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

11 **UNITED STATES DISTRICT COURT**
12 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

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

16 Plaintiffs,

17 vs.

18 CHRISTOPHER W. HINE, General
19 Counsel of the Kern Community College
20 District, individually and in his official
21 capacity; THOMAS J. BURKE, former
22 Chancellor of the Kern Community
23 College District, individually and in his
24 official capacity; BILLIE JO RICE, Vice
25 President of Bakersfield College,
26 individually and in her official capacity;
27 SONYA CHRISTIAN, Chancellor of the
28 Kern Community College District,
individually and in her official capacity;
and DOES 1 THROUGH 50, inclusive,

Defendants.

Case No. 1:21-cv-00845-DAD-BAK

**PLAINTIFFS' FIRST AMENDED
COMPLAINT;**

DEMAND FOR JURY TRIAL

Complaint Filed: May 25, 2021

Leader Berkon Colao & Silverstein LLP
Attorneys at Law

1 Plaintiffs Matthew Garrett, Ph.D. and Professor Erin Miller, by and through
2 their counsel of record, and for their First Amended Complaint against Defendants
3 Christopher W. Hine, Thomas J. Burke, Billie Jo Rice, Sonya Christian, and DOES
4 1 through 50, hereby state as follows:

5
6 **INTRODUCTION**

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

1 2. This incident is but one example of what has become a dangerous
2 assault on First Amendment rights on college campuses nationwide by
3 administrators and officials, often egged on by certain faculty members and
4 students, to suppress the speech of anyone with whom they disagree. Once
5 regarded as the “marketplace of ideas,” *Keyishian v. Board of Regents*, 364 U.S.
6 479, 487 (1967), college campuses in recent years have increasingly devolved into
7 environments where only acceptable viewpoints may be publicly expressed while
8 differing views are subject to investigation and even punishment. The clear
9 purpose of this illiberal movement is not merely to investigate and discipline those,
10 like Plaintiffs, who have expressed disagreeable ideas, but to chill the speech of and
11 serve as a warning to other faculty members that the better course of action is to
12 self-censor rather than risk suffering adverse employment consequences.

13 3. Defendants’ actions ignore the fundamental principle that neither
14 students nor faculty “shed their constitutional rights to freedom of speech or
15 expression at the schoolhouse gate.” *Tinker v. Des Moines Indpt. Comm. Sch. Dist.*,
16 393 U.S. 503, 506 (1969). Moreover, the Supreme Court has made it crystal clear
17 that teachers may not be compelled “to relinquish the First Amendment rights they
18 would otherwise enjoy as citizens to comment on matters of public interest in
19 connection with the operation of the public schools in which they work.” *Pickering*
20 *v. Bd. of Education*, 391 U.S. 563, 568 (1968). A teacher’s criticism of the
21 allocation of school funds and calls for more transparency on how those funds are
22 spent fall squarely within this principle.

23 4. By investigating, disciplining, and retaliating against Plaintiffs for
24 speaking on matters of public concern, Defendants have violated the First
25 Amendment. Plaintiffs now file this First Amended Complaint to vindicate their
26 First Amendment rights.

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JURISDICTION AND VENUE

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

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

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

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

THE PARTIES

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

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

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1 11. Defendant Christopher W. Hine was and is, at all times relevant to this
2 Complaint, employed as the General Counsel of Kern Community College District.
3 Hine acted under color of state law when he violated Plaintiffs' rights under the
4 First and Fourteenth Amendments when he ordered the investigation into Plaintiffs'
5 speech and when he issued an Administrative Determination disciplining Plaintiffs
6 and warning them of the potential of further negative repercussions to their
7 employment with the District arising out of their speech, which lies clearly within
8 the First Amendment's protection of freedom of expression and academic freedom.
9 Furthermore, Defendant Hine knew or should have known that he was violating
10 long-established principles of constitutional law with respect to his conduct. In
11 addition, Hine has continued to retaliate against Plaintiffs regarding their exercise
12 of their First Amendment rights by, among other things, interfering with Plaintiffs'
13 requests for public records concerning the expenditure and allocation of grant funds
14 and regarding the complaints against them. Defendant Hine is sued in his official
15 and individual capacities.

