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 19  
 20 IN THE UNITED STATES DISTRICT COURT  
 21 FOR THE NORTHERN DISTRICT OF CALIFORNIA

22  
 23 **STATE OF CALIFORNIA; CALIFORNIA**  
 24 **DEPARTMENT OF FAIR**  
 25 **EMPLOYMENT AND HOUSING; STATE**  
 26 **OF MARYLAND; STATE OF**  
 27 **MINNESOTA; and MINNESOTA**  
 28 **DEPARTMENT OF HUMAN RIGHTS,**

Plaintiffs,

v.

Case No.

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

1 **JANET DHILLON, in her official capacity as**  
2 **Chair of the U.S. Equal Employment**  
3 **Opportunity Commission and U.S. EQUAL**  
4 **EMPLOYMENT OPPORTUNITY**  
5 **COMMISSION,**

6 Defendants.

7 **INTRODUCTION**

8 1. Plaintiffs State of California, California Department of Fair Employment and  
9 Housing, State of Maryland, State of Minnesota, and Minnesota Department of Human Rights  
10 (Plaintiffs) bring this lawsuit to challenge a recent action taken by Defendants U.S. Equal  
11 Employment Opportunity Commission (EEOC) and its Chair, Janet Dhillon, to restrict state and  
12 local agencies charged with administering and enforcing fair employment practices laws from  
13 accessing information from employers within their jurisdictions contrary to the clear statutory  
14 command of Title VII of the Civil Rights Act of 1964 (Title VII). Defendants did not engage in  
15 the formal rulemaking required by the Administrative Procedure Act (APA), 5 U.S.C. § 553,  
16 but—as manifested through a series of actions and statements—have clearly adopted a change of  
17 policy that constitutes a rule (Rule) against sharing employment information with state and local  
18 Fair Employment Practice Agencies (FEPAs) unless it relates to an employer that is the subject of  
19 a particular charge of discrimination. Defendants’ Rule is a departure from past policy and  
20 practice, was made without requisite procedures under the APA and Title VII, denies state and  
21 local FEPAs their rights to information under Title VII, and prevents Plaintiffs from carrying out  
22 their mission of enforcing state and federal anti-discrimination laws against employers in their  
23 jurisdictions.

24 2. Title VII requires employers to maintain employment information relevant to the  
25 enforcement of its anti-discrimination provisions, and to furnish such information to EEOC.  
26 Since the 1960s, EEOC has specifically required covered private employers throughout the  
27 United States to file an annual report entitled “Employer Information Report EEO-1” (EEO-1).  
28 29 C.F.R. § 1602.7. The EEO-1 contains employment data regarding the employer’s industry,  
headquarters and location, and the composition of the employer’s workforce by job category and

1 sex, race, ethnicity, and other information. This information is an important resource for analysis  
2 of equal employment opportunity practices in particular industries and regions, and is “necessary  
3 for the proper performance of [EEOC’s] functions and has a practical utility to the fulfillment of  
4 the EEOC’s mission.” Agency Information Collection Activities: Existing Collection, 84 Fed.  
5 Reg. 48,138, 48,141 (Sept. 12, 2019).

6 3. EEO-1 data is similarly necessary to state and local FEPAs, which Congress has  
7 recognized as partners in the enforcement of federal anti-discrimination in employment laws. 42  
8 U.S.C. § 2000e-8(b), (d). State and local FEPAs rely on employment information to identify  
9 priorities for investigation and enforcement and to evaluate and identify employers with  
10 potentially discriminatory practices. Such data allows civil rights agencies to prioritize their work  
11 and allocate resources to most effectively fight employment discrimination in their jurisdictions.  
12 Indeed, Title VII *requires* that EEOC “shall furnish upon request and without cost to any State or  
13 local agency charged with the administration of a fair employment practice law information  
14 obtained . . . from any employer, employment agency, labor organization, or joint labor-  
15 management committee subject to the jurisdiction of such agency.” 42 U.S.C. § 2000e-8(d).

16 4. Pursuant to this unambiguous command in Title VII and the ongoing Worksharing  
17 Agreements between EEOC and the FEPAs of Plaintiff States, EEOC shared EEO-1 data for all  
18 employers within the Plaintiffs’ jurisdictions until EEOC’s policy change in 2020.<sup>1</sup> In recent  
19 decades, EEOC automatically shared EEO-1 data with many state and local FEPAs by providing  
20 them access to EEOC’s Integrated Mission Systems (IMS) database, where FEPAs could access  
21 information about all employers within their jurisdictions and input information about particular  
22 charges. In or about April 2019, EEOC disabled FEPAs’ access to jurisdiction-wide EEO-1 data  
23 in the IMS system, without consultation with or notice to Plaintiffs.

24 5. In 2020, EEOC abandoned its long-established practice of sharing all EEO-1 data  
25 within a particular FEPA’s jurisdiction with that FEPA. In January 2020, Defendant Dhillon  
26 issued an agency-wide Order allowing EEOC to share employer information and data with

27 <sup>1</sup> As used herein, “Plaintiff States” refers to the State of California, State of Maryland, and  
28 State of Minnesota. “Plaintiff FEPAs” refers to the California Department of Fair Employment  
and Housing and the Minnesota Department of Human Rights.

1 FEPAs only if the information requested related to a particular charge under investigation by the  
2 FEPA. EEOC's first public statement regarding its changed policy was the mere mention of what  
3 it described as its "current" practice near the end of a multi-page 30-day Paperwork Reduction  
4 Act ("PRA") notice related to its proposed continued collection of certain EEO-1 data. In the  
5 PRA notice, EEOC stated: "The EEOC's current practice is to share EEO-1 data with a  
6 contracted FEPA only upon request and to share EEO-1 data for an employer within the FEPA's  
7 jurisdiction and only when that employer is a respondent to a particular charge of discrimination  
8 cited by the FEPA in its data request." Agency Information Collection Activities: Existing  
9 Collection, 85 Fed. Reg. 16,340, 16,347 (Mar. 23, 2020). Since January 2020, Plaintiffs DFEH  
10 and Minnesota Department of Human Rights (MDHR) have requested and been refused EEO-1  
11 data for employers within their respective jurisdictions.

12 6. EEOC changed the scope of information it shares with Plaintiffs without  
13 consulting with FEPAs and without observing the notice-and-comment process required for  
14 agency action under the APA, 5 U.S.C. § 553. EEOC's unilaterally and newly imposed  
15 restrictions on Plaintiffs' access to EEO-1 data for employers within their jurisdictions violates  
16 EEOC's obligations under Title VII and long-standing Worksharing Agreements that EEOC has  
17 had with FEPAs in the Plaintiff States.

