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9 **ATTORNEYS FOR PLAINTIFFS**
10 MATTHEW GARRETT, Ph.D. and PROFESSOR ERIN
11 MILLER

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MATTHEW GARRETT, PH.D., an individual, and PROFESSOR ERIN MILLER, an individual,

Plaintiffs,

vs.

CHRISTOPHER W. HINE, General Counsel of the Kern Community College District, in his individual and official capacities; THOMAS J. BURKE, Chancellor of the Kern Community College District, in his individual and official capacities; and DOES 1 THROUGH 50, inclusive,

Defendants.

Case No. 21-584

PLAINTIFFS' COMPLAINT;

DEMAND FOR JURY TRIAL

Plaintiffs Matthew Garrett, Ph.D. and Professor Erin Miller, by and through their counsel of record, and for their Complaint against Defendants Christopher W. Hine, Thomas J. Burke, and DOES 1 through 50, hereby states as follows:

INTRODUCTION

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2 1. A public college or community college district has no business
3 investigating, much less disciplining, a faculty member for publicly criticizing how
4 the district chooses to spend its money. Yet that is precisely what officials of the
5 Kern Community College District (“KCCD” or the “District”) did when they
6 investigated and then disciplined Dr. Matthew Garrett and Professor Erin Miller
7 following their presentation on censorship to a Bakersfield College campus
8 audience on September 12, 2019 in which Dr. Garrett criticized what he regarded as
9 political bias in the District’s expenditure of college funds. To make matters worse,
10 basing their action upon a demonstrably false pretext, Defendants, District officials
11 operating under color of state law, knowingly violated Plaintiffs’ First Amendment
12 rights in order to assuage the feelings of and bow to pressure brought by other
13 faculty members who disagreed with Plaintiffs’ political viewpoints. Contrary to
14 the apparent view of Defendants, a faculty member’s constitutional rights cannot be
15 bargained away in order to satisfy the interests of competing groups on campus.
16 Plaintiffs bring this action to hold Defendants accountable for the violations of their
17 rights to free speech and academic freedom and to help bring about the changes
18 needed to end the threat to freedom of expression at the Kern Community College
19 District and on the Bakersfield College campus.

20 2. This incident is but one example of what has become a dangerous
21 assault on First Amendment rights on college campuses nationwide by
22 administrators and officials, often egged on by certain faculty members and
23 students, to suppress the speech of anyone with whom they disagree. Once
24 regarded as the “marketplace of ideas,” *Keyishian v. Board of Regents*, 364 U.S.
25 479, 487 (1967), college campuses in recent years have increasingly devolved into
26 environments where only acceptable viewpoints may be publicly expressed while
27 differing views are subject to investigation and even punishment. The clear
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1 purpose of this illiberal movement is not merely to investigate and discipline those,
2 like Plaintiffs, who have expressed disagreeable ideas, but to chill the speech of and
3 serve as a warning to other faculty members that the better course of action is to
4 self-censor rather than risk suffering adverse employment consequences.

5 3. Defendant’s actions ignore the fundamental principle that neither
6 students nor faculty “shed their constitutional rights to freedom of speech or
7 expression at the schoolhouse gate.” *Tinker v. Des Moines Indpt. Comm. Sch. Dist.*,
8 393 U.S. 503, 506 (1969). Moreover, the Supreme Court has made it crystal clear
9 that teachers may not be compelled “to relinquish the First Amendment rights they
10 would otherwise enjoy as citizens to comment on matters of public interest in
11 connection with the operation of the public schools in which they work.” *Pickering*
12 *v. Bd. of Education*, 391 U.S. 563, 568 (1968). A teacher’s criticism of the
13 allocation of school funds falls squarely within this principle.

14 **JURISDICTION AND VENUE**

15 4. This Court has original jurisdiction over these federal claims pursuant
16 to 28 U.S.C. §§ 1331 and 1343, as Plaintiffs bring claims under the First and
17 Fourteenth Amendments to the U.S. Constitution, and under 42 U.S.C. § 1983.