16 12. Defendant Thomas J. Burke was, at all times relevant to this
17 Complaint, employed as Chancellor of Kern Community College District. As such,
18 he is the District's chief executive officer, responsible for its administration and
19 policymaking, including the conduct alleged herein. Acting under color of state
20 law, Defendant Burke authorized, acquiesced in, sanctioned, and supported the
21 actions of Defendant Hine. Furthermore, Defendant Burke knew or should have
22 known that he was violating long-established principles of constitutional law with
23 respect to his conduct. Defendant Burke is sued in his official and individual
24 capacities.

25 13. Defendant Billie Jo Rice was and is, at all times relevant to this
26 Complaint, employed as Vice President of Bakersfield College. Rice retaliated
27 against Plaintiffs regarding their exercise of their First Amendment rights by,
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1 among other things, deliberately mishandling Dr. Garrett’s personal and
2 confidential information and interfering with Dr. Garrett’s application for
3 equivalency to teach in the fields of Interdisciplinary Studies and Ethnic Studies.
4 Defendant Rice’s actions were in violation of Plaintiff Garrett’s First Amendment
5 rights and in retaliation of their exercise of those rights. Defendant Rice is sued in
6 her official and individual capacities.

7 14. Defendant Sonya Christian is the Chancellor of the Kern Community
8 College District and has held that position since it was vacated by Defendant Burke.
9 As such, she is the District’s chief executive officer, responsible for its
10 administration and policymaking, including the conduct alleged herein. Before
11 becoming Chancellor, she was the President of Bakersfield College. As such, she
12 was the College’s chief executive officer, responsible for its administration and
13 policymaking, including the conduct alleged herein. While in these positions, she
14 oversaw and directed, among others, defendants Rice and Hine and was complicit
15 in and/or failed to act to prevent their violation of Plaintiffs’ rights and as retaliation
16 for Plaintiffs’ exercise of their First Amendment rights as alleged herein. She
17 acted under color of state law and is sued in her official and individual capacities.

18 15. Plaintiffs are informed and believe that DOES 1 through 50 are other
19 officials and administrators employed by KCCD and Bakersfield College who are
20 responsible for the improper actions against Plaintiff detailed below, or are
21 necessary parties, and Plaintiff will amend this Complaint when their true identities
22 are known.

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FACTUAL BACKGROUND

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

8 17. In April of 2019, controversial stickers were anonymously posted
9 around the Bakersfield College campus, some of which stated such things as
10 “smash cultural Marxism” and as well as other right-of-center viewpoints. The
11 stickers were removed by campus authorities. This prompted a public debate, in
12 part through op-ed articles in the local press. Certain faculty members and students
13 associated with the campus Social Justice Institute decried the stickers as “racist”
14 and “vandalism” and “hate crimes.” Dr. Garrett, on the other hand, publicly
15 questioned whether the stickers might actually be a protest of sorts against the use
16 of taxpayer funds to advance a one-sided partisan political agenda on campus.
17 Certain faculty members and students associated with the Social Justice Institute
18 responded to Dr. Garrett’s comments by publicly accusing both him and Professor
19 Miller of advocating and enabling white supremacy.

20 18. As this controversy progressed, and in lieu of ongoing salvos in the
21 local press, other faculty members sought to arrange a formal public debate
22 between Dr. Garrett on the one hand, and faculty associated with the Social Justice
23 Institute on the other including Professors Andrew Bond and Oliver Rosales. Since
24 such a debate is precisely the sort of free exchange of ideas that he stands for, Dr.
25 Garrett readily agreed. Bond and Rosales, however, refused to participate.
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28 ¹ The Liberty Institute has since been renamed The Renegade Institute for Liberty.

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

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

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

22 22. Criticism of the manner in which a public college or university
23 prioritizes the expenditure of its funds is core speech protected by the First
24 Amendment.

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

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

5 24. In October 2019, Professor Miller filed a public records request
6 regarding various grants.

7 25. Plaintiffs are informed and believe that, on October 11 and 19, 2019,
8 respectively, Professors Bond and Rosales filed HR complaints against Dr. Garrett
9 and Professor Miller arising out of the September 12, 2019 lecture.