18 7. Plaintiffs challenge EEOC's action as *ultra vires* agency action that is arbitrary,  
19 capricious, an abuse of discretion, and otherwise not in accordance with law and in excess of  
20 statutory jurisdiction, authority, or limitations, or short of statutory right under the APA.  
21 Plaintiffs seek declaratory and injunctive and/or mandamus relief to compel Defendants to  
22 perform their statutory and contractual duties.

### 23 **JURISDICTION AND VENUE**

24 8. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331  
25 because it is a case arising under the laws of the United States. The Court also has jurisdiction  
26 under 28 U.S.C. § 1346 because this is a civil action against the federal government founded upon  
27 acts of Congress. Jurisdiction is proper under the judicial review provisions of the APA, 5 U.S.C.  
28 §§ 701-706. The Court has authority to provide relief under the Declaratory Judgment Act, 28

1 U.S.C. § 2201, and the Mandamus Statute, 28 U.S.C. § 1361.

2 9. Venue is proper in the Northern District of California under 28 U.S.C.  
3 § 1391(e)(1) because the State of California and its Attorney General have offices at 455 Golden  
4 Gate Avenue, San Francisco, California, and at 1515 Clay Street, Oakland, California, and  
5 Defendants have offices at 450 Golden Gate Avenue, San Francisco, California, 1301 Clay Street,  
6 Oakland, California, and 96 N. Third St., San Jose, California.

7 **INTRADISTRICT ASSIGNMENT**

8 10. Assignment to the San Francisco or Oakland Division is appropriate under Civil  
9 Local Rule 3-2(c) and (d) because Plaintiff State of California and its Attorney General and  
10 Defendant EEOC maintain offices in San Francisco and Oakland, because Plaintiff DFEH serves  
11 employees and individuals who live and work in San Francisco and Oakland, and because  
12 DFEH's ability to serve those employees and individuals is limited by the restrictions EEOC has  
13 placed on DFEH's access to EEO-1 data and information.

14 **PARTIES**

15 11. Plaintiff State of California (California) is a sovereign state in the United States of  
16 America. California is aggrieved by the actions of Defendants that undermine its ability to  
17 enforce state anti-discrimination laws. California Attorney General Xavier Becerra brings this  
18 action in furtherance of his duty, under article V, § 13 of the California Constitution, to see that  
19 the laws of the State are uniformly and adequately enforced. This challenge is brought pursuant  
20 to the Attorney General's independent, constitutional, statutory, and common law authority to  
21 represent the public interest.

22 12. Defendants' refusal to provide access to all California employment data  
23 significantly undermines California's sovereign interests. As the chief law officer of the State,  
24 Attorney General Xavier Becerra has authority to enforce state and federal law, including  
25 California's strong employment protections, which bar discrimination in employment on the basis  
26 of race, religious creed, color, national origin, ancestry, physical disability, mental disability,  
27 medical condition, genetic information, marital status, sex, gender, gender identity, gender  
28 expression, age, sexual orientation, or military and veteran status. As described below, the Rule

1 creates additional administrative costs for California agencies charged with the administration of  
2 a fair employment practice law to find alternative sources of employment data to guide  
3 investigation and enforcement. Employment discrimination “foments domestic strife and unrest,  
4 deprives the state of the fullest utilization of its capacities for development and advancement, and  
5 substantially and adversely affects the interests of employees, employers, and the public in  
6 general.” Cal. Gov’t Code § 12920. Any curtailment of civil rights enforcement in California  
7 flowing from Defendants’ action limiting access to employment information directly undermines  
8 California’s interest in guaranteeing fair treatment and equal employment opportunities for its  
9 residents.

10 13. Plaintiff California Department of Fair Employment and Housing is a department  
11 within the executive branch of the State of California with prosecutorial authority to investigate,  
12 mediate, and litigate civil rights actions, Cal. Gov’t Code, §§ 12930 *et seq.*, and an “agency  
13 charged with the administration of a fair employment practice law” within the meaning of Title  
14 VII, 42 U.S.C. § 2000e-8(d); 29 C.F.R. § 1601.74 (listing designated FEPAs, including DFEH).  
15 DFEH is empowered to investigate and prosecute actions concerning all matters relating to the  
16 business activities and subjects under the department’s jurisdiction, Cal. Gov’t Code  
17 §§ 11180, 12902, and issue publications and the results of investigations and research, Cal. Gov’t  
18 Code § 12930(i). DFEH’s enforcement of the California Fair Employment and Housing Act, Cal.  
19 Gov’t Code §§ 12900 *et seq.* (FEHA) and Title VII is an exercise of the State of California’s  
20 public policy to protect the civil rights of all Californians to seek, obtain, and hold employment  
21 without discrimination based on protected characteristics. Cal. Gov’t Code § 12920. Under  
22 FEHA, the Director of DFEH, in his or her discretion, may issue an administrative complaint of  
23 discrimination on behalf of a group or class of potential victims and the department, including  
24 investigations of pattern-or-practice discrimination claims—even if no individual or group of  
25 employees comes forward with a complaint. Cal. Gov’t Code § 12961; 2 Cal. Code Regs.  
26 § 10012.

27 14. Defendants’ Rule and refusal to furnish DFEH with requested California  
28 employment data undermines DFEH’s effectiveness as a FEPA. Employment data is critical for

1 investigation of individual and systemic complaints, evaluating industry, regional, and historical  
2 trends across the state, and identifying potential violations without a complaint. Denying full  
3 access to California employment data will force DFEH to expend additional resources to find  
4 alternative sources of employment information. It also will impede DFEH's ability to conduct  
5 competitor analyses across employers statewide, identify and evaluate enforcement priorities  
6 across industries and regions statewide, and fulfill its statutory mandate to enforce equal  
7 employment opportunity protections in California.

8 15. Plaintiff State of Maryland (Maryland) is a sovereign state of the United States of  
9 America. Maryland is represented by and through the Attorney General of Maryland, Brian  
10 Frosh, its chief legal officer with general charge, supervision, and direction of Maryland's legal  
11 business. The Attorney General's powers and duties include acting on behalf of the State and the  
12 people of Maryland in the federal courts on matters of public concern. Under the Constitution of  
13 Maryland, and as directed by the Maryland General Assembly, the Attorney General has the  
14 authority to file suit to challenge action by the federal government that threatens the public  
15 interest and welfare of Maryland residents. Md. Const. Art. V, § 3(a)(2); 2017 Md. Laws, Joint  
16 Resolution 1.