18 5. This Court has pendent jurisdiction over the state law claims alleged
19 herein because those claims arise out of the same facts supporting Plaintiff’s federal
20 claims.

21 6. This Court has authority to award the requested declaratory relief
22 under 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil
23 Procedure; the requested injunctive relief under 28 U.S.C. § 1343(a) and pursuant
24 to Rule 65 of the Federal Rules of Civil Procedure; the requested damages under 28
25 U.S.C. § 1343(a); and attorneys’ fees under 42 U.S.C. § 1988.

26 7. This Court has personal jurisdiction over the Defendants because,
27 upon information and belief, each of the Defendants either resides in the Eastern
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1 District of California or has sufficient contacts with the Eastern District of
2 California due to their employment with the Kern Community College District to
3 establish this Court's jurisdiction over them.

4 8. Venue is proper under 28 U.S.C. § 1391 in the Eastern District of
5 California because a substantial part of the acts or omissions giving rise to this case
6 occurred within the Eastern District and at least one Defendant resides in the
7 Eastern District.

8 **THE PARTIES**

9 9. At all times relevant to this action, Plaintiff Matthew Garrett, Ph.D. is
10 and was a resident of Bakersfield, California, an employee of Kern Community
11 College District, and a full-time tenured professor in the History Department at
12 Bakersfield College.

13 10. At all times relevant to this action, Plaintiff Erin Miller is and was a
14 resident of Bakersfield, California, an employee of Kern Community College
15 District, and a full-time tenured professor in the History Department at Bakersfield
16 College.

17 11. Defendant Christopher W. Hine was and is, at all times relevant to this
18 Complaint, employed as the General Counsel of Kern Community College District.
19 Hine acted under color of state law when he violated Plaintiffs' rights under the
20 First and Fourteenth Amendments when he ordered the investigation into Plaintiffs'
21 speech and when he authored and signed the Administrative Determinations
22 disciplining Plaintiffs and warning them of the potential of further negative
23 repercussions to their employment with the District arising out of their speech,
24 which lies clearly within the First Amendment's protection of freedom of
25 expression and academic freedom. Furthermore, Defendant Hine knew or should
26 have known that he was violating long-established principles of constitutional law
27 with respect to his conduct. Hine is sued in his official and individual capacities.
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1 12. Defendant Thomas J. Burke was and is, at all times relevant to this
2 Complaint, employed as Chancellor of Kern Community College District. As such,
3 he is the District’s chief executive officer, responsible for its administration and
4 policymaking, including the conduct alleged herein. Acting under color of state
5 law, Defendant Burke authorized, acquiesced in, sanctioned, and supported the
6 actions of Defendant Hine. Furthermore, Defendant Burke knew or should have
7 known that he was violating long-established principles of constitutional law with
8 respect to his conduct. Defendant Burke is sued in his official and individual
9 capacities.

10 13. Plaintiffs are informed and believe that DOES 1 through 50 are other
11 officials and administrators employed by KCCD and Bakersfield College who are
12 responsible for the improper actions against Plaintiff detailed below, or are
13 necessary parties, and Plaintiff will amend this Complaint when their true identities
14 are known.

15 **FACTUAL BACKGROUND**

16 14. In addition to their roles as faculty members, Dr. Garrett was the
17 founder, and Professor Miller on the advisory board, of the Liberty Institute¹ – a
18 sanctioned campus organization that aims to promote and preserve freedom of
19 thought and intellectual literacy through the open discourse of diverse political
20 ideas with an emphasis on American ideals and western historical values.
21 Censorship is anathema to the Liberty Institute.

22 15. In April of 2019, controversial stickers were anonymously posted
23 around the Bakersfield College campus, some of which stated such things as
24 “smash cultural Marxism” and as well as other right-of-center viewpoints. The
25 stickers were removed by campus authorities. This prompted a public debate, in
26 part through op-ed articles in the local press. Certain faculty members and students

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28 ¹ The Liberty Institute has since been renamed The Renegade Institute for Liberty.