10 26. On December 3, 2019, Dr. Garrett gave a 30-minute radio interview in
11 which he discussed the collapse of critical thinking in the academy and again
12 criticized the way Bakersfield College faculty were directing grant funds. Dr.
13 Garrett’s comments during the radio interview were made as a private citizen on a
14 matter of public concern.

15 27. Plaintiffs are informed and believe that, on or about January 6, 2020,
16 Professor Bond and Rosales filed addendums to their complaints.

17 28. To this day, Defendants have improperly refused to permit Dr. Garrett
18 and Professor Miller to see the complaints that were made against them based on
19 the spurious assertion that showing Plaintiffs the charges would somehow violate
20 the privacy rights of the complainants.

21 ***Defendant Hine, with the Designation, Direction, Knowledge and Acquiescence***
22 ***of Defendant Burke, Orders an Investigation into Plaintiffs’ September 12, 2019***
23 ***Speech. Following the Investigation, Hine Punishes and Retaliates Against***
24 ***Plaintiffs Based Solely on the Exercise of Their First Amendment Rights.***

25 29. Plaintiffs are informed and believe and thereon allege that, in early
26 August 2020, Defendant Christopher W. Hine, with the designation, direction,
27 knowledge and acquiescence of Defendant Burke and perhaps other officials of
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1 KCCD and Bakersfield College who will be identified as DOE Defendants, referred
2 Professors Bond and Rosales’ formal complaints against Dr. Garrett and Professor
3 Miller for investigation as to whether some of their comments at the September 12,
4 2019 event constituted “unprofessional” conduct in violation of certain KCCD
5 Board and Administrative Policies.

6 30. On or about October 8, 2020, Hine issued a KCCD Administrative
7 Determination containing the following statements and findings:

8 (a) Professor Miller, in her introduction to Dr. Garrett’s speech,
9 made a number of statements implying that both Dr. Oliver Rosales and Professor
10 Andrew Bond “were improperly misusing grant funds and BC resources to finance
11 various ‘social justice’ platforms.”

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

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

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

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

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

26 31. Based upon the above statements and findings, Defendant Hine made
27 the determination that Dr. Garrett and Professor Miller “engaged in unprofessional
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1 conduct, as defined in Section A.3 of Article Four of the CCA collective bargaining
2 agreement, in their statements and allegations regarding misuse and
3 misappropriation of grant funds by Dr. Rosales and Professor Bond.” Hine’s
4 conduct was based solely on Plaintiffs’ statements on matters of public concern at
5 the September 12, 2019 speech and in Dr. Garrett’s radio interview, all of which
6 constituted protected speech under the First Amendment.

7 32. Having made the aforementioned “determination,” Defendant Hine
8 threatened that “the District will investigate any further complaints of policy and
9 procedure violations and, if applicable, will take appropriate remedial action,
10 including but not limited to any discipline determined to be appropriate. It is
11 recommended that any videos of the September 12, 2019 presentation by Dr.
12 Garrett with introduction by Professor Miller be removed from all district websites
13 until all inaccurate or misleading allegations have redacted or deleted.”

14 33. Notwithstanding his threat of further discipline, Defendant Hine has
15 never identified what statements of fact in Plaintiffs’ presentation were inaccurate
16 or misleading. This is because Hine was and remains fully aware that Plaintiffs’
17 statements were not inaccurate or misleading and that they were statements on
18 matters of public concern protected by the First Amendment. Indeed, for example,
19 Plaintiffs are informed and believe and thereon allege that Hine was clearly aware
20 that Dr. Garrett’s statements regarding the allocation of funds to Kern Sol News
21 since he negotiated the contract that allowed for the allocation of those funds.
22 Moreover, Plaintiffs deny that any of their statements were inaccurate or
23 misleading.

24 34. Defendant Hine’s Administrative Determination also invoked the
25 threat of termination of Dr. Garrett’s and Professor Miller’s employment by
26 referencing California Education Code § 87667, which provides that “A contract or
27 regular employee may be dismissed or penalized for one or more of the grounds set
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1 forth in Section 87732.” One of the grounds set forth in Section 87732 is
2 unprofessional conduct, which was precisely the determination found by Defendant
3 Hine against Dr. Garrett and Professor Miller.

4 35. In addition, Defendant Hine stated that the Administrative
5 Determination and the Investigator’s report will be referred to the President of
6 Bakersfield College “to determine what disciplinary actions and remedial actions
7 are necessary based upon the findings.”

