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APPENDIX A

[FILED: JULY 9, 2025]

FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KATE ADAMS, *Plaintiff- Appellant*, v. COUNTY OF SACRAMENTO; SCOTT JONES, Sheriff, *Defendants-Appellee*.	No. 23-15970 D.C. No. 2:22-cv-01499-WBS-KJN ORDER AND AMENDED OPINION

Appeal from the United States District Court
for the Eastern District of California
William B. Shubb, District Judge, Presiding

Argued and Submitted May 16, 2024
San Francisco, California

Filed September 9, 2024
Amended July 9, 2025

Before: Sidney R. Thomas, Consuelo M. Callahan, and Gabriel P. Sanchez, Circuit Judges.

Opinion by Judge Sidney R. Thomas;
Dissent by Judge Consuelo M. Callahan

SUMMARY*

First Amendment/Employment Retaliation

The panel amended its prior opinion filed on September 9, 2024, and published at 116 F.4th 1004 (9th Cir. 2024), denied a petition for panel rehearing, denied a petition for rehearing en banc, and ordered that no further petitions shall be entertained in this interlocutory appeal in which the panel affirmed the district court's dismissal of First Amendment retaliation and derivative conspiracy claims brought by Kate Adams, the former Chief of Police for the City of Rancho Cordova.

Adams alleged that she was forced to resign from her post over allegations that while working for the Sacramento County Sheriff's Office she sent racist text messages.

In evaluating the First Amendment rights of a public employee, the threshold inquiry is whether the statements at issue substantially address a matter of public concern. Speech involves matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest.

The panel examined the plain language, form, and context of Adams's two text messages, and held that under the circumstances presented by this case, sending private text messages to two friends during "a friendly, casual text message conversation," forwarding offensive racist spam images, and complaining about the images did not constitute "a matter of legitimate public concern" within the meaning of Pickering v. Board of Education, 391 U.S. 563 (1968). Adams's speech was one of personal

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

interest, not public interest. Accordingly, the panel affirmed the district court's dismissal of Adams's First Amendment retaliation and conspiracy claims.

Dissenting, Judge Callahan stated that Adams should have the chance to hold the County accountable for its harsh reaction to her speech. The public concern test should be applied leniently in this case where Adams's speech did not fall within the realm of workplace grievances, had no arguable impact on her employer, and touched on matters of social or political concern.

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ORDER

The opinion filed on September 9, 2024, and published at 116 F.4th 1004 (9th Cir. 2024), is amended. The dissent is unchanged. The amended opinion is filed concurrently with this order.

Appellant filed a petition for rehearing en banc. With the opinion as amended, Judges S.R. Thomas and Sanchez voted to deny the petition for rehearing. Judge Sanchez voted to deny the petition for rehearing en banc and Judge S.R. Thomas so recommended. Judge Callahan voted to grant the petition for rehearing and the petition for rehearing en banc. The full court has been advised of the petition for rehearing en banc and no judge of the court has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 40.

Accordingly, the petition for rehearing and rehearing en banc is DENIED. No further petitions for rehearing or rehearing en banc may be filed.

OPINION

S.R. THOMAS, Circuit Judge:

In this interlocutory appeal, we consider whether sending private text messages to two friends during "a friendly, casual text message conversation," forwarding offensive racist spam images, and complaining about the images constitutes "a matter of legitimate public concern" under Pickering v. Board of Education, 391 U.S. 563 (1968), and Hernandez v. City of Phoenix, 43 F.4th 966 (9th Cir. 2022). Under the circumstances presented by this case, we conclude that the speech does not, and we affirm the district court's dismissal of the claim.

"We review a decision on a motion to dismiss for failure to state a claim de novo, accepting the allegations

in the complaint as true and viewing them in the light most favorable to the plaintiff." Galanti v. Nev. Dep't of Corr., 65 F.4th 1152, 1154 (9th Cir. 2023). "Whether an employee's speech addresses a matter of public concern is a pure question of law. . . ." Karl v. City of Mountlake Terrace, 678 F.3d 1062, 1069 (9th Cir. 2012). We review whether speech addresses a matter of public concern de novo. Hernandez, 43 F.4th at 977.

I

Kate Adams began working for the Sacramento County Sheriff's Office ("Department") in 1994. She became Chief of Police for the City of Rancho Cordova in March 2020. In 2021, she was forced to resign from that post over allegations that she sent racist messages.

The messages in question were sent on New Year's Eve in 2013 when Adams was having "a friendly, casual text message conversation" with her co-worker and then-friend, Dan Morrissey. The two were exchanging New Year's wishes, and Adams sent videos of her children playing. At some point in the exchange, Adams sent Morrissey a text message stating, "Some rude racist just sent this!!" along with two images she had received. The record does not reveal who sent Adams the images or their motivation. However, from context, it appears that Adams did not know the senders. One of the images depicted a white man spraying a young black child with a hose and contained a superimposed offensive racial epithet. The other message included an image of a comedian, with superimposed text containing an offensive racial slur. Morrissey responded, "That's not right." Adams then replied in a message starting with, "Oh, and just in case u [sic.] think I encourage this . . ." However, the remainder of the text is not in the record. On the same evening, Adams also texted the same images to another

co-worker and then-friend, LeeAnnDra Marchese, although the record does not reflect if any messages were sent with those transmittals.

Adams's messages were not posted on social media, nor otherwise made readily discoverable by anyone other than those to whom they were directed. The record is clear that the messages were intended for a purely private audience of several friends in the context of private, social exchanges during "a friendly, casual text message conversation."

Seven years passed without further incident. However, during that period, Adams's friendships with Marchese and Morrissey deteriorated. In 2015, Adams was promoted to Assistant Chief of Police for the City of Rancho Cordova.

In 2019, Adams was informed of potential misconduct on the part of Marchese. She forwarded the allegation to the Department's Internal Affairs Division. After Marchese learned of Adams's report, several anonymous misconduct complaints were lodged against Adams—none of which were found substantiated.

In July 2020, Adams filed a formal complaint of harassment and retaliation against Marchese with the County's Equal Employment Opportunity office. During the investigation, Marchese provided print-outs of the text messages that Adams had forwarded in 2013, but did not provide the surrounding text commentary from Adams. The Department commenced an investigation of Adams. During the investigation, Morrissey provided his cell phone showing the 2013 texts. The Department then gave Adams a choice to either resign or be "terminated and publicly mischaracterized as a racist." An attorney for the County told her that if she agreed to resign, the investigation would never become public; however, if she

refused to resign, "the investigation would fuel a 'media circus'" in which she would be labeled a racist. She chose to resign in September 2021.

However, six months later, in March 2022, the President of the Sacramento chapter of the NAACP published an open letter stating that Adams had sent racially charged pictures to other Sheriff's Department employees; the letter described the hose-spraying image and called for accountability. The Sacramento Bee then published an article repeating the open letter's allegations. As a result, Adams resigned from her longtime adjunct teaching position at a local university, and two prospective employers ended their consideration of her. She also claims anxiety, stress, and depression were caused by the significant blows to her professional career and personal reputation.

II

In August 2022, Adams filed suit against the County of Sacramento, the Sheriff, and several Does, alleging claims for (1) denial of procedural due process, (2) breach of contract, (3) deprivation of the right to free speech under the First Amendment, (4) First Amendment conspiracy, (5) false light invasion of privacy, (6) false light conspiracy, (7) intentional interference with prospective economic advantage, and (8) intentional infliction of emotional distress. The only causes of action at issue in this interlocutory appeal are Adams's claim for violation of her right to free speech under the First Amendment and her derivative First Amendment conspiracy claim.