1 associated with the campus Social Justice Institute decried the stickers as “racist”
2 and “vandalism” and “hate crimes.” Dr. Garrett, on the other hand, publicly
3 questioned whether the stickers might actually be a protest of sorts against the use
4 of taxpayer funds to advance a one-sided partisan political agenda on campus.
5 Certain faculty members and students associated with the Social Justice Institute
6 responded to Dr. Garrett’s comments by publicly accusing both him and Professor
7 Miller of advocating and enabling white supremacy.

8 16. As this controversy progressed, and in lieu of ongoing salvos in the
9 local press, other faculty members sought to arrange a formal public debate
10 between Dr. Garrett on the one hand, and faculty associated with the Social Justice
11 Institute on the other including Professors Andrew Bond and Oliver Rosales. Since
12 such a debate is precisely the sort of free exchange of ideas that he stands for, Dr.
13 Garrett readily agreed. Bond and Rosales, however, refused to participate.

14 17. On September 12, 2019, with his counterparts having refused to
15 participate, Plaintiff Garrett gave a public lecture on the Bakersfield College
16 campus entitled, “The Tale of Two Protests: Free Speech and the Intellectual
17 Origins of BC Campus Censorship.” The lecture discussed the intellectual
18 justifications and strategies of censorship while drawing parallels to behavior at the
19 college. Plaintiff Miller delivered the introduction to Dr. Garrett’s lecture.

20 18. The event took place on campus, and was well-attended by members
21 of the college community and the public. Professor Miller’s introduction lasted
22 approximately ten minutes. Dr. Garrett’s speech lasted approximately one hour and
23 was followed by a vigorous audience question and answer period that lasted about
24 forty-five minutes.

25 19. During his lecture, Dr. Garrett discussed issues such as Marxism, free
26 speech, and campus censorship. A few minutes of his lecture also addressed what
27 in his view was the expenditure of grant funds to the college to promote a partisan
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1 political agenda. He identified certain Bakersfield College faculty including,
2 among others, Bond and Rosales as the recipients of grant funds that were being
3 directed to further partisan social justice agendas. He called for an investigation
4 into the expenditure of these funds at Bakersfield College. Neither Dr. Garrett in
5 his speech nor Professor Miller in her introduction at any time accused Bond or
6 Rosales or anyone else at Bakersfield College of misappropriating these funds or of
7 personally enriching themselves or of any illegal conduct.

8 20. Criticism of the manner in which a public college or university
9 prioritizes the expenditure of its funds is core speech protected by the First
10 Amendment.

11 21. Although differences of opinion were raised and discussed during the
12 course of the event, at all times the exchange of ideas was civil and respectful. The
13 September 12, 2019 lecture was an example of precisely the sort of “marketplace of
14 ideas” that American college campuses are intended to exemplify.

15 ***Bond and Rosales File Formal Complaints with Bakersfield College HR***
16 ***Regarding Plaintiffs’ Speech from the September 12, 2019 Lecture.***

17 22. In October 2019, Professor Miller filed a public records request
18 regarding various grants.

19 23. Plaintiffs are informed and believe that, on October 11 and 19, 2019,
20 respectively, Professors Bond and Rosales file HR complaints against Dr. Garrett
21 and Professor Miller arising out of the September 12, 2019 lecture.

22 24. During November 2019, the Bakersfield College administration
23 attempted to mediate the issues involving Dr. Garrett and Professor Miller and
24 Professors Bond and Rosales. However, rather than serve as a neutral mediator
25 recognizing the First Amendment issues at stake, Bakersfield College Vice
26 President Billie Jo Rice asked Dr. Garrett to stop requesting public records relating
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1 to the grants and to remove the publicly posted video of the September 12, 2019
2 lecture.