8 36. Plaintiffs are informed and believe and thereon allege that Defendant
9 Burke was aware that Dr. Garrett’s statements concerning the expenditure of grant
10 funds were correct and that Bond and Rosales had been given the opportunity to
11 participate in the program. Despite his knowledge that some or all of the findings
12 were false, Burke acquiesced in the Administrative Determination, did nothing to
13 correct the record, and nonetheless allowed the adverse consequences to Plaintiffs
14 to proceed.

15 37. Moreover, Defendant Hine further stated in the Administrative
16 Determination that Rosales’ and Bond’s complaints were whistleblower complaints
17 as provided in BP 7F, and that there are no appeal rights provided under BP 7F or
18 AP 7F.

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

1 39. Defendant Hine has since used the threat against Plaintiffs of being
2 charged with retaliation and the sanctions that accompany a finding of retaliation to
3 prevent or significantly limit Plaintiffs' right to public records requests.

4 40. Thus, at the same time that Defendant Hine has withheld the
5 complaints from Plaintiffs and has failed to identify the purported inaccuracies in
6 Plaintiffs' speech, Hine has threatened Plaintiffs with further discipline should they
7 continue to request production of the very records that support their statements
8 regarding KCCD's and Bakersfield College's grant expenditures.

9 41. Defendant Hine's actions were meant to, and in fact did, punish and
10 retaliate against Dr. Garrett and Professor Miller for the exercise of their First
11 Amendment rights and chill them from continuing to engage in speech on matters
12 of public concern.

13 ***Defendants' Administrative Determination Contained Demonstrably False***
14 ***Assertions of Fact and Findings.***

15 42. Each of the statements and findings of the Administrative
16 Determination was demonstrably false.

17 43. Neither Dr. Garrett nor Professor Miller, during their presentation of
18 September 12, 2019 (or during Dr. Garrett's radio interview) ever accused Rosales
19 or Bond of improperly misusing grant funds other than his disagreement with their
20 expenditure for partisan political purposes.

21 44. Neither Dr. Garrett nor Professor Miller, during their presentation of
22 September 12, 2019 (or during Dr. Garrett's radio interview), ever accused Rosales
23 or Bond of financial improprieties or the misappropriation of grant funds.

24 45. Neither Rosales nor Bond was denied a reasonable chance to explain
25 the grants in question or defend themselves. On the contrary, both Rosales and
26 Bond were aware that the grant funding would be a topic at the presentation and
27 were invited and encouraged to attend the September 12, 2019 event; yet both
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1 refused to participate. Bond and Rosales expressly told other faculty that they
2 chose not to participate in an effort to delegitimize Dr. Garrett's presentation.

3 46. Notably, the Administrative Determination makes clear that the
4 majority of Rosales' and Bond's complaints arising out of the September 12, 2019
5 presentation involved speech by Dr. Garrett and Professor Miller that even
6 Defendant Hine had to conclude was protected under the First Amendment.

7 47. Plaintiffs are informed and believe and thereby allege that Defendants
8 have deliberately taken the position, as a false pretext for the violation of Plaintiffs'
9 rights of free speech and academic freedom, that Dr. Garrett's and Professor
10 Miller's speech regarding the expenditure of grant funds during the September 12,
11 2019 event constitutes defamation as to Rosales and Bond and is therefore not
12 protected under the First Amendment.

13 48. Defendants' assertion that Dr. Garrett's and Professor Miller's speech
14 is unprotected defamation is demonstrably wrong inasmuch as Plaintiff plainly did
15 not accuse Rosales and Bond of financial improprieties or the misappropriation of
16 grant funds and because, to the extent that Plaintiffs discussed the expenditure of
17 grant funds, their comments were both truthful and expressions of their opinions on
18 a subject of significant public interest.

19 49. Indeed, Plaintiffs are informed and believe and thereon allege that
20 Defendants know to this day that Plaintiffs' comments regarding the expenditure of
21 grant funds were true inasmuch as Defendants Burke and Christian and Vice
22 President Zav Dadabhoy² had written letters of support for a grant directing funds
23 to the Kern Sol News, and that in or about November 2019 Rosales openly
24 admitted that he funded the Kern Sol News and intended to continue doing so.
25 Furthermore, Plaintiffs are informed and believe that Defendant Hine drafted or

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27 ² With the promotion of Sonya Christian to KCCD Chancellor, Zav Dadabhoy has since been
28 named Interim President of Bakersfield College.