The district court granted the Defendants' motion to dismiss Adams's first complaint for failure to state a claim, but granted Adams leave to amend. After Adams amended her complaint, the district court dismissed the First Amendment claims with prejudice for failure to

plead that the text messages constituted speech "on a matter of public concern." The district court held that "sen[ding] racist images, along with [Adams's] disapproval of the images"—as Adams described it—was not speech on a matter of public concern because Adams "ma[de] no allegations that her speech concerned either racism in her community or racism in the police department." In its initial dismissal, the court recognized that Adams's speech was not on a matter of public concern "because the speech was intended to be private and [did] not relate to the personnel or functioning of the Department."

Adams timely sought certification of the partial dismissal order for interlocutory appeal, under 28 U.S.C. § 1292(b). Defendants did not oppose, and the district court granted certification. A motions panel of our Court granted Adams's petition for permission to file this interlocutory appeal.

III

"[T]he First Amendment prohibits government officials from subjecting individuals to 'retaliatory actions' after the fact for having engaged in protected speech." *Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 474 (2022) (quoting *Nieves v. Bartlett*, 587 U.S. 391, 398 (2019)). In analyzing First Amendment retaliation claims brought by government employees, we employ the familiar test established in *Pickering*. Under the *Pickering* framework, it is the plaintiff's burden to establish that "(1) she spoke on a matter of public concern; (2) she spoke as a private citizen rather than a public employee; and (3) the relevant speech was a substantial or motivating factor in the adverse employment action." *Barone v. City of Springfield*, 902 F.3d 1091, 1098 (9th Cir. 2018). "If [a plaintiff] establishes such a prima facie

case, the burden shifts to the government to demonstrate that (4) it had an adequate justification for treating [the employee] differently than other members of the general public; or (5) it would have taken the adverse employment action even absent the protected speech." *Id.*

"In evaluating the First Amendment rights of a public employee, the threshold inquiry is whether the statements at issue substantially address a matter of public concern." *Roe v. City and County of San Francisco*, 109 F.3d 578, 584 (9th Cir. 1997) (citing *Allen v. Scribner*, 812 F.2d 426, 430 (9th Cir. 1987)); *see also City of San Diego v. Roe*, 543 U.S. 77, 84 (2004) (per curiam). "If . . . the speech did not address a matter of public concern, the employee simply has no First Amendment cause of action under *Pickering*." *Roberts v. Springfield Util. Bd.*, 68 F.4th 470, 474 (9th Cir. 2023) (citing *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006)).[1]

To determine "[w]hether an employee's speech addresses a matter of public concern," we consider "the content, form, and context of a given statement, as revealed by the whole record." *Connick v. Myers*, 461 U.S. 138, 147-48 (1983). We assess whether an employee's speech involves a matter of public concern "at the time of publication." *City of San Diego*, 543 U.S. at 84.

In viewing the whole record, we consider Adams's two text messages, the substance of the two forwarded

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[1] In *Dible v. City of Chandler*, 515 F.3d 918, 926–28 (9th Cir. 2008), we assumed, without deciding, that the "public concern" test does not apply as "a necessary threshold" for off-duty, non-work-related speech. Whether the test does, in fact, apply to such speech is an issue not properly raised in this case by the parties in their briefs or at oral argument, so we do not address that question here. Instead, we proceed on the assumption that the "public concern" standard as applied to workplace speech is applicable.

images, and the context of her conversations with Marchese and Morrissey as alleged in her complaint. We address the content, form, and context factors in turn, and we conclude that Adams's speech was one of personal interest, not public interest. Therefore, her text messages do not address a matter of public concern within the meaning of *Pickering*.

A

We start with the content of Adams's messages. "Speech involves matters of public concern 'when it can "be fairly considered as relating to any matter of political, social, or other concern to the community," or when it "is a subject of legitimate news interest."'" *Lane v. Franks*, 573 U.S. 228, 241 (2014) (quoting *Snyder v. Phelps*, 562 U.S. 443, 453 (2011)). The speech must involve "a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public at the time of publication." *City of San Diego*, 543 U.S. at 83–84. "[T]he content of the communication must be of broader societal concern." *Roe*, 109 F.3d at 585. As Professor Robert C. Post has explained, cases analyzing whether speech is "of public concern" have often followed either a "'normative' conception of public concern," or a "'descriptive' conception of public concern." Robert C. Post, *The Constitutional Concept of Public Discourse: Outrageous Opinion, Democratic Deliberation, and* Hustler Magazine v. Falwell, 103 Harv. L. Rev. 601, 669–72 (1990). The normative approach asks whether "the content of the speech at issue refers to matters that are substantively relevant to the processes of democratic self-governance." *Id.* at 670. The descriptive approach requires that the speech be "about issues that happen actually to interest the 'public,' which is to say to 'a significant number of persons.'" *Id.* at 672. This First Amendment protection is grounded in the value of "the

public's interest in receiving the well-informed views of government employees engaging in civic discussion." *Garcetti*, 547 U.S. at 419.

"[T]he essential question is whether the speech addressed matters of 'public' as opposed to 'personal' interest." *Desrochers v. City of San Bernardino*, 572 F.3d 703, 709 (9th Cir. 2009) (quoting *Connick*, 461 U.S. at 147). "[I]f the speech concerns information only of personal interest, 'a federal court is not the appropriate forum' in which to review the public agency reaction 'absent the most unusual circumstances.'" *Roe*, 109 F.3d at 585 (quoting *Connick*, 461 U.S. at 147). Because "restricting speech on purely private matters does not implicate the same constitutional concerns as limiting speech on matters of public interest," *Snyder*, 562 U.S. at 452, speech concerning only "personal interest," "such as speech addressing a 'personal employment dispute' or 'complaints over internal office affairs,'" ordinarily is not entitled to constitutional protection in the employment context. *Hernandez*, 43 F.4th at 977 (quoting *Connick*, 461 U.S. at 147, 148 n.9, 149); *see also Roe*, 109 F.3d at 585; *Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 965 (9th Cir. 2011).

In short, "if the communication is essentially self-interested, with no public import, then it is not of public concern." *Roe*, 109 F.3d at 585. "The focus must be upon whether the public or community is likely to be truly interested in the particular expression, or whether it is more properly viewed as essentially a private grievance." *Id.*; *see also Roberts*, 68 F.4th at 475 (restriction on private communications concerning a workplace misconduct investigation is not a matter of public concern).

The distinction we have drawn between personal and public interest applies even against the backdrop of

controversial issues like racism. To be sure, "protest[ing] racial discrimination" is a matter of public concern "where an employee speaks out as a citizen on a matter of general concern." *Connick*, 461 U.S. at 148 n.8 (citing *Givhan v. W. Line Consol. Sch. Dist.*, 439 U.S. 410, 415–16 (1979)). "Disputes over racial, religious, or other such discrimination by public officials" are a matter of public concern when, among other things, they involve the public's "deep and abiding interest" in "governmental conduct that affects the societal interest as a whole." *Alpha Energy Savers, Inc. v. Hansen*, 381 F.3d 917, 926–27 (9th Cir. 2004). Speech that addresses the topic of racism as relevant to the public can involve a matter of public concern. *Hernandez*, 43 F.4th at 978. However, speech that complains of only private, out- of-work, offensive individual contact by unknown parties does not necessarily do so.