3 25. On December 3, 2019, Dr. Garrett gave a 30-minute radio interview in
4 which he discussed the collapse of critical thinking in the academy and again
5 criticized the manner in which Bakersfield College faculty were directing grant
6 funds. Within a few days following this radio interview, Vice President Rice
7 telephoned Dr. Garrett and Professor Miller individually and advised that she was
8 discontinuing the informal resolution process. She blamed Dr. Garrett's radio
9 interview for this action.

10 26. Plaintiffs are informed and believe that, on January 6, 2020, Professor
11 Bond and Rosales filed addendums to their complaints. To this day, the
12 Bakersfield College administration has steadfastly refused to permit Dr. Garrett and
13 Professor Miller to see these complaints.

14 ***Defendant Hine, with Defendant Burke's Designation, Knowledge and***
15 ***Acquiescence, Orders an Investigation into Plaintiffs' September 12, 2019***
16 ***Speech, which Results in Administrative Determinations.***

17 27. Plaintiffs are informed and believe and thereon allege that, in early
18 August 2020, Defendant Christopher W. Hine, at the designation and direction of
19 Defendant Burke and perhaps other officials of KCCD and Bakersfield College
20 who will be identified as DOE Defendants, referred Professors Bond and Rosales'
21 formal complaints against Dr. Garrett and Professor Miller for investigation as to
22 whether some of their comments at the September 12, 2019 event constituted
23 "unprofessional" conduct in violation of certain KCCD Board and Administrative
24 Policies.

25 28. On or about October 8, 2020, Hine issued a KCCD Administrative
26 Determination containing the following statements and findings:
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1 (a) Professor Miller, in her introduction to Dr. Garrett’s speech,
2 made a number of statements implying that both Dr. Oliver Rosales and Professor
3 Andrew Bond “were improperly misusing grant funds and BC resources to finance
4 various ‘social justice’ platforms.”

5 (b) Dr. Garrett, during his speech, repeated the above allegations “in
6 greater detail” (i.e., that Rosales and Bond were improperly misusing grant funds).

7 (c) Dr. Garrett’s and Professor Miller’s comments constituted
8 allegations of “financial impropriety” and of misappropriation of grant funds by
9 Rosales and Bond.

10 (d) Dr. Garrett and Professor Miller’s purported accusations that
11 Rosales and Bond had engaged in “financial improprieties” constituted
12 unprofessional conduct.

13 (e) Dr. Garrett and Professor Miller made these accusations against
14 Rosales and Bond “without giving them a reasonable chance to explain the grants in
15 question or defend themselves.”

16 (f) Dr. Garrett “made the situation worse by repeating the
17 allegations on a radio station after Dr. Rosales and Professor Bond properly
18 complained.”

19 29. Based upon the above statements and findings, Defendant Hine made
20 the “determination” that Dr. Garrett and Professor Miller “engaged in
21 unprofessional conduct, as defined in Section A.3 of Article Four of the CCA
22 collective bargaining agreement, in their statements and allegations regarding
23 misuse and misappropriation of grant funds by Dr. Rosales and Professor Bond.”

24 30. Having made the aforementioned “determination,” Defendant Hine
25 threatened that “the District will investigate any further complaints of policy and
26 procedure violations and, if applicable, will take appropriate remedial action,
27 including but not limited to any discipline determined to be appropriate. It is
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1 recommended that any videos of the September 12, 2019 presentation by Dr.
2 Garrett with introduction by Professor Miller be removed from all district websites
3 until all inaccurate or misleading allegations have redacted or deleted.” However,
4 notwithstanding his threat of further discipline, Defendant Hine has never identified
5 what statements of fact in Plaintiffs’ presentation were inaccurate or misleading;
6 moreover, Plaintiffs deny that any of their statements were inaccurate or
7 misleading.

