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12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**
15 **SAN JOSE DIVISION**
16

17 JOHN D. HALTIGAN,
18 Plaintiff,

No. 5:23-cv-2437-NC
AMENDED COMPLAINT

19 v.

20 MICHAEL V. DRAKE, in his official
capacity as President of the University of
21 California; CYNTHIA K. LARIVE, in her
official capacity as Chancellor of UC Santa
22 Cruz; BENJAMIN C. STORM, in his official
capacity as Chair of the UC Santa Cruz
23 Psychology Department; and KATHARYNE
MITCHELL, in her official capacity as Dean
24 of the UC Santa Cruz Division of Social
Sciences,
25 Defendants.
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INTRODUCTION

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1. The University of California (University or UC) has adopted a modern-day loyalty oath for professors who seek to join the faculty. Today’s loyalty oath does not demand a pledge that professors are not members of the Communist Party, but professed agreement with “Diversity, Equity, and Inclusion” (DEI) policies and ideology. The DEI Statements demanded by the University are a thinly veiled attempt to ensure dogmatic conformity throughout the university system.

2. This requirement is imposed on every applicant to a faculty position in the University by means of a DEI Statement Requirement which applicants must clear in order to even get a foot in the door. The University administration ensures conformity and compliance by promulgating detailed rubrics and guidelines that tell applicants exactly what to say and what not to say in their Statements.

3. Dr. John D. Haltigan challenges this functional loyalty oath as a violation of his rights under the First Amendment. He has a PhD in Developmental Psychology and seeks to apply to a position at UC Santa Cruz, but the stringent ideological requirements of the DEI Statement make his application futile.

4. Dr. Haltigan is challenging the University of California’s DEI Statement Requirement because what was true for the anti-communist loyalty oaths of the Cold War era is still true today: The First Amendment does not tolerate laws that cast a pall of orthodoxy over the classroom. *Keyishian v. Bd. of Regents of Univ. of State of N.Y.*, 385 U.S. 589, 603 (1967). Academic freedom and freedom of expression demand that mandatory DEI Statements meet the same fate as the loyalty oaths of previous generations.

JURISDICTION AND VENUE

5. This action arises under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983. This Court has jurisdiction over this federal claim under 28 U.S.C. §§ 1331 (federal question) and 1343(a)(3) (redress for deprivation of civil rights). Declaratory relief is authorized by the Declaratory

1 Judgment Act, 28 U.S.C. § 2201.

2 6. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2) because a
3 substantial part of the events or omissions giving rise to the claim occurred and
4 continue to occur in this district.

5 **PARTIES**

6 7. Plaintiff John D. Haltigan is a U.S. citizen and resident of Pennsylvania.
7 He has a PhD in Developmental Psychology from the University of Miami, and until
8 earlier this year served as an Assistant Professor in the Department of Psychiatry at
9 the University of Toronto. He is currently not employed in academia and is actively
10 seeking employment in psychology departments around the country. He is qualified
11 for employment in the Psychology Department at UC Santa Cruz and has applied to
12 that university in the past. He has also applied to similar positions around the country
13 with less stringent DEI statement requirements.

14 8. Defendant Michael V. Drake is the President of the University of
15 California and is sued in his official capacity.

16 9. Defendant Cynthia K. Larive is the Chancellor of UC Santa Cruz and is
17 sued in her official capacity.

18 10. Defendant Benjamin C. Storm is a professor of psychology and the Chair
19 of the UC Santa Cruz Psychology Department. He is sued in his official capacity.

20 11. Defendant Katharyne Mitchell is a professor of sociology and the Dean
21 of the UC Santa Cruz Division of Social Sciences. She is sued in her official capacity.

22 **FACTUAL BACKGROUND**

23 **The Evolution of the DEI Statement in the University of California**

24 12. The University of California has long considered diversity to be an
25 important value in faculty hiring.

26 13. Accordingly, in 2005, the University of California published a new
27 section of its Academic Personnel Manual (APM) encouraging “diversity and equal
28 opportunity.” This section was designed to ensure that faculty which put effort into

1 promoting equal opportunity and diversity receive some credit, but not to displace or
2 substitute for scholarly rigor, objectivity, and originality.

3 14. Under the 2005 version of the APM, applicants were asked for DEI
4 statements, but they were rarely decisive; DEI statements were weighed alongside
5 more traditional measures of aptitude, including academic success, publications,
6 research plans, and teaching ability.

7 15. Nor did the University provide prescriptive DEI statement guidelines
8 and rubrics; the prevailing understanding of academic freedom prohibited the
9 administration from dictating to faculty search committees about the beliefs of
10 prospective academics.

11 16. Gradually, however, the University of California began to come under
12 pressure to use DEI statements more aggressively to pursue ideological conformity
13 and a vision of diversity focused on racial, ethnic, and gender balancing.

14 17. In 2015, the APM provision was revised, to add language that
15 emphasized the importance of DEI achievement as compared to other traditional
16 academic criteria.