There is no doubt that the images Adams received were offensive. However, Adams's texts and distribution of the images speak only of her exasperation at being sent the images, which is an issue of personal—not public—concern. Whether she was privately sent offensive, racist images outside the workplace, without more, is not a matter of public concern within the meaning of *Pickering*. The content of her private communications to her friends did not protest generally applicable "policies and practices" she "conceived to be racially discriminatory in purpose or effect." *Givhan*, 439 U.S. at 413. Nor does Adams suggest her receipt of the images is connected to "wrongful governmental activity" in the Department. *Alpha Energy Savers*, 381 F.3d at 927.

The substance of the images themselves does not alter the *Pickering* content analysis. Indeed, "[t]he inappropriate or controversial character of a statement is irrelevant to the question whether it deals with a matter

of public concern." *Rankin v. McPherson*, 483 U.S. 378, 387 (1987). In this context, our analysis in *Hernandez* is instructive. There, we considered the case of a police officer who was fired after posting several images that "sought to denigrate or mock" Muslims and Islam. *Hernandez*, 43 F.4th at 978. But taken alone, the images' expressed hostility towards Muslims was insufficient for us to conclude that the content factor weighed in Hernandez's favor. Instead, we found the images to address matters of public concern because they concerned subjects that "receive[d] media coverage" like "government spending priorities" and "touched on matters of cultural assimilation and intolerance of religious differences." *Id.* In addition to their content, it was also significant in *Hernandez* that the statements were posted to his Facebook account, where "any member of the general public could view it." *Id.* at 973. Something more than discussing an offensive racial comment, communicated in a private text, is required for speech to involve a matter of public concern. *See Lamb v. Montrose Cnty. Sheriff's Off.*, 2022 WL 487105, at *7 (10th Cir. Feb. 17, 2022) (holding that private text messages sent to a friend complaining about racism did not constitute "a matter of public concern").

Nor were the images themselves "a subject of legitimate news interest." *City of San Diego*, 543 US at 83–84. While Adams now attempts to liken her texts to "commenting on an item of political news," we assess her speech at the time it was made. *Id.* (noting that the assessment of whether a matter is of public concern is made "at the time of publication"). "We look to what the employee[] actually said, not what they say they said after the fact." *Desrochers*, 572 F.3d at 711. We examine the content of the statements at the time they were made, rather than rely on an employee's "post hoc

characterizations" of their statements. *Id.* at 711. And "[a] statement 'does not attain the status of public concern simply because its subject matter could, in different circumstances, have been the topic of a communication to the public that might be of general interest.'" *Leverington v. City of Colorado Springs*, 643 F.3d 719, 727 (10th Cir. 2011) (quoting *Salehpoor v. Shahinpoor*, 358 F.3d 782, 788 (10th Cir. 2004)).

When made, the texts involved a private matter—her receipt of offensive images transmitted by an anonymous sender. There is no suggestion in her complaint that these two images were newsworthy when she forwarded them to Marchese and Morrissey. "[T]he fact that the incident mentioned . . . gained public interest does not mean that the [speech] itself was framed in a manner calculated to ignite that public interest." *Morris v. City of Colorado Springs*, 666 F.3d 654, 663 (10th Cir. 2012). We do not know who sent Adams the images, and she makes no allegation that the images were of note in her community, her job, or to the public. Nor does she suggest their circulation to her was the result of broader issues in the police department.

In this instance, the subject matter—private receipt of offensive images—was also not "substantively relevant to the processes of democratic self-governance," Post, *supra*, at 670, nor an issue that was needed to enable members of society "to make informed decisions about the operation of their government." *McKinley v. City of Eloy*, 705 F.2d 1110, 1114 (9th Cir. 1983) (quoting *Thornhill v. Alabama*, 310 U.S. 88, 102 (1940) (footnote omitted)). The subject matter of private forwarded offensive messages at the time the messages were sent was not of interest to the general public, nor "a significant number of persons." Post, *supra*, at 672.

Thus, examining the plain language of Adams's texts and the forwarded images, we conclude she was commenting on a personal matter. Therefore, Adams has failed to establish the content factor required in a *Pickering* First Amendment retaliation claim.

B

We next consider the form and context of Adams's speech. Here, the form and context—private social texts to a co-worker—weigh against finding her texts addressed a matter of public concern. "When assessing these two factors, we look to the public or private nature of the speech, and to the speaker's motive." *Turner v. City and County of San Francisco*, 788 F.3d 1206, 1211 (9th Cir. 2015); *Johnson v. Multnomah County*, 48 F.3d 420, 425 (9th Cir. 1995) ("[T]he employee's motivation and the chosen audience are among the many factors to be considered in light of the public's interest in the subject matter of the speech."). As we have succinctly put it, the question as to motivation is "[W]hy did the employee speak (as best as we can tell)?" *Turner*, 788 F.3d at 1210 (quoting *Desrochers*, 572 F.3d at 715).

Thus, it is important whether the employee sought to provide information about an issue of public concern, *Connick*, 461 U.S. at 148, or "made [their remarks] in the course of a conversation addressing . . . polic[y]" or "matter[s] of heightened public attention." *Rankin*, 483 U.S. at 386. Statements made in public may weigh in favor of a finding that the matters discussed were "of public concern." For example, posting images online to "be viewed by any member of the general public" suggests an intent to "foster discussion on those topics." *Hernandez*, 43 F.4th at 978; *see also Desrochers*, 572 F.3d at 715 ("Because the speech at issue took the form of internal employee grievances which were not disseminated to the

public, this portion of the *Connick* test cuts against a finding of public concern."). But the "limited circulation" of speech "is not, in itself, determinative." *Jensen v. Brown*, 131 F.4th 677, 688 (9th Cir. 2025) (quoting *Demers v. Austin*, 746 F.3d 402, 416 (9th Cir. 2014)). Speech uttered, for example, only to a fellow employee or a workplace superior, "rather than to the general public," does not *necessarily* "remove it from the realm of public concern." *Id.* (quoting *Chateaubriand v. Gaspard*, 97 F.3d 1218, 1223 (9th Cir. 1996)).

In this case, however, the answer to the question of "why did the employee speak" is evident from the record: Adams received private offensive texts and complained about receiving them privately to two friends. And here, unlike the situation in *Hernandez*, the form of the communications was private texts not intended to be accessed by anyone else. Neither the form nor context of the messages indicates that Adams intended to discuss "matter[s] of heightened public attention" or policy. *Rankin*, 483 U.S. at 386.

Although the speech's form is not always "dispositive," a speaker's "narrow . . . focus and limited audience weigh against [a] claim of protected speech." *Roe*, 109 F.3d at 585. When speech is directed to a limited audience, and a conversation personal rather than political in nature, the form and context factors weigh against concluding that the speech addresses a matter of public concern. *See Desrochers*, 572 F.3d at 714; *Roe*, 109 F.3d at 585. As we have noted on a number of occasions, the fact that private communications are directed to co-workers—rather than the public or press—may cut against a conclusion that the matter is of public concern. *See Jensen*, 131 F.4th at 688; *Desrochers*, 572 F.3d at 710; *Roe*, 109 F.3d at 586; *Johnson*, 48 F.3d at 425.

The form and context of Adams's texts to Morrissey[2] evince nothing more than a casual private conversation among friends. As stated in the complaint, Adams and Morrissey were "engaged in a friendly, casual text message conversation" where they "exchanged Happy New Year's wishes and Ms. Adams shared videos of her children playing." The private texts were directed only to two recipients—an extremely limited audience. Adams intended for the messages to remain private, as they only resurfaced when the recipients revealed them years later. And the context—a text exchange among friends discussing their children and the holidays, free of political discourse—reinforces the fact that her texts express her personal adverse reaction at being sent the imagery, instead of advancing societal political debate. *See Lamb*, 2022 WL 487105, at *7.