8 31. Defendant Hine’s Administrative Determination also invoked the
9 threat of termination of Dr. Garrett’s and Professor Miller’s employment by
10 referencing California Education Code § 87667, which provides that “A contract or
11 regular employee may be dismissed or penalized for one or more of the grounds set
12 forth in Section 87732.” One of the grounds set forth in Section 87732 is
13 unprofessional conduct, which was precisely the determination found by Defendant
14 Hine against Dr. Garrett and Professor Miller.

15 32. In addition, Defendant Hine stated that the Administrative
16 Determination and the Investigator’s report will be referred to the President of
17 Bakersfield College “to determine what disciplinary actions and remedial actions
18 are necessary based upon the findings.

19 33. Moreover, Defendant Hine further stated in the Administrative
20 Determination that Rosales’ and Bond’s complaints were whistleblower complaints
21 as provided in BP 7f, and that there are no appeal rights provided under BP 7F or
22 AP 7F.

23 34. In short, Defendant Hine reached findings and determinations that
24 were pretextual and false and carried with them the threat of further discipline up to
25 and including termination. In addition, by classifying Bond and Rosales as so-
26 called “whistleblowers” (defining “whistleblower” in a manner utterly foreign to
27 California law), Defendant Hine left Dr. Garrett and Professor Miller exposed to
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1 charges of retaliation and termination in the event they tried to publicly defend
2 themselves.

3 ***Defendants’ Administrative Determination Contained Demonstrably False***
4 ***Assertions of Fact and Findings.***

5 35. Each of the statements and findings of the Administrative
6 Determination was demonstrably false.

7 36. Neither Dr. Garrett nor Professor Miller, during their presentation of
8 September 12, 2019 (or during Dr. Garrett’s radio interview) ever accused Rosales
9 or Bond of improperly misusing grant funds.

10 37. Neither Dr. Garrett nor Professor Miller, during their presentation of
11 September 12, 2019, ever accused Rosales or Bond of financial impropriety or
12 misappropriation of grant funds.

13 38. Both Rosales and Bond were not denied a reasonable chance to explain
14 the grants in question or defend themselves. On the contrary, both Rosales and
15 Bond were invited and encouraged to attend the September 12, 2019 event; yet both
16 refused to participate. Bond and Rosales expressly told other faculty that they
17 chose not to participate in an effort to delegitimize Dr. Garrett’s presentation.

18 39. Notably, the Administrative Determination makes clear that the
19 majority of Rosales’ and Bond’s complaints arising out of the September 12, 2019
20 presentation involved speech by Dr. Garrett and Professor Miller that even
21 Defendant Hine had to conclude was protected under the First Amendment.

22 40. Defendants have repeatedly refused to provide Plaintiffs with copies of
23 the Rosales and Bond complaints.

24 41. Plaintiffs are informed and believe and thereby allege that Defendants
25 have deliberately taken the position, as a false pretext for the violation of Plaintiffs’
26 rights of free speech and academic freedom, that Dr. Garrett’s and Professor
27 Smith’s speech regarding the expenditure of grant funds during the September 12,
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1 2019 event constitutes defamation as to Rosales and Bond and is therefore not
2 protected under the First Amendment.

3 42. Defendants' assertion that Dr. Garrett's and Professor Miller's speech
4 is unprotected defamation is demonstrably wrong inasmuch as Plaintiff plainly did
5 not accuse Rosales and Bond of financial impropriety or misappropriation of grant
6 funds and because, to the extent that Plaintiffs discussed the expenditure of grant
7 funds, their comments were both truthful and expressions of their opinions on a
8 subject of significant public interest.

9 43. Indeed, Plaintiffs are informed and believe and thereon allege that
10 Defendants knew that Plaintiffs comments regarding the expenditure of grant funds
11 were true inasmuch as Bakersfield College President Sonya Christian and Vice
12 President Zav Dadabhoj had written letters of support for a grant directing funds to
13 the Kern Sol News, and that during informal mediation between Professor Miller
14 and Vice President Billie Jo Rice, Rosales openly admitted that Rosales funded the
15 Kern Sol News and intended to continue doing so. In short, despite knowing that
16 Dr. Garrett's comments were true, Defendants nonetheless issued an Administrative
17 Determination that completely mischaracterized Plaintiffs' statements, and
18 censored, disciplined, and threatened them with further discipline.