1 prepared the contract facilitating that funding. In short, despite knowing that Dr.
2 Garrett's comments were true, Hine nonetheless issued an Administrative
3 Determination that completely mischaracterized Plaintiffs' statements, and
4 censored, disciplined, and threatened them with further discipline thereby punishing
5 them and chilling them from continuing to engage in speech on matters of public
6 concern.

7 50. Plaintiffs are informed and believe and thereby allege that Defendants,
8 in particular Defendant Hine who is an attorney and the KCCD General Counsel,
9 were and are fully aware that Dr. Garrett's and Professor Miller's speech on
10 September 12, 2019 and Dr. Garrett's statements during the radio interview were
11 fully protected under the First Amendment. Defendant Hine nonetheless
12 deliberately mischaracterized Plaintiffs' speech in violation of their First
13 Amendment rights in order to placate or "throw a bone" to Rosales and Bond so
14 that they wouldn't feel their complaints had been effectively dismissed in their
15 entirety as they should have been.

16 51. Plaintiffs are informed and believe and thereby allege that Defendants,
17 in particular Defendant Hine as an attorney and KCCD General Counsel, have
18 deliberately misclassified Rosales and Bond as "whistleblowers" under KCCD
19 Board Policy 7F in order to further placate them and enhance their status as
20 complainants and to retaliate against Plaintiffs over the exercise of their right to free
21 speech and academic freedom.

22 52. Defendant Hine's deliberate violation of Plaintiffs' First Amendment
23 rights emboldened Bond to respond by sending a mass email to the campus
24 community declaring victory over Dr. Garrett and Professor Miller by announcing
25 KCCD's institutional support further censoring Plaintiffs, declaring Plaintiffs'
26 demonstrably true statements as lies, and implicitly reinforcing Bond's damning
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1 and false allegations on campus that Plaintiffs were supporters of white
2 supremacism.

3 ***Defendants' Acts of Retaliation in Response to Plaintiffs' Exercise of Their First***
4 ***Amendment Rights Have Continued Unabated.***

5 53. In addition to the above violations of Plaintiffs' First Amendment
6 rights and retaliation for exercising those rights, Defendants' acts of retaliation
7 against Plaintiffs in response to their exercise of their First Amendment rights
8 continue to this day including, among other things, the following flagrant examples.

9 54. In February 2021, despite knowing that the complaints against
10 Plaintiffs were untrue, Defendant Hine blocked Plaintiff Miller's public records
11 requests related to the complaints, investigation, and Administrative Determination.
12 Indeed, in blocking these requests, Hine warned Plaintiffs that further requests for
13 records could increase the likelihood that they would be charged with retaliation by
14 the complainants.

15 55. In March 2021, Dr. Garrett applied for equivalency to teach in the
16 fields of Interdisciplinary Studies and Ethnic Studies. Defendant Rice (as well as
17 certain DOE administrators to be named later) carelessly, negligently, and
18 deliberately mishandled and disseminated Dr. Garrett's confidential information
19 related to that application, including his personal transcripts and Social Security
20 Number, to individuals having no duties pertaining to his application and no right to
21 see such information.

22 56. Furthermore, in response to efforts by Bond and Rosales and others to
23 derail Dr. Garrett's application on grounds that his protected viewpoints and
24 personal background were inconsistent with Ethnic Studies, Rice retaliated against
25 Dr. Garrett by attempting in various ways to obstruct his application to teach Ethnic
26 Studies by, among other things, misrepresenting in bad faith the institutional need
27 and requirements for teaching Ethnic Studies.

1 57. Plaintiffs are informed and believe and thereon allege that Defendant
2 Christian enjoys the final say in the manner in which Bakersfield College campus
3 events are conducted in light of the Covid pandemic. Christian has demonstrated
4 her willingness to approve, personally and/or through the administrators who she
5 supervises (i.e., DOE Defendants to be named when identified later) large-scale in-
6 person events when they involve her political allies and the potential for financial
7 benefit for the District while applying more restrictive Covid protocols to an event
8 sponsored by Dr. Garrett.