17 16. Defendants' refusal to provide access to all Maryland employment data  
18 significantly undermines Maryland's sovereign interests. Maryland has a strong public policy  
19 interest in prohibiting discrimination on the basis of race, color, or national origin. *See* Md. Code  
20 Ann., State Gov't §§ 20-302, 20-304, 20-401, 20-402, 20-602, 20-702, 20-705, 20-707, 20-  
21 901. The Maryland General Assembly has declared that "assur[ing] all persons equal  
22 opportunity" is necessary "for the protection of the public safety, public health, and general  
23 welfare, for the maintenance of business and good government, and for the promotion of the  
24 State's trade, commerce, and manufacturers." Md. Code Ann., State Gov't § 20-602. As  
25 described below, the Rule creates additional administrative costs for Maryland agencies charged  
26 with investigating discriminatory employment practices and taking actions to address them.

27 17. The Maryland Commission on Civil Rights (MCCR) is an instrumentality of the  
28 State of Maryland with the authority to investigate, mediate, and litigate civil rights actions, and it

1 qualifies as an “agency charged with the administration of a fair employment practice law” within  
2 the meaning of Title VII, 42 U.S.C. § 2000e-8(d); 29 C.F.R. § 1601.74. EEOC and the MCCR  
3 have been parties to a Worksharing Agreement for approximately the last 30 years.

4 18. Plaintiff State of Minnesota (Minnesota) is a sovereign state in the United States of  
5 America. Minnesota is aggrieved by the actions of Defendants that undermine its ability to  
6 investigate and enforce Minnesota’s anti-discrimination laws. Minnesota brings this action to  
7 protect its sovereign, quasi-sovereign, and proprietary interests. Attorney General Keith Ellison  
8 is the chief legal officer of the State of Minnesota, and his powers and duties include filing  
9 lawsuits in federal court on behalf of the State of Minnesota. Minn. Stat. § 8.01. As the chief  
10 legal officer of the State of Minnesota, Attorney General Ellison possesses broad authority to  
11 protect Minnesota’s economic interests, as well as the authority to investigate and enforce  
12 potential violations of state laws, and to represent the Minnesota Department of Human Rights in  
13 enforcing the Minnesota Human Rights Act, Minn. Stat. ch. 363A. Minn. Stat. §§ 8.31, 363A.32,  
14 subd. 1. As described below, Defendants’ actions undermine the work of MDHR, the state  
15 agency charged with administering the Minnesota Human Rights Act, which prohibits  
16 discrimination in employment and requires certain state contractors to establish affirmative action  
17 plans and maintain equal pay certificates. *See* Minn. Stat. §§ 363A.08, 363A.36, 363A.44. The  
18 Minnesota Legislature has declared that discrimination in employment “threatens the rights and  
19 privileges of the inhabitants of this state and menaces the institutions and foundations of  
20 democracy.” Minn. Stat. § 363A.02, subd. 1(b). Any possible curtailment of civil rights  
21 enforcement in Minnesota flowing from Defendants’ actions directly undermines Minnesota’s  
22 express public policy of securing for persons in Minnesota freedom from discrimination in  
23 employment. Minn. Stat. § 363A.02, subd. 1(a)(1).

24 19. Plaintiff Minnesota Department of Human Rights is a department within the  
25 executive branch of the State of Minnesota with authority to enforce the Minnesota Human  
26 Rights Act, Minnesota’s robust anti-discrimination statute. *See* Minn. Stat. ch. 363A. MDHR  
27 investigates, mediates, and litigates claims of discrimination, partners with businesses to foster  
28 inclusive and equitable workplaces, enforces compliance with equal pay and workforce

1 requirements for state contractors, and engages communities through education and outreach to  
2 advance the civil rights of every Minnesotan. MDHR is an “agency charged with the  
3 administration of a fair employment practice law” within the meaning of Title VII, 42 U.S.C.  
4 § 2000e-8(d); 29 C.F.R. § 1601.74. MDHR partners with the EEOC through a Worksharing  
5 Agreement. In January 2020, MDHR requested jurisdiction-wide EEO-1 data to aid it in  
6 identifying priorities for enforcement of state and federal equal opportunity in employment laws.  
7 Defendants’ refusal to provide such information violates MDHR’s right to information under  
8 Title VII and will force MDHR to forgo enforcement efforts or expend scarce resources to  
9 identify enforcement priorities through other means, such as public education campaigns.

10 20. Defendant U.S. Equal Employment Opportunity Commission is an agency of the  
11 United States government responsible for administering and enforcing federal anti-discrimination  
12 in employment laws, including Title VII.

13 21. Defendant Janet Dhillon is the Chair of Defendant EEOC, responsible for the  
14 administration and implementation of policy and the financial management and organizational  
15 development of the Commission. Defendant Dhillon is sued in her official capacity.

### 16 **FACTUAL ALLEGATIONS**

#### 17 **EEOC’s Longstanding Policy and Practice of Sharing EEO-1 Data with FEPAs**

18 22. Title VII of the Civil Rights Act of 1964 requires employers subject to its  
19 jurisdiction to make and keep “records relevant to the determinations of whether unlawful  
20 employment practices have been or are being committed,” and to “make such reports therefrom as  
21 the Commission shall prescribe by regulation or order, after public hearing, as reasonable,  
22 necessary, or appropriate for the enforcement of [Title VII] or the regulations or orders  
23 thereunder.” 42 U.S.C. § 2000e-8(c).

24 23. Pursuant to its authority under Title VII, 42 U.S.C. § 2000e-8(c), for many decades  
25 starting in 1966, EEOC has required private employers with more than 100 employees to file with  
26 the Commission annually an employment data report entitled “Employer Information Report  
27 EEO-1,” “in conformity with the directions set forth in the form and accompanying instructions.”  
28 29 C.F.R. § 1602.7.

1           24. Title VII further requires that EEOC “shall consult with other interested State and  
2 Federal agencies,” shall “endeavor to coordinate its requirements with those adopted by such  
3 agencies,” and “shall furnish upon request and without cost to any State or local agency charged  
4 with the administration of fair employment practice law information obtained pursuant to  
5 subsection (c) of this section from any employer . . . subject to the jurisdiction of such agency.  
6 Such information shall be furnished on condition that it not be made public by the recipient  
7 agency prior to the institution of a proceeding under State or local law involving such  
8 information.” 42 U.S.C. § 2000e-8(d).