17 18. In 2016, the California Budget Act allocated \$2 million to promote racial
18 and gender diversity, requiring a report from the University on fund usage and the
19 racial/ethnic and gender composition of the University.

20 19. As a result, UC established the Advancing Faculty Diversity (AFD)
21 program, which supports projects to increase racial and gender balance on UC
22 campuses.

23 20. In November 2017, the UC Office of the President (UCOP) issued a
24 detailed report on its use of the state funds.

25 21. The UCOP explained that the UC system was “particularly focused” on
26 increasing diversity along racial and ethnic lines.

27 22. The UCOP Report highlighted a number of tools that particular
28 departments or campuses could use to achieve the goal of enhanced racial and ethnic

1 balance, including DEI statements.

2 23. As explained in the UCOP Report, AFD had allocated the state's funds
3 to pilot programs that aimed to advance faculty racial and ethnic balancing within the
4 constraint of Prop 209.

5 24. Among these programs was \$600,000 for a UC Riverside program in the
6 College of Engineering, which involved a unique approach to diversity statements.

7 25. UCOP highlighted UC Riverside as particularly successful because it
8 resulted in a ten-fold increase in underrepresented minority finalists and a doubling
9 of female representation.

10 26. According to UCOP, UC Riverside's success derived from their use of a
11 simple rubric measuring research and diversity statements and particularly from
12 their evaluation of DEI statements from the beginning of the candidate evaluation
13 process and as part of the initial candidate screening.

14 27. In the following years, AFD received more state funding and has
15 continued to build on its program to pursue racial balancing and ideological
16 conformity and apply the lessons from the original effort. In 2018–19, AFD launched
17 a grant program supporting campus efforts to increase diversity. This grant program
18 is ongoing.

19 28. AFD has since launched five recruitment projects aiming to increase
20 racial balance, at a total cost of about \$2.5 million, including a pilot program at UC
21 Santa Cruz.

22 29. The AFD-funded pilot program at UC Santa Cruz focused on several
23 elements. Most importantly, it emphasized that DEI statements should be an
24 “important part” of the selection process, which must be considered in the first round
25 of review. The program also encouraged search committees to engage in more in-depth
26 discussions about the value of these statements.

27 30. However, some search committees at UC Santa Cruz disregarded the
28 emphasis on screening based on DEI statements, fearing they might lose top

1 candidates.

2 31. This led the University and the administration on the Santa Cruz
3 campus to refocus search committees on the importance of using DEI Statements
4 aggressively.

5 32. Collectively, these initiatives and pressures have utterly transformed the
6 DEI Statement's purpose and use in the University of California system.

7 33. Importantly, this transformation involved the widespread adoption of
8 the UC Riverside experiment to perform an initial screening of candidates based only
9 on the diversity statements (the Initial Screening Requirement).

10 34. The other major change has been the widespread adoption of detailed
11 rubrics and guidelines to ensure uniformity.

12 35. For example, around the same time that the California State legislature
13 was giving money to the University to adjust the racial and gender balance in its
14 faculty, the University's Academic Personnel and Programs Office (APP) issued more
15 detailed guidelines for evaluating DEI statements.

16 **DEI Statements as Ideological Litmus Tests at UC Santa Cruz**

17 36. Following these developments, UC Santa Cruz now provides prospective
18 applicants with detailed guidelines on what to say and what not to say on their DEI
19 statements.

20 37. On the main "Diversity" page for the UC Santa Cruz Office of Academic
21 Personnel (APO), UC Santa Cruz makes clear that the University's understanding of
22 diversity is about hiring and promoting individuals from specific racial and ethnic
23 groups.

24 38. APO defines the terms "diversity," "equity," and "inclusion" in a specific
25 manner that ensures successful applicants adhere to a particular ideology and
26 worldview.

27 39. APO goes on to explain that DEI statements are evaluated in three
28 categories: awareness, experience, and future plans at UC Santa Cruz.

1 40. Ideas and beliefs that applicants are supposed to convey are embedded
2 throughout APO's expectations but particularly captured under the "awareness"
3 heading.

4 41. Experience and future plans are evaluated based on an applicant's past
5 or planned contributions to diversity, equity, and inclusion in teaching, research and
6 professional work, and service and professional activities. The activities and
7 contributions applicants are asked to discuss are thinly veiled proxies for particular
8 beliefs that the administration favors.

9 42. The main diversity page also links to a "starting rubric," to further drive
10 home to applicants exactly what they must say to pass through the DEI filter.

11 43. To receive a high score under the terms set by the rubric, an applicant
12 must express agreement with specific sociopolitical ideas, including the view that
13 treating individuals differently based on their race or sex is desirable.

14 44. The rubric evaluates DEI statements based on the three criteria
15 mentioned above: awareness (or "knowledge," as the rubric describes it), experience,
16 and future plans, with a scoring range of 1-5 for each. 1-2 represents a low score, 3
17 represents a mixed score, and 4-5 represents a high score.

18 45. For each criterion, high scores are reserved for those who promise to
19 adhere to a specific world view that requires treating individuals differently according
20 to race.