9 58. For example, in October 2021, the campus community was encouraged
10 to attend in person the football homecoming game as well as pregame tailgating.
11 Similarly, in September 2021, the Bakersfield College Performing Arts Department
12 hosted a jazz festival attended by campus and influential community members
13 including Dolores Huerta. Furthermore, Bakersfield College hosted an in-person
14 event involving a speech by Democratic Assemblyman Rudy Salas to which
15 students and administrators were encouraged to attend. In addition, Plaintiffs are
16 informed and believe that Defendant Christian permitted its Athletics Hall of Fame
17 dinner to go forward off campus without masks or social distancing or other Covid
18 measures.

19 59. In stark contrast, when Dr. Garrett invited a black conservative
20 speaker, Kevin McGary, for an in-person on campus event in September 2021, he
21 was not permitted to host the event in-person. As a result, Dr. Garrett's funding for
22 the event was damaged and the last minute notice of the change of venue was
23 embarrassing and damaging as to the community relationships he was building.
24 This is yet another example of the viewpoint discrimination and retaliation directed
25 at Plaintiffs as a consequence of their September 12, 2019 speech.

26 60. Defendants continue to retaliate against Plaintiffs by having failed to
27 this day to withdraw the Administrative Determination despite their ability to do so
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1 and despite their longstanding and ongoing knowledge that its accusations against
2 Plaintiffs are false and pretextual and in violation of their First Amendment rights.
3 ***Plaintiffs Enjoy the Right to Academic and Personal Freedom Pursuant to their***
4 ***Collective Bargaining Agreement with KCCD and the KCCD Board Policies and***
5 ***Administrative Policies.***

6 61. KCCD Administrative Policy 7D2A provides, in relevant part, as
7 follows: “Academic Freedom
8 No provision of this Administrative Procedure shall be interpreted to prohibit
9 conduct that is legitimately related to the course content, teaching methods,
10 scholarship, or public commentary of an individual faculty member or the
11 educational, political, artistic, or literary expression of students in classrooms and
12 public forums. Freedom of speech and academic freedom are, however, not
13 limitless and this procedure will not protect speech or expressive conduct that
14 violates federal or California antidiscrimination laws.”

15 62. The Administrative Determination expressly concedes that none of the
16 allegations by Rosales and Bond, if true, would state a violation of state or federal
17 antidiscrimination laws.

18 63. Plaintiffs’ collective bargaining agreement with KCCD provides, in
19 relevant part, as follows:

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21 “ARTICLE FOUR – PROFESSIONAL EXPECTATION

22 A. Academic Freedom: The District, the Colleges and unit members will adhere
23 to the following in regard to academic freedom:

- 24 1. Education in a democracy depends upon earnest and unceasing pursuit of
25 truth and upon free and unrestricted communication of truth...
- 26 4. The District recognizes the fundamental right of the faculty member to be
27 free from any censorship or restraint which might interfere with the
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1 faculty member's obligation to pursue truth and maintain his/her
2 intellectual integrity in the performance of his/her teaching functions.

3 B. Personal Freedom

4 2. A faculty member shall be entitled to the full rights of citizenship and no
5 religious or political activities, or lack thereof, of any unite member shall
6 be used for purposes of disciplinary action.

7 ***Defendants' Actions Have Caused a Deprivation of Rights, and Economic and***
8 ***Emotional Damage to Dr. Garrett and Professor Miller.***

9 64. Each of Defendants' actions described above relating to the
10 investigation and discipline, the threat of further discipline, and other acts of
11 retaliation, were substantial and were motivated in whole or in part by Plaintiffs'
12 constitutionally protected speech and expressive conduct.

13 65. As a direct and proximate result of Defendants' acts, Plaintiffs have
14 suffered irreparable injury, including being deprived of their constitutional rights to
15 free expression. Defendants' actions were meant to, and in fact did, punish Dr.
16 Garrett and Professor Miller and chill them from continuing to engage in speech on
17 matters of public concern.

18 66. Defendants have acted recklessly and with callous disregard for
19 Plaintiffs' First Amendment rights by retaliating against them for speaking on
20 matters of public concern.