9           25. Title VII authorizes EEOC to cooperate with state and local FEPAs and “with the  
10 consent of such agencies, . . . engage in and contribute to the cost of research and other projects of  
11 mutual interest undertaken by such agencies, and utilize the services of such agencies and their  
12 employees, and, notwithstanding any other provision of law, pay by advance or reimbursement  
13 such agencies and their employees for services rendered to assist the Commission” in carrying out  
14 its duties under Title VII. 42 U.S.C. § 2000e-8(b). According to EEOC internal correspondence,  
15 EEOC has retained copies of Worksharing Agreements dating as far back as 1969.

16           26. DFEH has been party to a Worksharing Agreement with EEOC since at least 1981.  
17 These Worksharing Agreements set forth terms governing the relationship between the two  
18 agencies through which they jointly implement the requirements of Title VII. Their Fiscal Year  
19 2019 Worksharing Agreement and 2020 contract extension, which was in effect at the time of the  
20 agency action at issue in this litigation, states in part that both agencies “shall make available for  
21 inspection and copying . . . any information that may assist each Agency in carrying out its  
22 responsibilities. Such information shall include, but not necessarily be limited to, investigative  
23 files, conciliation agreements, staffing information, case management printouts, charge  
24 processing documentation, and any other material and data as may be related to the processing of  
25 dual-filed charges or the administration of the contract.” EEOC-DFEH Worksharing Agreement  
26 for FY 2019 and 2020, § IV.A. Worksharing Agreements going back to at least 2008 all contain  
27 this identical language. True and correct copies of the Fiscal Year 2019 EEOC-DFEH  
28 Worksharing Agreement and 2020 contract extension, which are exemplary of Worksharing

1 Agreements EEOC has with other FEPAs, are attached as Exhibits A and B and incorporated by  
2 this reference.

3 27. During the decades preceding 2020, EEOC's standard practice was to routinely  
4 share with DFEH, both automatically and upon request, the EEO-1 data that California employers  
5 had submitted to EEOC, in accordance with the above-quoted provisions of Title VII and the  
6 EEOC-DFEH Worksharing Agreements.

7 28. For at least the last decade, EEOC shared information by providing DFEH access  
8 to EEOC's IMS database, which DFEH used both to input information for EEOC, and to examine  
9 California-wide data. DFEH also previously received EEO-1 data through now outdated file  
10 sharing mechanisms, such as a physical computer disc.

11 29. Similarly, EEOC previously provided MDHR access to EEO-1 data within its  
12 jurisdiction via the IMS database, through which MDHR had the ability to access EEO-1 data  
13 regarding employers within its jurisdiction without having to make specific requests to EEOC  
14 personnel. In or around April 2019, EEOC disabled MDHR's abilities to access such data  
15 through the IMS database.

16 30. Until Defendants' adoption of the Rule, MCCR was able to obtain jurisdiction-  
17 wide EEO-1 data from EEOC upon request under their Worksharing Agreement.

18 31. In or about July 2019, DFEH discovered that it was unable to access all California  
19 EEO-1 data through the IMS database and initiated communications with EEOC to obtain the  
20 information. DFEH staff submitted a "Help Desk" incident ticket to EEOC in July 2019 to  
21 request support in accessing the data. EEOC responded that "EEO-1 Analytics is not available to  
22 the FEPA offices; therefore, the button has been set to disable." Following additional  
23 communications, DFEH received jurisdiction-wide data in August 2019 when EEOC provided  
24 DFEH with a flash drive containing 2015-2017 EEO-1 Component 1 data.

25 32. DFEH has used EEO-1 data provided by EEOC in a variety of ways over the  
26 years, including but not limited to the following:

27 (a) In investigations of California employers named as respondents in  
28 particular charges of discrimination, DFEH has used EEO-1 data not only to examine the

1 practices of the specific named employer and the composition of its workforce, but also to  
2 compare the data for that employer with the data for other California employers in similar  
3 industries to determine whether differences exist in their employment practices, patterns, and  
4 outcomes.

5 (b) DFEH has used California-wide EEO-1 data to identify potentially  
6 discriminatory practices by employers in the state for the purpose of filing Director's complaints  
7 pursuant to the California Fair Employment and Housing Act, Cal. Gov't Code §§ 12960 and  
8 12961. California law empowers the DFEH Director (or the Director's designated representative)  
9 to challenge unlawful employment practices either individually or on behalf of a group or class,  
10 even where an aggrieved individual has not filed a complaint.

11 (c) DFEH has used California-wide EEO-1 data to analyze and understand  
12 trends in California's private sector workforce in order to identify enforcement priorities and to  
13 make more efficient use of its limited resources.

14 33. In using EEO-1 data provided by EEOC in the past, DFEH, MCCR, and MDHR  
15 have fully complied with all applicable state and federal confidentiality requirements, including  
16 those set forth in Title VII, 42 U.S.C. § 2000e-8(d), and in DFEH-EEOC Worksharing  
17 Agreements. *See* Worksharing Agreement for FY 2019 and 2020, § IV.A. EEOC did not raise  
18 concerns with any of the Plaintiffs or FEPAs in Plaintiff States regarding compliance with  
19 confidentiality requirements or advise Plaintiffs of any need to adopt greater security or  
20 confidentiality protocols for their access to and use of EEO-1 data in advance of the agency  
21 action challenged in this litigation.

22 34. EEOC's previous practice of making jurisdiction-wide EEO-1 data available to  
23 DFEH and MDHR through the IMS database, and to MCCR upon request, was consistent with  
24 Title VII, 42 U.S.C. § 2000e-8(d), and with the longstanding series of Worksharing Agreements  
25 between EEOC and DFEH, MCCR, and MDHR, respectively.

26 **EEOC's Recent Collection of Compensation Data**

27 35. Until its revision by EEOC in 2016, the EEO-1 directed covered employers to  
28 report annually the number of individuals employed by job category and by sex, race, and

1 ethnicity (“Component 1” data). The EEO-1 Component 1 Report currently includes seven race  
2 and ethnicity categories and ten job categories. Agency Information Collection Activities:  
3 Existing Collection, 85 Fed. Reg. at 16,348.

4 36. In 2016, EEOC voted to add to the EEO-1 a requirement that employers report  
5 summary W-2 earnings and hours data for employees by job category and by sex, race, and  
6 ethnicity (“Component 2” data), and EEOC published a notice of the proposed change in the  
7 Federal Register for a 60-day comment period as required by the Paperwork Reduction Act, 44  
8 U.S.C. §§ 3501 *et seq.* See Agency Information Collection Activities: Revision of the Employer  
9 Information Report (EEO-1) and Comment Request, 81 Fed. Reg. 5113 (Feb. 1, 2016).