21 46. Under the rubric, low scores are specifically promised for applicants that
22 believe race and sex should not be used to judge individuals.

23 47. Further orthodoxy for applicants to recite is provided on a list on APO's
24 website of "common myths" about DEI in faculty recruitment and hiring under its
25 "Academic Recruitment Resources" page.

26 48. In the common myths document, among other things, the University
27 makes clear its commitment to race-centric hiring and its focus on silencing dissent
28 on these issues.

1 University of Miami in 2009.

2 59. After obtaining his doctorate, Dr. Haltigan served as a postdoctoral
3 fellow first at the University of Illinois at Urbana-Champaign (until 2011), then at the
4 University of North Carolina at Greensboro (until 2013), then at the University of
5 Ottawa (until 2016).

6 60. From 2016 until earlier this year, Dr. Haltigan was an Assistant
7 Professor in the Department of Psychiatry at the University of Toronto.

8 61. His research interests include the legacy of early caregiving experiences
9 for child and adolescent development, brain and bodily systems that mediate the
10 effects of early social experiences on development, and evolutionary development
11 psychopathology, among others.

12 62. Dr. Haltigan has been a coinvestigator on several research programs
13 operating under federal and other grants, he has over 60 publications to his name,
14 and several additional manuscripts under review.

15 63. He has over a decade of experience teaching and mentoring students
16 from all backgrounds.

17 64. Dr. Haltigan is committed to colorblindness and viewpoint diversity. He
18 objects to DEI orthodoxy and believes individuals should be considered based on
19 individual merit.

20 65. He is currently actively seeking jobs in academia and has applied to
21 positions at other universities with less stringent DEI requirements.

22 **UC Santa Cruz's Psychology Department's Job Opening**

23 66. In one example of how the DEI Statement Policy is applied in practice,
24 on July 21, 2022, UC Santa Cruz posted an open hiring announcement for a tenure-
25 track position in Developmental Psychology.

26 67. As with every position at UC Santa Cruz in the Division of Social
27 Sciences, the Psychology Department requires a DEI statement in order to apply, and
28 "urges" candidates to review the scoring rubric explained above.

1 ultimately seeks to regulate speech outside the contours of the program.

2 76. The DEI Statement Requirement unconstitutionally leverages the
3 availability of a position at the University to force applicants to express agreement
4 with the University's ideology.

5 77. The DEI Statement Requirement places anyone with Dr. Haltigan's
6 views who wants to work at the University of California in an untenable position. One
7 can either file an honest, but doomed, application, or one can lie and recant his or her
8 honest views. Silence and dissent are not options if he or she wants to progress past
9 the initial screening.

10 78. Because the DEI Statement Requirement requires Dr. Haltigan to affirm
11 particular beliefs that are inherently separate from the qualifications for a position on
12 the University's faculty or the purpose of the University as a whole, it imposes a
13 condition on employment that would be unconstitutional if done outright.

14 **Second Claim for Relief:**

15 **Violation of the First Amendment of the United States Constitution**

16 **Viewpoint Discrimination**

17 79. Plaintiff hereby realleges and incorporates by reference the allegations
18 contained in the previous paragraphs.

19 80. Defendants are acting under the "color of state law" within the meaning
20 of 42 U.S.C. § 1983 in imposing and enforcing a DEI Statement Requirement on all
21 applicants for faculty positions.

22 81. The DEI Statement Requirement represents invidious viewpoint
23 discrimination against any applicant holding views contrary to the detailed ideological
24 standards set out in the DEI rubric and other guidance documents.

25 82. The purpose of the DEI Statement Requirement is to penalize certain
26 viewpoints and drive those viewpoints from the marketplace of academic hiring.

27 83. Dr. Haltigan's views on colorblind inclusivity, viewpoint diversity, and
28 merit-based promotion and hiring are all anathema to the University's express

1 requirements in the DEI Statement.

2 84. The DEI Statement Requirement has no relationship to established
3 professional standards, the University’s mission, or the qualifications for a position
4 on the University’s faculty.

5 85. Because the DEI Statement Requirement is not tailored to any
6 compelling interest, it is unconstitutional.

7 **Request for Relief**

8 Plaintiff respectfully requests the following relief:

- 9 A. A declaration that the DEI Statement Requirement employed by UC Santa
10 Cruz violates the First Amendment to the United States Constitution;
- 11 B. A permanent injunction forbidding UC Santa Cruz and University of
12 California officials from enforcing, or attempting to enforce, the DEI
13 Statement Requirement against Dr. Haltigan;
- 14 C. An award of attorneys’ fees, costs, and expenses in this action pursuant to
15 42 U.S.C. § 1988;
- 16 D. Such other relief as this Court deems proper.

17 DATED: June 19, 2023.

18 Respectfully submitted,

19 JOSHUA P. THOMPSON
20 WILSON C. FREEMAN*
21 JACK E. BROWN*

22 By /s/ Wilson C. Freeman
23 WILSON C. FREEMAN*
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