21 67. Defendants' actions damaged Plaintiffs' reputation, caused them stress
22 and emotional injuries, including suffering from physical manifestations of stress
23 and anxiety, consumed hours of time during which they have tried to defend
24 themselves, and irreparably injured their constitutional rights to free speech and
25 academic freedom. Plaintiffs' ability to defend themselves, however, has been
26 limited by the explicit and implicit threat of the Administrative Determination and
27 the response to Plaintiffs' document requests that any attempts at defending
28

1 themselves could be construed as retaliation against the purported “whistleblowers”
2 thereby subjecting them to further punishment.

3 68. As a result of Defendants’ actions, Plaintiffs’ names are now linked on
4 the Bakersfield College campus with the false accusations that they engaged in
5 unprofessional conduct and the false accusations that they accused Rosales and
6 Bond of financial improprieties and financial misappropriation and that they are
7 associated with white supremacist ideology.

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

14 70. Each of Defendants’ actions, and taken together, constitutes an adverse
15 employment action based on Plaintiffs’ exercise of protected speech under the First
16 Amendment.

17 71. Plaintiffs have diligently attempted to mitigate their damages by
18 consistently defending themselves against Defendants’ actions, all to no avail.

19 **FIRST CAUSE OF ACTION**

20 **Violation of Plaintiffs’ First Amendment Right to Freedom of Speech through**
21 **Retaliation**

22 **(42 U.S.C. § 1983 – Against Defendants in Their Individual Capacities)**

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

25 73. By subjecting Plaintiffs, and each of them, to an investigation, an
26 Administrative Determination containing demonstrably and pretextual false
27 statements and findings, disciplinary action, and the threat of further disciplinary
28

1 action including potential termination, Defendants, by policy and practice, and
2 acting under color of state law, have retaliated against Plaintiffs substantially
3 because of their exercise of their freedom of expression and have deprived them of
4 their ability to freely express their ideas on issues of public concern at Bakersfield
5 College. In so doing, Defendants unconstitutionally have taken adverse
6 employment actions against Plaintiffs in retaliation for their protected speech on
7 matters of public concern.

8 74. Despite (a) knowing that the First Amendment protected Plaintiffs’
9 speech and (b) having no justifiable interest in regulating or punishing Plaintiffs’
10 speech on matters of public concern or an interest that outweighs Plaintiffs’
11 exercise of their First Amendment rights, Defendants discriminated against
12 Plaintiffs for exercising their clearly established right to free speech on issues of
13 public concern and the right to academic freedom as secured by the First and
14 Fourteenth Amendments to the United States Constitution.

15 75. As a direct and proximate result of Defendants’ actions described
16 above, Plaintiffs have been deprived of their constitutional rights. They have
17 suffered, and continue to suffer, emotional distress and economic injury. They are,
18 therefore, pursuant to 42 U.S.C. §§ 1983 and 1988, entitled to an award of
19 compensatory damages, punitive damages, and the reasonable costs of this lawsuit,
20 including reasonable attorneys’ fees.

21 **SECOND CAUSE OF ACTION**

22 **Violation of Plaintiffs’ First Amendment Right to Freedom of Speech through**
23 **Retaliation**

24 **(42 U.S.C. § 1983 – Against Defendants in Their Official Capacities)**

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

1 77. By subjecting Plaintiffs, and each of them, to an investigation, an
2 Administrative Determination containing demonstrably and pretextual false
3 statements and findings, disciplinary action, and the threat of further disciplinary
4 action including potential termination, Defendants, by policy and practice, and
5 acting under color of state law, have retaliated against Plaintiffs substantially
6 because of their exercise of their freedom of expression and have deprived them of
7 their ability to freely express their ideas on issues of public concern at Bakersfield
8 College. In so doing, Defendants unconstitutionally have taken adverse
9 employment actions against Plaintiffs in retaliation for their protected speech on
10 matters of public concern.

11 78. Despite (a) knowing that the First Amendment protected Plaintiffs’
12 speech and (b) having no justifiable interest in regulating or punishing Plaintiffs’
13 speech on matters of public concern or an interest that outweighs Plaintiffs’
14 exercise of their First Amendment rights, Defendants discriminated against
15 Plaintiffs for exercising their clearly established right to free speech on issues of
16 public concern and the right to academic freedom as secured by the First and
17 Fourteenth Amendments to the United States Constitution.