10 37. Following further rulemaking, in September 2016, the Office of Management and  
11 Budget (OMB) approved the revision of the EEO-1 Report to add Component 2 (the reporting of  
12 summary pay and hours data for employees by sex, race, ethnicity, and job category), and EEOC  
13 announced that covered employers would be required to submit the revised EEO-1 beginning in  
14 March 2018.<sup>2</sup>

15 38. However, in August 2017, OMB stayed the Component 2 pay data collection it  
16 had previously approved.<sup>3</sup>

17 39. In March 2019, the United States District Court for the District of Columbia held  
18 that OMB’s action in staying the EEO-1 Component 2 pay data collection was arbitrary and  
19 capricious in violation of the APA, 5 U.S.C. § 706(2)(A). The court accordingly vacated the stay  
20 and reinstated OMB’s previous approval of the Component 2 pay data collection. *Nat’l Women’s*  
21 *Law Ctr. v. Office of Mgmt. & Budget*, 358 F. Supp. 3d 66 (D.D.C. 2019). The court  
22 subsequently ordered EEOC to collect EEO-1 pay data for 2017 and 2018. See *Nat’l Women’s*  
23 *Law Ctr. v. Office of Mgmt. & Budget*, No. 17-cv-2458 (D.D.C. Feb. 10, 2020), ECF No. 102.

24 40. In September 2019, under Defendant Dhillon’s leadership, EEOC published a new  
25 60-day PRA notice, in which it requested OMB approval to continue the collection of Component

26  
27 <sup>2</sup> See EEOC Press Release, *EEOC to Collect Summary Pay Data* (Sept. 29, 2016),  
<https://www.eeoc.gov/newsroom/eeoc-collect-summary-pay-data>.

28 <sup>3</sup> See Memorandum from Neomi Rao, Adm’r, OIRA, to Victoria Lipnic, Acting Chair,  
EEOC (Aug. 29, 2017), <https://tinyurl.com/yxg62re7>.

1 1 employment data in its EEO-1 reports for three more years, and stated that it did not intend to  
2 request further collection of any Component 2 pay data in those reports. *See* Agency Information  
3 Collection Activities: Existing Collection, 84 Fed. Reg. 48,138. Nothing in the 60-day notice  
4 raised, discussed, or referred to any modification of EEOC’s longstanding practices with respect  
5 to sharing EEO-1 information with state and local FEPAs.

6 41. In November 2019, EEOC held a public hearing on the proposal set forth in its  
7 new 60-day PRA notice. *See* EEOC, *Hearing of November 20, 2019 – Public Hearing on the*  
8 *Proposed Revisions of the Employer Information Report (EEO-1) – Transcript* (Nov. 20, 2019),  
9 <https://tinyurl.com/yxo3j93>. Neither the Commissioners nor any other participants at the hearing  
10 raised, discussed, or referred to any modification of EEOC’s longstanding practices with respect  
11 to sharing EEO-1 information with FEPAs.

12 42. On March 23, 2020, EEOC published a new 30-day PRA notice, announcing that  
13 it had submitted to OMB its request for a three-year approval of the continued collection of EEO-  
14 1 Component 1 employment data, and that it was not submitting a request for approval of any  
15 collection of Component 2 pay data. *See* Agency Information Collection Activities: Existing  
16 Collection, 85 Fed. Reg. 16,340.

17 **EEOC’s Change to Policy for Sharing EEO-1 Data with FEPAs**

18 43. Toward the end of the March 23, 2020 PRA notice, EEOC mentioned—for the  
19 first and only time in its EEO-1 PRA approval process—that its “current practice is to share EEO-  
20 1 data with a contracted FEPA only upon request and to share only EEO-1 data for an employer  
21 within the FEPA’s jurisdiction and only when that employer is a respondent to a particular charge  
22 of discrimination cited by the FEPA in its data request.” Agency Information Collection  
23 Activities: Existing Collection, 85 Fed. Reg. at 16,347. The notice contained no explanation as to  
24 why EEOC had changed its data-sharing practices, and failed even to acknowledge that its  
25 purported “current” practice was a significant change from its previous practice of sharing *all*  
26 EEO-1 data with FEPAs about employers within their respective jurisdictions. Nor did it  
27 acknowledge that Title VII requires EEOC to share information about employers within a FEPA’s  
28 jurisdiction. *See* 42 U.S.C. § 2000e-8(d).

1 **California**

2 44. In an April 17, 2020 letter to Samuel C. (Chris) Haffer, EEOC’s Chief Data  
3 Officer and Director of the Office of Enterprise Data Analysis, DFEH noted that EEOC had  
4 previously provided 2015-2017 EEO-1 Component 1 data for all California employers, and  
5 formally requested the following additional data pursuant to Title VII and EEOC’s Worksharing  
6 Agreement with DFEH:

- 7 (a) 2018 EEO-1 Component 1 data for all California employers;  
8 (b) 2017-2018 EEO-1 Component 2 data for all California employers; and  
9 (c) EEO-1 data for the “Silicon Valley tech firms” analyzed in EEOC’s  
10 Diversity in High Tech Report (May 2016), [https://www.eeoc.gov/special-](https://www.eeoc.gov/special-report/diversity-high-tech)  
11 [report/diversity-high-tech](https://www.eeoc.gov/special-report/diversity-high-tech), including the EEO-1 Component 1 and other  
12 data analyzed for the report as well as updated Component 1 and  
13 Component 2 data for those same employers.

14 45. For almost two months, DFEH received no response from EEOC to the letter dated  
15 April 17, 2020.

16 46. On or about June 5, 2020, DFEH received an EEOC memorandum addressed to all  
17 FEPA Directors from Nicholas M. Inzeo, then Director of EEOC’s Office of Field Programs. A  
18 true and correct copy of the Inzeo memorandum is attached as Exhibit C and incorporated herein  
19 by this reference. The Inzeo memorandum stated, among other things, that EEOC had undertaken  
20 a review of “internal policies and practices for handling all data sharing arrangements,” including  
21 those with FEPAs, and that as a result EEOC had implemented the following “reforms:”

22 (a) In April 2019, EEOC had removed the ability of FEPAs to access all EEO-  
23 1 data through EEOC’s IMS database.

24 (b) In January 2020, Defendant Dhillon had issued an agency-wide Order  
25 “making it clear that EEO data and other nonpublic information and data will be shared only with  
26 FEPAs that have a contract and a separately executed Worksharing Agreement.”

27 (c) Defendant Dhillon’s January 2020 order further provided that EEOC  
28 “would share information and data related to a particular charge under investigation by the FEPA,

1 consistent with the requirements of Title VII.”

2 (d) FEPAs should submit requests for EEO-1 data with regard to a particular  
3 charge to their respective EEOC field office, and “[r]equests outside the scope of a particular  
4 charge under investigation by the FEPA should be submitted to the Deputy Director of OEDA  
5 [the Office of Enterprise Data Analysis] at EEOC Headquarters.”