The form and context of the communications confirm our conclusion that Adams's private texts were only meant to convey a personal grievance about receiving offensive private texts to her friends in the course of social conversation, not to comment on a matter of public concern. There is no indication in the context that she intended to make a public comment.

IV

Taken together, each factor—content, form, and context—forecloses Adams's claim that her speech addressed a "matter of public concern" within the meaning of Pickering. Adams's dismissal may or "may not be fair," Connick, 461 U.S. at 146, but unfairness alone does not create the "right to transform everyday

[2] The totality of Adams's conversation with marchese is not preserved, so we rely on her conversation with Morrissey, but Adams does not allege anything distinct about the form or context of her texts with Marchese that would change our analysis on these factors.

employment disputes into matters for constitutional litigation in the federal courts." Borough of Duryea v. Guarnieri, 564 U.S. 379, 399 (2011).

And, as we have noted, Adams has other causes of action that were not resolved by the district court. This interlocutory appeal only concerns her First Amendment retaliation and conspiracy claims. We, of course, express no view as to the other claims, which are not before us.

We affirm the decision of the district court as to the dismissal of the First Amendment retaliation and conspiracy claims and remand for further proceedings. We need not, and do not, reach any other issue urged by the parties.

AFFIRMED.

CALLAHAN, Circuit Judge, dissenting:

This is not your average First Amendment retaliation case. Kate Adams's speech occurred outside of work, was totally unrelated to her job, and should not have had any impact on her employment, but did. The public concern test was not meant to deprive public servants of all First Amendment protection in such circumstances. Our circuit has broadly construed the public concern test for decades. This is a strange case in which to suddenly start applying it strictly. Because Ms. Adams should have the chance to hold the County accountable for its harsh reaction to her speech, I dissent.

I.

My colleagues and I agree on the broad strokes of the public concern test. "Speech involves matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." *Lane v. Franks*, 573 U.S. 228, 241 (2014) (internal quotation omitted). "Whether an employee's speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record." *Greisen v. Hanken*, 925 F.3d 1097, 1109 (9th Cir. 2019) (quoting *Connick v. Myers*, 461 U.S. 138, 147–48 (1983)). A principle the majority opinion conveniently elides is that, of these three factors, the "content of the speech is generally the most important." *Id.* (internal quotation omitted); *see Johnson v. Poway Unified Sch. Dist.*, 658 F.3d 954, 965 (9th Cir. 2011) ("Of the three concerns, content is king.").

The public concern test is a notoriously difficult one to apply, but guidance can be found from its purpose and origins. The test was developed to filter out clearly *un*protected speech by public employees—"namely, speech on 'matters only of personal interest,' such as speech addressing 'a personal employment dispute' or 'complaints over internal office affairs.'" *Hernandez v. City of Phoenix*, 43 F.4th 966, 976 (9th Cir. 2022) (quoting *Connick v. Myers*, 461 U.S. 138, 147, 148 n.8, 149 (1983)). Given that history, our court has long defined "public concern" broadly to include "almost *any* matter other than speech that relates to internal power struggles within the workplace." *Tucker v. State of Cal. Dep't of Educ.*, 97 F.3d 1204, 1210 (9th Cir. 1996). Just two years ago, we reaffirmed that "[m]ost speech falling outside that purely private realm"—the realm of personal employment disputes and internal complaints—"will warrant at least some First Amendment protection and thus will qualify as speech on a matter of public concern," allowing the claim to be decided on the core elements of the *Pickering* framework. *Hernandez*, 43 F.4th at 977.

Ms. Adams's speech here—her text messages to her colleagues—do not fall in the realm of workplace grievances. Indeed, as the majority acknowledges (and as the parties agree), her texts were wholly unrelated to her job or her employer. Accordingly, the liberally construed public concern test should be applied leniently in this case, as I shall explain.

A.

The public concern test was created out of recognition that the First Amendment must apply differently to the government when it is acting as employer, instead of acting as sovereign. *See Pickering v. Bd. of Ed. of Twp. High Sch. Dist. 205*, 391 U.S. 563, 568 (1968) (observing

that the government has "interests as an employer in regulating the speech of its employees that differ significantly from those it possesses in connection with regulation of the speech of the citizenry in general"); *see also Bd. of Cnty. Comm'rs, Wabaunsee Cnty. v. Umbehr*, 518 U.S. 668, 676 (1996) ("[T]he government's interest in achieving its goals as effectively and efficiently as possible is elevated from a relatively subordinate interest when it acts as sovereign to a significant one when it acts as employer." (quotation omitted)). "A government entity has broader discretion to restrict speech when it acts in its role as employer, but the restrictions it imposes must be directed at speech *that has some potential to affect the entity's operations*." *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006) (emphasis added).

"*Pickering* is based on the insight that the speech of a public-sector employee may interfere with the effective operation of a government office." *Janus v. Am. Fed'n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 908 (2018). Thus, when an employee's speech is about conditions at her job or actions by her government employer, the government employer's interest in self-protection is at its zenith. Subjecting government offices to litigation every time a disgruntled employee complains about the work environment would seriously undermine that office's ability to carry out its mission and serve the public. *See City of San Diego v. Roe*, 543 U.S. 77, 82 (2004) (per curiam). In cases arising from internal office complaints, the public concern test has its highest use: serving as a bulwark to deflect those employee grievances that do not truly concern the public.

Indeed, that was the precise context that led the Supreme Court in *Connick v. Myers*, 461 U.S. 138 (1983), to first make the public concern inquiry an explicit threshold test. In *Connick*, an assistant district attorney

sought First Amendment protection after being discharged for circulating an intraoffice survey/questionnaire in response to being transferred against her wishes. *Id.* at 140–41. The Court held that the bulk of the questionnaire was "most accurately characterized as an employee grievance concerning internal office policy." *Id.* at 154. The Court reasoned that the assistant district attorney "did not seek to inform the public that the District Attorney's office was not discharging its governmental responsibilities," nor did she "seek to bring to light actual or potential wrongdoing or breach of public trust" by the office. *Id.* at 148.

This focus on what might generally be called "whistleblowing" against government actors takes center stage in many of our court's cases applying the public concern test, including those cited by the majority. *See, e.g.*, *Desrochers v. City of San Bernardino*, 572 F.3d 703, 712 (9th Cir. 2009) (citing absence of "allegations of conduct amounting to 'actual or potential wrongdoing or breach of public trust'" (quoting *Connick*, 461 U.S. at 148)); *Roe v. City & Cnty. of San Francisco* ("*Roe v. S.F.*"), 109 F.3d 578, 585 (9th Cir. 1997) ("Public employee speech is 'of public concern' if it helps citizens 'to make informed decisions about the operation of their government.'" (quoting *McKinley v. City of Eloy*, 705 F.2d 1110, 1114 (9th Cir. 1983)). In rejecting Ms. Adams's claims, the majority relies heavily on the absence of indicia of whistleblowing—emphasizing that her texts were neither about wrongdoing by the Sheriff's Department nor sharing information that would enable informed decisions about the Department's operation.