19 44. Plaintiffs are informed and believe and thereby allege that Defendants,
20 in particular Defendant Hine who is an attorney and the KCCD General Counsel,
21 were and are fully aware that Dr. Garrett's and Professor Miller's speech on
22 September 12, 2019 did not meet the elements of defamation and was fully
23 protected under the First Amendment. Defendants nonetheless deliberately
24 mischaracterized Plaintiffs' speech as unprotected defamation in violation of their
25 First Amendment rights in order to placate or "throw a bone" to Rosales and Bond
26 so that they wouldn't feel their complaints had been effectively dismissed in their
27 entirety as they should have been.

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1 45. Plaintiffs are informed and believe and thereby allege that Defendants,
2 in particular Defendant Hine as an attorney and KCCD General Counsel, have
3 deliberately misclassified Rosales and Bond as “whistleblowers” under KCCD
4 Board Policy 7F in order to further placate them and enhance their status as
5 complainants while curtailing Plaintiffs’ right to free speech and academic freedom.

6 46. Defendants’ deliberate violation of Plaintiffs’ First Amendment rights
7 emboldened Bond to respond by sending a mass email to the campus community
8 declaring victory over Dr. Garrett and Professor Miller by announcing KCCD’s
9 institutional support further censoring Plaintiffs, declaring Plaintiffs’ demonstrably
10 true statements as lies, and implicitly reinforcing Bond’s and Rosales’ damning
11 allegations on campus that Plaintiffs were supporters of white supremacy.

12 ***Plaintiffs Enjoy the Contractual Right to Academic and Personal Freedom***
13 ***Pursuant to their Collective Bargaining Agreement with KCCD and the KCCD***
14 ***Board Policies and Administrative Policies***

15 47. KCCD Administrative Policy 7D2A provides, in relevant part, as
16 follows: “Academic Freedom
17 No provision of this Administrative Procedure shall be interpreted to prohibit
18 conduct that is legitimately related to the course content, teaching methods,
19 scholarship, or public commentary of an individual faculty member or the
20 educational, political, artistic, or literary expression of students in classrooms and
21 public forums. Freedom of speech and academic freedom are, however, not
22 limitless and this procedure will not protect speech or expressive conduct that
23 violates federal or California antidiscrimination laws.”

24 48. The Administrative Determination expressly concedes that none of the
25 allegations by Rosales and Bond, if true, would state a violation of state or federal
26 antidiscrimination laws.

1 Bond of financial improprieties and financial misappropriation and that they are
2 associated with white supremacist ideology.

3 53. Plaintiffs have also been irreparably damaged in their profession as
4 college professors. At a time when college campuses are rife with “cancel culture”
5 and knee-jerk reactions to anything perceived as insensitivity toward so-called
6 marginalized faculty and students, Defendants’ actions toward Plaintiffs will likely
7 limit their opportunities should they choose to seek future employment at other
8 colleges or universities.

9 54. Plaintiffs have diligently attempted to mitigate their damages by
10 consistently defending themselves against Defendants’ actions, all to no avail.

11 **FIRST CAUSE OF ACTION**

12 **Violation of Plaintiffs’ First Amendment Right to Freedom of Speech through**
13 **Retaliation**
14 **(42 U.S.C. § 1983)**

15 55. Plaintiffs repeat and reallege each of the allegations contained in
16 paragraphs 1-54 of this Complaint, as if set forth fully herein.

17 56. By subjecting Plaintiffs, and each of them, to an investigation, an
18 Administrative Determination containing demonstrably and pretextual false
19 statements and findings, disciplinary action, and the threat of further disciplinary
20 action including potential termination, Defendants, by policy and practice, and
21 acting under color of state law, have retaliated against Plaintiffs because of their
22 free expression and have deprived them of their ability to freely express their ideas
23 on issues of public concern at Bakersfield College.