6 47. Prior to June 5, 2020, EEOC had not notified Plaintiffs or the public of Defendant  
7 Dhillon’s January 2020 agency-wide order. The only indication Plaintiff DFEH received that its  
8 access to jurisdiction-wide data had been curtailed was when—in about July 2019—it discovered  
9 that its access to EEOC’s IMS database had been disabled. *See supra* ¶ 31. EEOC disabled  
10 DFEH’s access without prior notice to or consultation with DFEH.

11 48. DFEH subsequently received another EEOC memorandum dated June 8, 2020,  
12 addressed to DFEH Staff Counsel Kaitlin Toyama from Samuel C. Haffer, Ph.D., Chief Data  
13 Officer and Director of EEOC’s Office of Enterprise Data Analysis. The Haffer memorandum  
14 responded to the April 17, 2020 DFEH letter as follows:

15 (a) EEOC denied DFEH’s requests for 2018 EEO-1 Component 1 data for all  
16 California employers, 2017-2018 EEO-1 Component 2 data for all California employers, and  
17 EEO-1 data for the “Silicon Valley tech firms” analyzed in EEOC’s Diversity in High Tech  
18 Report (May 2016). The Haffer memorandum stated that the requested information was not  
19 “with regard to a particular charge of discrimination under active investigation” by DFEH, and  
20 therefore could not be shared with DFEH “for the reasons described in the June 5, 2020  
21 Memorandum from Nicholas Inzeo.”

22 (b) In addition, with respect to DFEH’s requests for EEO-1 Component 2 pay  
23 data and its requests for assurances regarding the retention of data, the Haffer memorandum  
24 stated that the pay data collection ordered by the court in *Nat’l Women’s Law Ctr. v. Office of*  
25 *Mgmt. & Budget, supra*, was not completed until February 10, 2020; that those data were  
26 “currently undergoing extensive data cleaning”; and that “[d]ecisions by the EEOC concerning  
27 the retention of the data will be made in compliance with applicable federal law and regulations  
28 governing the retention of records.”

1           49.     DFEH has not received any further EEO-1 data or other information from EEOC  
2 in response to its April 17, 2020 request to date.

3 ***Maryland***

4           50.     MCCR has traditionally used EEO-1 data in two ways. First, it has used  
5 employer-specific EEO-1 data to further investigations of discriminatory hiring practices and to  
6 develop enforcement actions to address the same. Second, it has used statewide EEO-1 data to  
7 identify discriminatory hiring practices throughout Maryland. At some point in 2019, MCCR's  
8 access to statewide EEO-1 data was changed without prior notice. MCCR subsequently learned  
9 that EEOC had terminated MCCR's access through the implementation of the policy challenged  
10 here.

11 ***Minnesota***

12           51.     At some point in 2019, without providing notice to MDHR, EEOC disabled  
13 MDHR's ability to directly access EEO-1 data through EEOC's IMS. In January 2020, MDHR  
14 contacted the EEOC to indicate that MDHR was unable to access EEO-1 data through IMS and  
15 that MDHR would like to request Minnesota state-wide EEO-1 data, and asked about the best  
16 way to make such a request. MDHR was directed to provide a detailed list of respondents for  
17 which MDHR was requesting data and to indicate whether each respondent was the subject of a  
18 charge. Shortly thereafter, MDHR submitted a letter requesting "EEO-1 data for all employers  
19 who have submitted such data in the State of Minnesota," and noting that "it would be helpful if  
20 this data was provided to MDHR through the Data Analytics tool in the IMS system." In the  
21 short-term, however, MDHR requested EEO-1 data for all state contractors that MDHR currently  
22 regulates under state law, and in particular Minn. Stat. § 363A.36; EEO-1 data for a particular  
23 respondent placement agency under investigation as well as data for placement sites that worked  
24 with that respondent; and EEO-1 data for a specific respondent employer under investigation. In  
25 the letter, MDHR explained that it planned to review and reference EEO-1 data for the  
26 enumerated state contractors in order to optimize its strategic compliance efforts and ensure that  
27 enforcement of MDHR's statutory authority is data-driven. *See also* Minn. Stat. § 363A.36.

28           52.     EEOC refused to provide MDHR with jurisdiction-wide EEO-1 or EEO-1 data for

1 all state contractors that MDHR regulates. Instead, EEOC only provided MDHR with EEO-1  
2 data on the two respondents who were the subjects of particular charges, and since one of the  
3 respondents was a staffing company, EEOC provided EEO-1 data for customers of the staffing  
4 company. When MDHR requested information on the remainder of MDHR's request, an EEOC  
5 representative wrote, "I was told that OEDA in HQ is going to be responding to the latter request  
6 [for state contractor and jurisdiction-wide data]."

7 53. On February 18, 2020, Samuel C. Haffer responded to MDHR's request for EEO-1  
8 data for all Minnesota employers. Haffer stated that Title VII and the EEOC's regulations did not  
9 "entitle MDHR to EEO-1 data for any other employer in its jurisdiction," and that MDHR's  
10 Worksharing Agreement also did not "entitle MDHR to EEO-1 data unrelated to a pending  
11 charge."

12 **Harms Caused by EEOC's Unilateral and Unlawful Restriction on Plaintiffs' Access to**  
13 **Employment Data**

14 54. As EEOC has repeatedly acknowledged, EEO-1 data is critically important to its  
15 own work enforcing protections against employment discrimination. Agency Information  
16 Collection Activities: Existing Collection, 84 Fed Reg. at 48,141 (component 1 data is "necessary  
17 for the proper performance of the agency's functions and has a practical utility to the fulfillment  
18 of the EEOC's mission"); Agency Information Collection Activities: Existing Collection, 85 Fed.  
19 Reg. at 16,345-46 (EEO-1 data is an "important tool" for enforcement of laws prohibiting  
20 discrimination in employment, is used "to analyze employment patterns within companies,  
21 industries, or regions").

22 55. The State of California has a sovereign interest in enforcing its own state anti-  
23 discrimination statutes, including California Government Code § 12940, which prohibits  
24 employment discrimination. *See, e.g.*, Cal. Gov't Code § 12930(f)(1); Cal. Const. art. V, § 13  
25 (Attorney General has authority to enforce all state laws). DFEH has used or intends to use  
26 information from EEOC both to identify industries and employers for investigations, and to issue  
27 reports that "in its judgment will tend to promote goodwill and minimize or eliminate  
28 discrimination in employment" as authorized by California Government Code § 12930(i).