18 79. As a direct and proximate result of Defendants’ adverse employment
19 actions, Plaintiffs have suffered irreparable injury, including being deprived of their
20 constitutional rights to free expression.

21 80. Plaintiffs have no adequate legal, administrative, or other remedy by
22 which to prevent or minimize the continuing irreparable harm to their First
23 Amendment rights.

24 81. As a legal consequence of Defendants’ violation of Plaintiffs’ First
25 Amendment rights, which are irreparable *per se*, Plaintiffs are entitled to injunctive
26 relief including, but not limited to, mandating that Defendants publicly rescind the
27 Administrative Determination and its findings, remove from Plaintiffs employment
28

1 files and from the records of KCCD and Bakersfield College all records pertaining
2 to the Administrative Determination, requiring Defendants to rescind their
3 “recommendation” to remove the unedited video of their September 12, 2019
4 speech from all District websites, to withdraw the referral of the Administrative
5 Determination to the President of Bakersfield College for further disciplinary
6 action, and to cease obstruction of Plaintiffs’ public records requests.

7 82. Defendants’ actions described above have created a present an
8 ongoing injury to Plaintiffs through a pattern of retaliation as well as damage to
9 their reputation that will likely impact their career prospects. They are, therefore,
10 pursuant to 42 U.S.C. §§ 1983 and 1988, entitled to the injunctive relief requested
11 above, and the reasonable costs of this lawsuit, including reasonable attorneys’ fees.

12 **THIRD CAUSE OF ACTION**

13 **(Declaratory Judgment - 28 U.S.C. § 2201, *et seq.*)**

14 83. Plaintiffs repeat and reallege each of the allegations contained in
15 paragraphs 1-82 of this Complaint, as if set forth fully herein.

16 84. An actual controversy has arisen and now exists between Plaintiffs and
17 Defendants concerning whether Plaintiffs’ speech described above constituted
18 protected speech under the First Amendment and whether Defendants’ retaliatory
19 actions violate the Constitution. A judicial declaration is, therefore, necessary and
20 appropriate at this time.

21 85. Plaintiffs desire a judicial determination of their rights against
22 Defendants as they pertain to Plaintiffs’ right to speak without being subjected to
23 the threat of further investigation, retaliation, and discipline based on pretextual
24 grounds.

25 86. To prevent further violation of Plaintiffs’ constitutional rights by
26 Defendants, it is appropriate and proper that a declaratory judgment issue, pursuant
27
28

1 to 28 U.S.C. § 2201 and Fed.R.Civ.P. 57, declaring that Defendants’ conduct
2 described above is unconstitutional.

3
4 **REQUEST FOR RELIEF**

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

8 1. A declaratory judgment stating the Individual Defendants’ actions
9 described herein violated Plaintiff’s right to free speech as guaranteed by the First
10 and Fourteenth Amendments to the United States Constitution;

11 2. A permanent injunction pursuant to 28 U.S.C. § 1343(a) requiring
12 those Defendants with the authority to do so to publicly rescind the Administrative
13 Determination, remove from Plaintiffs’ employment files and from the records of
14 KCCD and Bakersfield College all records pertaining to the Administrative
15 Determination, require Defendants to rescind the “recommendation” to remove the
16 unedited video of their September 12, 2019 speech from all District websites, to
17 withdraw the referral of the Administrative Determination to the President of
18 Bakersfield College for further disciplinary action, and to cease all further
19 retaliatory actions arising out of Plaintiffs’ exercise of their First Amendment
20 rights.

21 3. Compensatory damages against Defendants in their individual
22 capacities, in an amount to be proven at trial to compensate Plaintiffs for the
23 Defendants’ unconstitutional violation of their free speech rights and the retaliation
24 they have suffered;

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

1 5. Plaintiff's reasonable attorneys' fees pursuant to 42 U.S.C. § 1988,
2 costs of suit and reasonable expenses;

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

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

6
7 Dated: June 28, 2022

LEADER BERKON COLAO &
SILVERSTEIN LLP

8
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DEMAND FOR JURY TRIAL

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

Dated: June 28, 2022

LEADER BERKON COLAO &
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