24 57. Defendants, acting under color of state law, and by policy and practice,
25 knew or should have known that they explicitly and implicitly discriminated against
26 Plaintiffs for exercising their clearly established right to free speech on issues of
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1 public concern and the right to academic freedom as secured by the First and
2 Fourteenth Amendments to the United States Constitution.

3 58. The denial of constitutional rights is irreparable injury *per se* entitling
4 Plaintiffs to declaratory and injunctive relief. Because of Defendants' actions,
5 Plaintiffs have suffered, and continue to suffer, emotional distress, economic injury
6 and irreparable harm. They are, therefore, entitled to equitable relief and an award
7 of monetary damages.

8 59. Pursuant to 42 U.S.C. §§ 1983 and 1988, Plaintiffs are entitled to
9 declaratory and injunctive relief for a finding that Defendants have violated their
10 rights of free speech under the First Amendment, requiring Defendants to publicly
11 rescind the Administrative Determination and its findings, remove from Plaintiffs
12 employment files and from the records of KCCD and Bakersfield College all
13 records pertaining to the Administrative Determination, requiring Defendants to
14 rescind their "recommendation" to remove the unedited video of their September
15 12, 2019 speech from all District websites, and to withdraw the referral of the
16 Administrative Determination to the President of Bakersfield College for further
17 disciplinary action.

18 60. Additionally, Plaintiffs are entitled to monetary damages, including
19 compensatory and punitive damages, and their reasonable attorneys' fees and costs.

20 **SECOND CAUSE OF ACTION**

21 **(Breach of Contract)**

22 61. Plaintiffs repeat and reallege each of the allegations contained in
23 paragraphs 1-60 of this Complaint, as if set forth fully herein.

24 62. At all times referenced herein, Plaintiffs were parties to an
25 employment contract with KCCD wherein KCCD and its officers on the one hand
26 and Plaintiffs on the other hand were bound by the terms of their collective
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1 bargaining agreement and by the KCCD Board Policies and Administrative
2 Policies.

3 63. By virtue of their conduct discussed above, Defendants, acting on
4 behalf of KCCD, violated the terms of this contract by violating Plaintiffs’ right to
5 academic and personal freedom concerning their right to free expression.

6 64. Plaintiffs are entitled to monetary damages as a result of this breach of
7 contract.

8 **THIRD CAUSE OF ACTION**

9 **(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

10 65. Plaintiffs repeat and reallege each of the allegations contained in
11 paragraphs 1-64 of this Complaint, as if set forth fully herein.

12 66. At all times referenced herein, Plaintiffs were parties to an
13 employment contract with KCCD wherein KCCD and its officers on the one hand
14 and Plaintiffs on the other hand were bound by the terms of their collective
15 bargaining agreement and by the KCCD Board Policies and Administrative
16 Policies.

17 67. Plaintiff did all, or substantially all, of the significant things that their
18 contract required them to do.

19 68. Defendants, with knowledge that their conduct deprived Plaintiffs of
20 their right to free speech under the First and Fourteenth Amendments to the United
21 States Constitution, nonetheless investigated and subjected Plaintiffs to discipline
22 as described above in retaliation for their exercise of these rights.

23 69. By doing so, Defendants did not act fairly and in good faith causing
24 harm to Plaintiffs.

25 70. Plaintiffs are entitled to monetary compensatory and punitive damages
26 as a result of this conduct.

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FOURTH CAUSE OF ACTION

(Negligence)

71. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1-70 of this Complaint, as if set forth fully herein.

72. Having received complaints from Rosales and Bond regarding Plaintiffs' September 12, 2019 speech, Defendants had a duty to investigate these complaints in accordance with a reasonable standard of care.

73. Defendants breached this duty of care by failing to conduct a fair investigation into the underlying facts of the complaints.

