedy all of the  
19 pleading deficiencies described in this order, plaintiff has not yet had any opportunity to amend  
20 its complaint. Defendant—though he opposes leave to amend—has also not asserted that he  
21 would be unduly prejudiced by granting plaintiff leave to file a first amended complaint. (Doc.  
22 No. 18 at 14–15.) Rather, in his reply brief, defendant contends that permitting amendment  
23 would be futile, arguing that “‘a citizen lacks standing to contest the policies of the prosecuting  
24 authority when he himself is neither prosecuted nor threatened with prosecution’ because he  
25 ‘lacks a judicially cognizable interest in the prosecution or non-prosecution of another.’” (*Id.* at  
26 15) (quoting *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973)). However, plaintiff has not had  
27 an opportunity to fully respond to this argument advanced by defendant and it is unclear whether  
28 the decision in *Linda R.S.* has applicability to the claims asserted by plaintiff in this case. For

1 these reasons, the court will grant plaintiff leave to amend. *See Nat'l Council of La Raza v.*  
2 *Cegavske*, 800 F.3d 1032, 1041 (9th Cir. 2015) (“It is black-letter law that a district court must  
3 give plaintiffs at least one chance to amend a deficient complaint, absent a clear showing that  
4 amendment would be futile.”).

5 **CONCLUSION**

6 For the reasons stated above:

- 7 1. Defendant’s and plaintiff’s requests for judicial notice (Doc. No. 10, 16) are  
8 granted;
- 9 2. Defendant’s motion to dismiss plaintiff’s complaint due to plaintiff’s lack of  
10 Article III standing (Doc. No. 8) is granted, with leave to amend;
- 11 3. The remainder of defendant’s motion to dismiss (Doc. No. 8) is denied as having  
12 been rendered moot by this order;
- 13 4. Plaintiff shall file its first amended complaint, or alternatively, a notice of its intent  
14 not to do so, within twenty-one (21) days from the date of entry of this order; and
- 15 5. Plaintiff is warned that its failure to comply with this order may result in dismissal  
16 of this action due to plaintiff’s failure to prosecute.

17 IT IS SO ORDERED.

18 Dated: August 30, 2023

19   
20 UNITED STATES DISTRICT JUDGE