1           56. Title VII itself requires that EEOC defer to states to enforce anti-discrimination  
2 laws against employers against whom it has issued a complaint, should they choose to do so. *See*,  
3 *e.g.*, 42 U.S.C. § 2000e-5(d) (requiring notice to state or local authority and delay of 60 days prior  
4 to EEOC taking action to allow state or local authority to enforce state or local provision to  
5 remedy unfair employment practice).

6           57. Contrary to the interests underlying both California law and Title VII, EEOC's  
7 refusal to share California-wide EEO-1 data with DFEH deprives DFEH of information that is  
8 essential for the enforcement of California statutes and for the protection of the civil rights of  
9 California's residents.

10           58. DFEH seeks to use California-wide EEO-1 data to formulate and issue aggregated  
11 statistical reports for public education, similar to EEOC's May 2016 Diversity in High Tech  
12 Report.<sup>4</sup> Without access to statewide EEO-1 data, DFEH will be unable to formulate and issue  
13 such reports.

14           59. California-wide EEO-1 data has been critical to DFEH's investigations of  
15 California employers named as respondents in particular charges of discrimination because it  
16 allows DFEH to examine the practices of the specific named employer and the composition of its  
17 workforce in comparison to other California employers in similar industries, and to identify  
18 disparities in their employment practices, patterns, and outcomes. Without access to the EEO-1  
19 data for other California employers, DFEH will be unable to make these comparisons.

20           60. DFEH has authority to institute investigations and file complaints even without an  
21 aggrieved employee or applicant coming forward. DFEH's access to California-wide EEO-1 data  
22 enables the department to analyze employment trends across the state, compare employer  
23 workforces and outcomes within similar industries and across multiple years, and identify  
24 enforcement priorities for employer investigations. Without access to such statewide data, DFEH  
25 will need to employ other methods—such as subpoenas and public education campaigns—to  
26 identify and assess priorities for investigation and enforcement. Even with an investment of  
27

28           <sup>4</sup> EEOC, Diversity in High Tech Report (May 2016), available at  
<https://www.eeoc.gov/special-report/diversity-high-tech>.

1 additional resources, without access to California-wide EEO-1 data, it is likely that some  
2 problematic employment trends, practices, or outcomes in the state will not come to Plaintiffs'  
3 attention at all. Thus, without access to statewide EEO-1 data, Plaintiffs California and DFEH  
4 will be substantially impaired in their ability to enforce state and federal laws protecting the civil  
5 rights of California workers.

6 61. Defendants' refusal to provide access to the EEO-1 data for all employers in  
7 Maryland will force the MCCR to forgo enforcement efforts or expend scarce resources to  
8 identify enforcement priorities through other means, such as public education campaigns with  
9 limited staff.

10 62. The State of Minnesota and MDHR are similarly harmed by EEOC's restriction on  
11 sharing EEO-1 data. EEOC's refusal to share Minnesota-wide EEO-1 data and EEO-1 data for  
12 state contractors subject to MDHR's jurisdiction deprives Plaintiffs Minnesota and MDHR of  
13 information that is essential for the enforcement of Minnesota statutes and for the protection of  
14 civil rights of Minnesota residents. Additionally, MDHR is unable to efficiently and effectively  
15 investigate cases without access to EEO-1 data for particular industries or geographic areas within  
16 its jurisdiction. MDHR has authority to institute investigations and file complaints even without  
17 an aggrieved party coming forward. *See* Minn. Stat. § 363A.28, subd. 2. MDHR's access to  
18 Minnesota-wide EEO-1 data would enable MDHR to analyze employment trends across the state,  
19 compare employer workforces and outcomes within similar industries and across multiple years,  
20 and identify enforcement priorities for employer investigations. Without access to statewide  
21 EEO-1 data, Plaintiffs Minnesota and MDHR will be harmed and impaired in their ability to  
22 investigate and enforce state laws protecting the civil rights of Minnesota workers.

23 **ALLEGATIONS FOR INJUNCTIVE, DECLARATORY, AND MANDAMUS RELIEF**

24 63. An actual controversy exists between the parties within the meaning of 29 U.S.C.  
25 § 2201(a) in that Plaintiffs contend Defendants' actions to limit Plaintiffs' access to EEO-1 data  
26 from their jurisdictions are invalid and unlawful and Defendants contend the opposite.

27 64. Defendants' actions to limit Plaintiffs' access to EEO-1 data from their  
28 jurisdictions have caused and, if permitted to proceed, will continue to cause harms to Plaintiffs

1 for which there is no remedy at law.

2 65. The statutory duty of EEOC and its officials and employees to share EEO-1  
3 information from employers within the jurisdiction of state and local FEPAs who request it is  
4 nondiscretionary, ministerial, and so plainly prescribed as to be free from doubt.

5 **FIRST CLAIM FOR RELIEF**

6 **ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(1)**

7 **(Agency Action Unlawfully Withheld under Title VII, 42 U.S.C. § 2000e-8(d))**

8 66. Plaintiffs incorporate by reference the foregoing paragraphs.

9 67. Defendant EEOC is an “agency” under the APA, 5 U.S.C. § 551(1), and its refusal  
10 to provide Plaintiffs with EEO-1 data from employers within their jurisdictions unrelated to a  
11 particular charge of discrimination is “agency action” under the APA, *id.* § 551(13).

12 68. Congress expressly provided in Title VII that EEOC “shall furnish upon request  
13 and without cost to any State or local agency charged with the administration of a fair  
14 employment practice law information obtained pursuant to [42 U.S.C. § 2000e-8(c)] from any  
15 employer . . . subject to the jurisdiction of such agency.” 42 U.S.C. § 2000e-8(d).

16 69. The EEO-1 data collected and maintained by EEOC is obtained from employers  
17 pursuant to Title VII, 42 U.S.C. § 2000e-8(c).

18 70. As of April 2020, DFEH, MCCR, and MDHR were parties to Worksharing  
19 Agreements with EEOC that required EEOC to “make available for inspection and copying . . .  
20 any information that may assist [each respective FEPA] in carrying out its responsibilities.”  
21 DFEH, MCCR, and MDHR further agreed, “with respect to all information obtained from the  
22 EEOC . . . to observe the confidentiality provisions of Title VII, the ADEA, the ADA and  
23 GINA.”

24 71. Defendants’ violations cause ongoing harms to Plaintiffs. Despite DFEH’s and  
25 MDHR’s requests, EEOC refused and continues to refuse to furnish all Plaintiffs with EEO-1 data  
26 that EEOC obtained from employers subject to their respective jurisdictions. DFEH and MDHR  
27 are unable to automatically access and use EEO-1 data from their jurisdictions as they did prior to  
28 Defendants’ change in policy, and MCCR is no longer able to obtain that data upon request.