74. Defendants' failure to fairly investigate these complaints was the proximate cause of damages sustained by Plaintiffs for which Plaintiffs are entitled to compensatory damages.

FIFTH CAUSE OF ACTION

(Intentional Infliction of Emotional Distress)

75. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1-74 of this Complaint, as if set forth fully herein.

76. Based on the foregoing facts and circumstances, Defendants deliberately deprived Plaintiffs of their constitutional right to free speech under the First and Fourteenth Amendments to the United States Constitution.

77. The above actions by Defendants were so outrageous, unjustifiable and intolerable that they caused mental anguish and severe psychological and emotional distress to Plaintiff, as well as physical harm, financial loss, humiliation, loss of reputation and other damages.

78. As a result of the foregoing, Plaintiffs are entitled to compensatory and punitive damages.

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SIXTH CAUSE OF ACTION

(Declaratory Judgment)

(28 U.S.C. § 2201, et seq.)

79. Plaintiffs repeat and reallege each of the allegations contained in paragraphs 1-78 of this Complaint, as if set forth fully herein.

80. An actual controversy has arisen and now exists between Plaintiffs and Defendants concerning Plaintiffs’ right under the United States Constitution. A judicial declaration is necessary and appropriate at this time as to the First Cause of Action above.

81. Plaintiffs desire a judicial determination of their rights against Defendants as they pertain to Plaintiffs’ right to speak without being subjected to the threat of further investigation and discipline based on pretextual grounds in furtherance of Defendants’ desire to placate and assuage the feelings of members of the Bakersfield College community who disagree with Plaintiffs’ viewpoints.

82. To prevent further violation of Plaintiffs’ constitutional rights by Defendants, it is appropriate and proper that a declaratory judgment issue, pursuant to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, declaring that Defendants’ conduct described above is unconstitutional.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs Dr. Matthew Garrett and Professor Erin Miller respectfully request that the Court enter judgment against Defendants and provide Plaintiffs with the following relief:

- 1. A declaratory judgment stating the Individual Defendants’ actions described herein violated Plaintiff’s right to free speech as guaranteed by the First and Fourteenth Amendments to the United States Constitution;
- 2. A permanent injunction requiring Defendants to remove from Plaintiffs’ employment files and from the records of KCCD and Bakersfield

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1 College all records pertaining to the Administrative Determination, require
2 Defendants to rescind their “recommendation” to remove the unedited video of
3 their September 12, 2019 speech from all District websites, and to withdraw the
4 referral of the Administrative Determination to the President of Bakersfield College
5 for further disciplinary action.

6 3. Compensatory damages against Defendants in their individual
7 capacities, in an amount to be proven at trial to compensate Plaintiffs for the
8 Defendants’ violation of their free speech rights and the damages resulting
9 therefrom;

10 4. Punitive damages against Defendants in their individual capacities to
11 sanction their deliberate misconduct, and to deter Defendants and others from
12 denying free speech rights to others similarly situated in the future;

13 5. Plaintiff’s reasonable attorneys’ fees pursuant to 42 U.S.C. § 1988,
14 costs of suit and reasonable expenses;

15 6. Pre and post-judgment interest at the maximum rate allowable by law;
16 and

17 7. Any other relief which this Court may deem just and proper.

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19 DATED: May 24, 2021

LEADER BERKON COLAO &
SILVERSTEIN LLP

20
21
22 By: /s/ Arthur I. Willner

Arthur I. Willner, SBN 118480

awillner@leaderberkon.com

23 Attorneys for Plaintiffs MATTHEW GARRETT,
24 PH.D. and PROFESSOR ERIN MILLER
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JURY TRIAL

Plaintiffs demand a trial by jury on all claims triable by jury in this cause of action.

DATED: May 24, 2021

LEADER BERKON COLAO &
SILVERSTEIN LLP

By: /s/ Arthur I. Willner

Arthur I. Willner, SBN 118480

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