But in imposing a supposed whistleblowing requirement, the majority considers only cases that, like *Connick*, have applied the public concern test to speech that occurred at work or about work. *See Roberts v.*

Springfield Util. Bd., 68 F.4th 470, 472, 475 (9th Cir. 2023) (prohibiting employee from speaking about his own alleged violation of employer's policies during internal investigation); *Desrochers*, 572 F.3d at 712–19 (sergeants' internal grievances against superiors); *Alpha Energy Savers, Inc. v. Hansen*, 381 F.3d 917, 925–27 (9th Cir. 2004) (testimony about discrimination by governmental employer); *Roe v. S.F.*, 109 F.3d 578 (officer's memo regarding district attorneys not prosecuting his cases); *McKinley*, 705 F.2d at 1112, 1114 (officer publicly criticizing city's withholding of annual police officer raises). Indeed, "public concern" jurisprudence overall "has typically focused on employee speech that takes place at work or that addresses the policies of the government employer." *Roe v. City of San Diego*, 356 F.3d 1108 (9th Cir. 2004), *reversed on other grounds sub nom. City of San Diego v. Roe*, 543 U.S. 77 (2004).

Because employee speech at work or about work often *can be* viewed as an individual employment grievance not entitled to constitutional protection, in those cases it is necessary to conduct a searching inquiry into the motivation for the speech (part of its context) and the content of the speech to ensure it is sufficiently robust to communicate some message of interest to the broader public. That is where our focus on some degree of whistleblowing comes into play. The court in *Desrochers*, for instance, held the plaintiff-sergeants' internal grievances did not satisfy the content factor because they merely involved "a personality dispute centered on [their supervisor]'s management style" and alleged no "actual or potential wrongdoing or breach of public trust." 572 F.3d at 712 (quoting *Connick*, 461 U.S. at 148). Coming to the opposite conclusion in *McKinley*, we held the plaintiff-officer's public criticism of the city-employer withholding annual officer raises—something that impacted the

plaintiff's personal working conditions—nonetheless qualified for protection because it was about an issue that impacted "the competency of the police force" and its ability to efficiently perform its duties. 705 F.2d at 1114.

Alerting the public to government abuses or mismanagement is perhaps the clearest form of speech on a matter of public concern, but it is not the only form. Precedent firmly establishes that speech need not involve whistleblowing to touch on matters of public concern. Take another foundational Supreme Court case, *Rankin v. McPherson*, 483 U.S. 378 (1987).

In *Rankin*, a clerical employee in a county constable's office was discharged "for remarking, after hearing of an attempt on the life of [President Reagan], 'If they go for him again, I hope they get him.'" *Id.* at 379–80. (The employee made this remark informally and privately to a co-worker at the office after the two heard about the attempted assassination over the office radio. *Id.* at 381–82.) The Court held this remark "plainly dealt with a matter of public concern"—reasoning that the statement "was made in the course of a conversation addressing the policies of the President's administration" and "came on the heels of a news bulletin regarding what is certainly a matter of heightened public attention: an attempt on the life of the President." *Id.* at 386. Nowhere in its two-paragraph analysis did the Court pause to inquire whether the employee's off-the-cuff remark was serving any whistleblowing purpose or conveying a message the public would find informative. There was no need to go there because the Court was addressing speech whose content had nothing to do with the workplace and therefore could not be alternatively construed as an employee grievance.

Another clear example of the wide range of speech that may qualify without being directed to government (mis)conduct lies in our recent decision in *Hernandez*, 43 F.4th 966. There, we found a police officer's series of Facebook posts denigrating Muslims and Islam constituted speech on matters of public concern. *Id.* at 972–73, 977. As the majority notes, one of the four posts at issue (a link to an article headlined "'Military Pensions Cut, Muslim Mortgages Paid By US!'") addressed in some part "the subject of government spending priorities." *Id.* at 974, 978. None of the other three posts had any connection to government conduct,[1] and yet we found all of them were also speech on matters of public concern. *Id.* at 973–74, 977. *Contra Connick*, 461 U.S. at 148 (looking for whistleblowing intent); *Roe v. S.F.*, 109 F.3d at 585 (looking for speech to inform on operation of government).

Thus, although in the context of speech related to one's employment or employer the test often does turn on the presence or absence of whistleblowing, the test does not always do so beyond that context. Courts must be careful not to allow litigants to, as the majority writes, "transform everyday employment disputes into matters for constitutional litigation." *Borough of Duryea v. Guarnieri*, 564 U.S. 379, 399 (2011); *see Connick*, 461 U.S. at 154 (rejecting assistant district attorney's claim as an "attempt to constitutionalize the employee grievance").

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[1] The first was a meme asserting that "Muhammad" is "the most common name for a convicted gang rapist in England." *Id.* at 973, 984. The second was a meme endorsing a supposed story of a British cab driver kicking an "Arab Muslim" out of his cab for requesting that the driver turn off the radio, in keeping with the passenger's faith. *Id.* at 973–74, 984. And the third meme depicted four purported quotations by Islamic scholars or scientists to "mock the[ir] supposed contributions to science." *Id.* at 974, 984.

But that's just it: Ms. Adams's texts were not about any employment dispute. She was texting friends about the jarring experience of having received two racist memes, apparently out of the blue. In cases like this one, which involve no "employment dispute[]" or "employee grievance" to begin with, the absence of whistleblowing content or motivation says little about how interested the public might be in the subject of the speech—and therefore should not factor into the equation.

B.

Instead, we should apply the intentionally broadly phrased test of whether the speech at issue "can be fairly considered as relating to any matter of political, social, or other concern to the community." *Lane*, 573 U.S. at 241 (internal quotation omitted); *see Connick*, 461 U.S. at 146. Under binding precedent, the answer for Ms. Adams's text messages is clearly yes.

Ms. Adams's texts here bear a strong resemblance to one of the Facebook posts held to pass the public concern test in *Hernandez*, 43 F.4th 966. The second post addressed in *Hernandez* was "a meme depicting a photo of what appears to be a British cab driver opening the door to his cab. The text accompanying the photo states, 'You just got to love the Brits,' followed by two paragraphs of text describing a supposed encounter between a 'devout Muslim' and a cab driver in London . . . ." *Id.* at 973. The gist of the described encounter was that the Muslim passenger asked the cab driver to turn off the radio, and the cab driver stopped the cab and told the "Arab Muslim" to "'piss-off [sic] and wait for a camel!'" *Id.* at 973–74. In assessing the content factor for this post, the court held this meme "at least tangentially touched on matters of cultural assimilation and intolerance of religious differences in British society, which again are

topics of social or political concern to some segments of the general public." *Id.* at 978.

In *Hernandez*, we did not look for any of the extra indicia of public importance that today's majority now piles onto the test. Officer Hernandez's xenophobic attempt at humor was not "substantively relevant to the processes of democratic self-governance." And, while the post was public, the meme cannot be said to have *informed* the public about anything—let alone to have helped them "to make informed decisions about the operation of their government." *Cf. Roe v. S.F.*, 109 F.3d at 585; *McKinley*, 705 F.2d at 1114. Nevertheless, that post satisfied the content factor. Contrary to the majority's spin, this second post satisfied the content factor simply by virtue of having addressed "matters of cultural assimilation and intolerance of religious differences"—without the court citing any contemporaneous media coverage of these topics, as it had for the other three posts. *Hernandez*, 43 F.4th at 978.

Given that *Hernandez*'s cab driver post counted as speech on "matters of cultural assimilation and intolerance of religious differences" satisfying the content factor, *id.*, so too do Ms. Adams's texts—as speech on matters of racism. The majority is quick to point out that Officer Hernandez's Facebook posts, unlike Ms. Adams's texts, were posted to a public platform. *Id.* at 973. But the public or private nature of the communication implicates the *form* factor, not the content factor.[2] *See id.* at 977

[2] This is one of two key moments where the majority allows considerations of form and context to bleed into its analysis of content. In addition to emphasizing the private form of the texts to downplay their content, the majority also double counts the lack of allegations that Ms. Adams was participating in an ongoing discussion of racism, which goes to context, not content.