1 enforcement of that policy. Additionally, Plaintiffs are entitled to a writ of mandamus under 28  
 2 U.S.C. § 1361 to compel Defendants to furnish to the FEPA for each respective Plaintiff, upon  
 3 request, the EEO-1 information within the Plaintiff's FEPA's jurisdiction.

### 4 **THIRD CLAIM FOR RELIEF**

#### 5 ***Ultra Vires Agency Action***

6 78. Plaintiffs incorporate by reference the foregoing paragraphs.

7 79. An agency acts *ultra vires* when it exceeds its statutory authority conferred by  
 8 Congress.

9 80. There is no statutory authority that allows Defendants to withhold from the  
 10 Plaintiff FEPAs or FEPAs within the Plaintiff States EEO-1 data from Plaintiffs' jurisdictions.  
 11 Indeed, Defendants' policy to withhold such information conflicts with EEOC's obligations under  
 12 Title VII, 42 U.S.C. § 2000e-8.

13 81. Defendants' policy limiting its sharing of EEO-1 data with FEPAs only related to a  
 14 particular charge of discrimination and Defendants' refusal to provide other EEO-1 data from  
 15 employers within Plaintiffs' jurisdictions are *ultra vires*, and should be set aside under 28 U.S.C.  
 16 § 2201. Additionally, Plaintiffs are entitled to a writ of mandamus under 28 U.S.C. § 1361 to  
 17 compel Defendants to furnish to the FEPA for each respective Plaintiff, upon request, the EEO-1  
 18 information within the Plaintiff's FEPA's jurisdiction.

### 19 **FOURTH CLAIM FOR RELIEF**

#### 20 **ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A)**

#### 21 **(Arbitrary and Capricious Action)**

22 82. Plaintiffs incorporate by reference the foregoing paragraphs.

23 83. The APA requires that a court "hold unlawful and set aside agency action,  
 24 findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or  
 25 otherwise not in accordance with law." *Id.* § 706(2)(A).

26 84. Defendants' new restrictions on sharing data with DFEH, MCCR, and MDHR, and  
 27 Defendants' refusal to provide EEO-1 data to DFEH and MDHR upon request regarding  
 28 employers subject to their respective jurisdictions, are arbitrary and capricious and an abuse of

1 discretion. Defendants have failed to provide a “reasoned basis” for limiting FEPA access to  
 2 EEO-1 data to situations in which the data is relevant to a particular charge that the FEPA is  
 3 investigating. *Motor Vehicle Mfrs. Ass’n of the U.S. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S.  
 4 29, 43 (1983) (citation omitted). In addition, Defendants have failed to consider an important  
 5 aspect of the problem by not accounting for the harm to FEPAs’ ability to administer and enforce  
 6 fair employment practices laws without access to EEO-1 data for employers within their  
 7 jurisdictions, failed to acknowledge that they were changing the policy and/or to provide a  
 8 justification for changing policy, and failed to provide an explanation for the policy change that is  
 9 consistent with the evidence before the agency. *See id.*; *Fed. Comm’n Comm’n v. Fox Television*  
 10 *Stations, Inc.*, 556 U.S. 502, 515 (2009) (agency must show there are good reasons for new  
 11 policy).

12 85. For the reasons stated herein, Plaintiffs are entitled to: (a) a declaration that the  
 13 Defendants’ policy to limit FEPA access to EEO-1 data to information relevant to a particular  
 14 charge of discrimination is unlawful, and thus, should be set aside under 5 U.S.C. § 706; and (b) a  
 15 permanent injunction prohibiting the imposition and enforcement of that policy.

16 **FIFTH CLAIM FOR RELIEF**

17 **ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A)(D)**

18 **(Issuance of an Agency Rule Without Observance of Procedure Required by Law**  
 19 **under 5 U.S.C. § 553)**

20 86. Plaintiffs incorporate by reference the foregoing paragraphs.

21 87. The APA, 5 U.S.C. § 553, requires that agencies provide notice and an opportunity  
 22 for the public to comment prior to the issuance of agency rules.

23 88. Defendants’ adoption of a policy restricting FEPA access to EEO-1 data to  
 24 information relevant to a particular charge of discrimination is an agency rule subject to the  
 25 notice-and-comment requirements of the APA but occurred without observance of those  
 26 requirements.

27 89. For the reasons herein, Plaintiffs are entitled to: (a) a declaration that the  
 28 Defendants’ policy restricting FEPA access to EEO-1 data to information relevant to particular

1 charge of discrimination is unlawful, and thus should be set aside under 5 U.S.C. 706; and (b) a  
2 permanent injunction prohibiting the imposition and enforcement of that policy.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in its favor  
5 and grant relief as follows:

6 A. Order Defendants to furnish the EEO-1 data requested by Plaintiffs DFEH and  
7 MDHR and to furnish EEO-1 data to Plaintiffs and FEPAs in Plaintiff States upon request in  
8 accordance with EEOC's statutory duties under Title VII, 42 U.S.C. § 2000e-8(c) and (d).

9 B. Declare that the Rule: (a) unlawfully withholds agency action; (b) is in excess of  
10 statutory jurisdiction, authority, or limitation, or short of statutory right violation of the APA; (c)  
11 is *ultra vires*; (d) is arbitrary, capricious, and an abuse of discretion in violation of the APA; and  
12 (e) was adopted without observance of notice-and-comment requirements in violation of the  
13 APA.

14 C. Hold unlawful, vacate, and set aside the Rule, pursuant to 5 U.S.C. § 706(2).

15 D. Permanently enjoin implementation and enforcement of the Rule.

16 E. Issue a writ of mandamus under 28 U.S.C. § 1361 to compel Defendants to furnish  
17 Plaintiffs, upon request, the EEO-1 information within the Plaintiff FEPAs' jurisdictions.

18 F. Award Plaintiffs costs, expenses, and reasonable attorneys' fees;

19 G. Award such other relief as the Court deems just and proper.  
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1 Dated: October 30, 2020

Respectfully submitted,

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**ATTESTATION OF SIGNATURES**

I, Julia Harumi Mass, hereby attest, pursuant to Local Civil Rule 5-1(i)(3) of the Northern District of California, that I have obtained the concurrence of each signatory hereto in the filing of this document.

Dated: October 30, 2020 : /s/ Julia Harumi Mass  
JULIA HARUMI MASS  
Deputy Attorney General  
*Attorneys for Plaintiffs State of California and  
Department of Fair Employment and Housing*