(noting that form factor encompasses the statement's "time, place, and manner").

As *Hernandez* demonstrates, the majority also takes an overly narrow view of the content of Ms. Adams's speech, as a factual matter. The majority insists that because Ms. Adams's texts were merely conveying "exasperation" at having received offensive memes, she was voicing a purely personal concern. Elsewhere, the majority claims it is considering the full package of Ms. Adams's speech: both her two text messages and "the substance of the two forwarded images." But in its analysis of the content factor, the majority suddenly forgets the images themselves. The most egregious of the two images depicted a white man spraying a young black child with a garden hose and the superimposed text, "Go be a n***** somewhere else," without the asterisks. While Ms. Adams's cover message was expressing disdain for the vile racism displayed in that image, she also sent the image itself. And under *Hernandez*, that image at least tangentially touches on matters of racism. 43 F.4th at 973–74, 978 (cab driver meme); *see Dodge v. Evergreen Sch. Dist. #114*, 56 F.4th 767, 777 (9th Cir. 2022) (teacher's hat bearing the slogan "Make America Great Again" constituted speech on "issues such as immigration, racism, and bigotry, which are all matters of public concern").

The fact that Ms. Adams may not have been *advocating* for or against anything in her series of texts should not change the content calculus, though the majority allows it to. The majority acknowledges that speech on "the topic of racism as relevant to the public" *can* satisfy the public concern test. The majority rejects Ms. Adams's speech here, though, because she was "complain[ing] of only private, out-of-work, offensive individual contact." As explained above, however, the lack

of connection between her speech and her work should make it easier, not harder, for Ms. Adams to pass the public concern threshold in this non-grievance-based case.

Moreover, even if Ms. Adams's messages are construed to lack advocacy, this does not foreclose satisfaction of the content factor. The district court in *Hernandez* made the same mistake the majority now makes in requiring an advocacy component. There, the district court had found "no indication of [social and political] advocacy in the true content" of the Facebook posts—rejecting Officer Hernandez's characterization of his posts as commentary on, inter alia, "cultural assimilation." *Hernandez v. City of Phoenix*, 482 F. Supp. 3d 902, 914–15 (D. Ariz. 2020) (citing *Roe v. S.F.*, 109 F.3d at 585), *aff'd in part, rev'd in part*, 43 F.4th 966 (9th Cir. 2022). In reversing the district court's dismissal of the retaliation claim, this court held that the posts were in fact commentary on "cultural assimilation," despite the lack of accompanying advocacy.[3] *Hernandez*, 43 F.4th at 978.

Here, Ms. Adams's amended complaint characterizes her texts as "condemning racist images." This is an entirely fair characterization of her actual messages: first, "Some rude racist just sent this!!", followed by her statement denying "encourag[ing] this." *See Connick*, 461 U.S. at 146 ("fairly characterized" standard). Despite the

[3] Supreme Court precedent further confirms that we look to the issue underlying the speech, not the quality of the speech itself, in applying the public concern test. Like the signs the Westboro Baptist Church protestors were holding in Snyder v. Phelps, Adams's text messages "may fall short of refined social or political commentary," but "the issue[] they highlight"—racism—is unquestionably a matter of public import. 562 U.S. 443, 454 (2011) (holding that signs stating "God Hates the USA/Thank God for 9/11" and "God Hates Fags" highlighted "matters of public import").

majority's straw-man comparison, this is not a case of post hoc mischaracterization like *Desrochers*, where the plaintiff-sergeants tried to recast their grievances over "poor interpersonal relationships" with superiors as speech implicating the competency and efficiency of the police force. 572 F.3d at 711–12. *Hernandez*'s acceptance of the plaintiff's framing of his cab driver post, 43 F.4th at 978, dictates that we accept Ms. Adams's equally (if not more) justified framing of her text messages as speech about racism. As in *Hernandez*, Ms. Adams's messages "assuredly did not address an internal workplace grievance or complaints about internal office affairs. They instead addressed matters of social or political concern that would be of interest to others outside the [Rancho Cordova] Police Department." *Id.* at 977–78. That should have been the beginning and the end of the content factor analysis.

C.

Instead of following binding circuit precedent, the majority invents a new set of requirements for satisfying the content factor based on Tenth Circuit cases and a 30-year-old law review article. *See* Robert C. Post, *The Constitutional Concept of Public Discourse: Outrageous Opinion, Democratic Deliberation, and* Hustler Magazine v. Falwell, 103 Harv. L. Rev. 601 (1990). With no disrespect to Professor Post, whose work has been favorably cited in various Ninth Circuit decisions, his writings are no substitute for caselaw. Nevertheless, the majority seems to adopt one of Professor Post's *descriptions* of the state of "public concern" jurisprudence (in 1990) as part of the standard for satisfying the content factor of the public concern test. The majority rejects the subject matter of Ms. Adams's texts for not being "substantively relevant to the processes of democratic self-governance." Post, *supra*, at

670. This language has never before appeared in the opinions of this circuit or any other. And, as previously discussed, many First Amendment claims have gone forward without content that would meet that supposed standard.[4] *See, e.g.*, *Rankin*, 483 U.S. 378; *Hernandez*, 43 F.4th 966.

The second prong of the majority's new test rests on true precedent, but precedent that it reads selectively. The majority's second prong asks whether the content of the speech concerned "an issue that was needed to enable members of society 'to make informed decisions about the operation of their government.'" Certainly, we have acknowledged that such speech "merits the highest degree of [F]irst [A]mendment protection." *McKinley*, 705 F.2d at 1114. But that does not mean all other types of speech merit *no* First Amendment protection—which is the consequence of rejecting retaliation claims at the threshold "public concern" stage. As *McKinley* itself states, this informative requirement (like the whistleblowing discussed above) is tied specifically to speech that could be viewed as an employment dispute or

[4] Indeed, Professor Post himself did not even offer this language as a definitional standard. It comes from a section of his article stating that "in most instances" the Supreme Court's use of the phrase "public concern" "signifies that the content of the speech at issue refers to matters that are substantively relevant to the processes of democratic self-governance." Post, *supra*, at 670. The very next sentence, however, critiques this conception of public concern as "lead[ing] directly to a doctrinal impasse." *Id.* As Post puts it, "every issue that can potentially agitate the public is also potentially relevant to democratic self-governance, and hence potentially of public concern." *Id.* "[C]ommunication for one purpose, such as gossip, will influence communication for another, such as self-government." *Id.* at 674. Thus, it appears that Professor Post would have understood Ms. Adams's texts about the racist memes to *qualify* as speech substantively relevant to the processes of democratic self-governance.

grievance. *See id.* ("Speech by public employees may be characterized as not of 'public concern' when it is clear that such speech *deals with individual personnel disputes and grievances and that* the information would be of no relevance to the public's evaluation of the performance of governmental agencies." (emphasis added)); *see also Roberts*, 68 F.4th at 474–75 (same); *Coszalter v. City of Salem*, 320 F.3d 968, 973 (9th Cir. 2003) (same). When the discipline-triggering speech cannot—by any stretch—be viewed as airing an individual employee grievance, the plaintiff is not required to show that her speech had this informative quality. *See, e.g.*, *Rankin*, 483 U.S. 378; *Hernandez*, 43 F.4th 966.

Lacking sufficient Ninth Circuit precedent to reject Ms. Adams's speech, the majority turns to the Tenth Circuit for back-up. If the Tenth Circuit applied the public concern test comparably to our circuit's "broad[]" and "liberal" approach, that would be one thing. *See Dodge*, 56 F.4th at 777 ("What constitutes public concern is 'defined broadly[.]'" (quoting *Ulrich v. City & Cnty. of San Francisco*, 308 F.3d 968, 978 (9th Cir. 2002)); *Roe v. S.F.*, 109 F.3d at 586 ("We adhere to a liberal construction of what an issue 'of public concern' is under the First Amendment."). But it does not. Tenth Circuit courts "construe 'public concern' very narrowly." *Butler v. Bd. of Cnty. Comm'rs*, 920 F.3d 651, 656 (10th Cir. 2019) (quoting *Leverington v. City of Colorado Springs*, 643 F.3d 719, 727 (10th Cir. 2011)). Our court has never taken that approach, and the majority provides no reason for its about-face.

Like the district court, the majority also relies on a superficially similar unpublished Tenth Circuit case in which a police officer's text message to a friend on his personal cellphone was held not to be speech on a matter of public concern. *See Lamb v. Montrose Cnty. Sheriff's*

Off., No. 19-1275, 2022 WL 487105 (10th Cir. Feb. 17, 2022). The text message sent in *Lamb* expressed dislike of the officer's new work environment, mentioning "Racism" and lack of professionalism. *Lamb*, 2022 WL 487105 at *1. The Tenth Circuit held this was not speech on a matter of public concern because the text was neither public nor "intended for public dissemination" and the use of "free-floating" terms like "Racism" without explanation did not "sufficiently inform the issue as to be helpful to the public in evaluating the conduct of government." *Id.* at *7 (internal quotation marks omitted). *Lamb* is distinct and not persuasive, however, because of the critical difference that the officer's speech was expressing *dissatisfaction with his employment and employer.* Like *Desrochers*, 572 F.3d at 712–19, *Lamb* relies on standards that are—or were, until today—unique to evaluating claims based on speech that can be construed as a workplace grievance.

II.

The majority errs in applying rules common to workplace grievance cases to this case of speech that was both unrelated to Ms. Adams's work and not detrimental to her employer.[5] The overarching interest in having a government office fulfill its mission effectively and efficiently is not impacted by employee speech wholly unrelated to the job or the office. Such cases do not demand strict gatekeeping because they carry no risk of admitting an employee-grievance claim dressed up as a

[5] When an employee's speech is facially unrelated to her job or employer, it might still have the potential to negatively impact her government employer and thus qualify as related to her employment. *See, e.g., City of San Diego v. Roe*, 543 U.S. 77, 81–82 (2004) (officer's production and dissemination of pornography linked to police force). But here Defendants have never argued any detrimental impact from Ms. Adams's speech as it actually was: voicing objection to racist commentary.

constitutional claim. Here, Ms. Adams's texts—in their full form and at the time of transmission, not as later misconstrued and selectively publicized by third parties—had no arguable impact on her employer. Thus, the public concern test is only loosely applicable. *See Garcetti*, 547 U.S. at 418 (restrictions imposed by the government as employer "must be directed at speech that has some potential to affect the entity's operations"); *City of San Diego*, 543 U.S. at 80 ("[W]hen government employees speak or write on their own time on topics unrelated to their employment, the speech can have First Amendment protection, absent some governmental justification 'far stronger than mere speculation' in regulating it." (citation omitted)).

Various courts and jurists have questioned whether the test should apply at all to employee speech unrelated to their employment. *See, e.g.*, *Connick*, 461 U.S. at 157 (Brennan, J., dissenting, joined by Marshall, Blackmun, Stevens, JJ.) (noting that "[w]hen public employees engage in expression unrelated to their employment while away from the work place, their First Amendment rights are, of course, no different from those of the general public," limiting the relevance of the public concern test in that context); *Dible v. City of Chandler*, 515 F.3d 918, 927–29 (9th Cir. 2008) (supposing without deciding "the public concern test is not required when unrelated expressive activity takes place away from the work setting"); *id.* at 932 (Canby, J., concurring) ("Public concern should not be a hurdle depriving employee speech of First Amendment protection when that speech is unrelated to the employment."); *Locurto v. Giuliani*, 447 F.3d 159, 172–75 (2d Cir. 2006) (in dicta, discussing how Supreme Court precedent demonstrating "the public concern test does not apply neatly as a threshold test for expression unrelated to Government employment"). We

need not tackle that question here. I take no issue with the decision to apply the public concern test to these facts. The problem is that the majority applies an inordinately robust version of the public concern test in this case that barely implicates its animating principles. The public concern test does not disqualify Ms. Adams's speech, which was not related to her employment, from First Amendment protection.

III.

"The public concern test was . . . intended to weed out claims in which an adverse employment action is taken against an employee for complaining about internal office affairs, such as the employee's conditions of employment or job status." *Roe v. City of San Diego*, 356 F.3d at 1115, *rev'd on other grounds*. Thus, *Hernandez* found the form factor weighed in the officer's favor in part because he "posted each of the items at issue on his own time, outside the workplace, using his personal Facebook profile." 43 F.4th at 978. Whereas *Hernandez* recognized that these features confirmed the non-grievance nature of the speech, today's majority holds these very same circumstances *against* Ms. Adams. And when *Hernandez* considered the context factor, its analysis remained focused on whether the surrounding circumstances revealed a connection to a workplace grievance. *See id.* ("The context in which Hernandez's posts were made also supports the conclusion that the posts were not tied to any workplace dispute or grievance."). There are no allegations connecting Ms. Adams's text messages to her work or any workplace grievance. That should, at the very least, have balanced out the other aspects of the form and context factors on which the majority exclusively relies.

And in the end, "content is king." *Johnson*, 658 F.3d at 965. The content favors Ms. Adams because her

comment on portrayals of racism touches on a "topic[] of social or political concern to some segments of the general public," *Hernandez*, 43 F.4th at 978, and neither her messages nor the images "address[ed] an internal workplace grievance or complaints about internal office affairs," *id.* at 977.

Today's decision demonstrates the real-life consequences of adopting an overly strict approach to free speech claims made by public employees. The majority withholds even the *possibility* of First Amendment protection for a dedicated public servant, who devoted 27 years of her life to protecting the people of Sacramento County. The First Amendment is supposed to protect the right to speak about political issues without fear of retribution by the government. Yet, the County forced Ms. Adams to resign for sharing her reaction to a meme reflecting disturbing "issues of the day," *Weeks v. Bayer*, 246 F.3d 1231, 1235 (9th Cir. 2001), and the majority says she may not even get a foot in the courthouse door. The County punished Ms. Adams for speech she had a right to make. At the very least, it should have to demonstrate a justification for doing so.

Today's opinion revises the public concern test in a way that deprives public employees of constitutional protection for their non-grievance speech. But "citizens do not surrender their First Amendment rights by accepting public employment." *Lane*, 573 U.S. at 231. Ms. Adams should not have been forced to surrender hers

APPENDIX B

[FILED: MARCH 27, 2023]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KATE ADAMS, Plaintiff, v. COUNTY OF SACRAMENTO, a political subdivision of the state of California; SHERIFF SCOTT JONES in his individual capacity; and DOES 1-10, Defendants.	No. 2:22-cv-01499 WBS KJN ORDER RE: DEFENDANTS' MOTION TO DISMISS CLAIMS IN FIRST AMENDED COMPLAINT

On January 11, 2023, this court granted defendants' motion to dismiss plaintiff's complaint in its entirety. (Order (Docket No. 16).) On February 15, 2023, the court denied plaintiff's motion for partial reconsideration of the dismissal of plaintiff's First Amendment and First Amendment conspiracy claims (Claims 3 and 4). (Docket No. 28.)

Plaintiff subsequently filed her First Amended Complaint which, among other things, re-alleges her First Amendment and First Amendment conspiracy claims with little or no additional allegations in support. Plaintiff again alleges that she sent a text message to a friend which said, "'Some rude racist just sent this!!" along with the two racist images that she had been sent. (First Am. Compl. ¶ 89.)

Presently before the court is defendants' to dismiss only those claims for violation of the First Amendment and First Amendment conspiracy (Claims 3 and 4). (Mot. (Docket No. 25-1).) In its prior order dismissing the original Complaint, the court found that plaintiff's text messages were not a matter of public concern and thus plaintiff failed to allege facts sufficient to support her First Amendment claims. (Order at 12-13.)

In her opposition to the present motion, plaintiff acknowledges that she does not advance any new allegations regarding her First Amendment claims,[1] and instead incorporates her previously made arguments. (*See* Opp'n at 2 (Docket No. 29).) Plaintiff states that she "files this opposition and the arguments contained herein solely for the purpose of preserving her right to appeal the First Amendment claims." (*Id.*) After hearing the parties' oral arguments with regard to these claims, the court reaffirms its determination that plaintiff has failed to sufficiently allege a claim based upon violation of the First amendment.

To determine whether a government employer has violated the First Amendment, the Ninth Circuit applies a five-part test which asks:

> (1) whether the plaintiff spoke on a matter of public concern; (2) whether the plaintiff spoke as a private citizen or public employee; (3) whether the plaintiff's protected speech was a substantial

[1] Plaintiff's new allegations supporting her other claims include that plaintiff and Sheriff Jones spoke on the phone to discuss the potential media issues if the text messages became public, the lawyer for the county informed plaintiff through her union counsel of Sheriff Jones's intention to terminate her if she did not resign, and information from the NAACP regarding its source for the published open letter regarding plaintiff. (*See* First Am. Compl. ¶¶ 106, 107-111, 116-118.)

> or motivating factor in the adverse employment action; (4) whether the state had an adequate justification for treating the employee differently from other members of the general public; and (5) whether the state would have taken the adverse employment action even absent the protected speech.

Eng v. Cooley, 552 F.3d 1062, 1070 (9th Cir. 2009). The plaintiff bears the burden on the first three steps and therefore, to support a First Amendment claim, must show that (1) their speech was a matter of public concern; (2) that they were speaking as a private citizen; and (3) that their speech was a substantial or motivating factor in their termination. *Id.* at 1070-71.

As argued by the parties, the crux of this motion is whether plaintiff's texts addressed a matter of public concern. The Ninth Circuit has "not articulated a precise definition of 'public concern,' recognizing instead that such inquiry is not an exact science." *Desrochers v. City of San Bernardino*, 572 F.3d 703, 709 (9th Cir. 2009) (citations and internal quotations omitted). Instead, the court "relie[s] on a generalized analysis of the nature of the speech." *Id.* To determine "whether an employee's speech addresses a matter of public concern," a court must consider "the content, form, and context of a given statement, as revealed by the whole record." *Eng*, 552 F.3d at 1070 (citations and quotations omitted). As the Ninth Circuit recognizes, "courts have had some difficulty deciding when speech deals with an issue of 'public concern.'" *Id.* (quoting *McKinley v. City of Eloy*, 705 F.2d 1110, 1113-14 (9th Cir. 1983)).

The present case is unlike the typical cases involving a public employee who alleges she was terminated on account of her speech. Such cases usually involve either

expressing a workplace grievance, which is not considered a matter of public concern, or bringing attention to a social or political topic, which is considered a matter of public concern. *Compare Connick v. Myers*, 461 U.S. 138, 148 (1983) (addressing criticism of supervisor's decision to transfer assistant district attorney); *Desrochers*, 572 F.3d at 717 (addressing criticism of criticizing supervisor's decision to transfer one police officer and discipline another); *Lamb v. Montrose Cnty. Sheriff's Off.*, No. 19-1275, 2022 WL 487105, at *7 (10th Cir. 2022) (addressing speech expressing dislike of workplace environment, including racism and the lack of professionalism), *with Rankin v. McPherson*, 483 U.S. 378 (1987) (addressing speech expressing support for attempted assassination of then President Reagan); *Hernandez v. City of Phoenix*, 43 F.4th 966, 978-79 (9th Cir. 2022) (addressing posting on Facebook articles about religious intolerance, cultural assimilation, government spending, and media coverage); *Eng*, 552 F.3d at 1072-73 (addressing disclosure of information about public school financing and the performance of the district attorney's office); *Coszalter v. City of Salem*, 320 F.3d 968, 974 (9th Cir. 2003) (addressing disclosure of issues regarding working conditions, safety, and sewage); *McKinley*, 705 F.2d at 1113-14 (addressing criticism of city's decision about compensation for the police force).

Here, plaintiff alleges that she sent racist images, along with her disapproval of the images, to a friend during a private conversation about casual and personal topics. (First Am. Compl ¶ 89.) Her speech clearly did not involve an employment grievance. However, plaintiff's speech was also not motivated by a desire to call attention to an issue nor part of a larger conversation about a topic of public interest. *See Johnson v. Multnomah Cnty.*, 48 F.3d 420, 425 (9th Cir. 1995) ("[T]he employee's

motivation . . . [is] among the many factors to be considered in light of the public's interest in the subject matter of the speech."); *Roberts v. Ward*, 468 F.3d 963, 971 (6th Cir. 2006) (explaining that whether "speech is a matter of public concern may turn on whether the speech is generic in nature, or whether it reflects an in-depth attempt to contribute to public discourse").

Both the form and context of plaintiff's speech weigh against a finding of public concern in this case. Text messages are inherently private. *See Roe v. City & County of S.F.*, 109 F.3d 578, 585 (9th Cir. 1997) ("[A] limited audience weigh[s] against [a] claim of protected speech."). Plaintiff makes no allegations that her speech concerned either racism in her community or racism in the police department. Further, she makes no allegations as to who sent her the text messages or why that person sent her the text messages. Moreover, plaintiff does not suggest that her speech is a matter of public concern because of her position in law enforcement.

To find that plaintiff's speech constitutes a matter of public concern would be to find that any mention of a topic of public interest, however brief or indirect, constitutes a matter of public concern. Such a finding would collapse the court's analysis of the "the content, form, and context of a given statement, as revealed by the whole record" into solely a consideration of content. *See Eng*, 552 F.3d at 1070 (citations and quotations omitted). This court does not read the case law to support that proposition. *Cf. Desrochers*, 572 F.3d at 711 ("We have never held that a simple reference to government functioning automatically qualifies as speech on a matter of public concern[.]"); *Weeks v. Bayer*, 246 F.3d 1231, 1235-36 (9th Cir. 2001) ("Water cooler conversation would become the stuff of First Amendment claims, and casual remarks about work

would be elevated to constitutional complaints. The First Amendment does not go that far.") (citation omitted).

Moreover, "[t]he Supreme Court has warned us that speech 'not otherwise of public concern does not attain that status because its subject matter could, in a different circumstance, have been the topic of communication to the public that might be of general interest.'" *See id.* at 717 (quoting *Connick*, 461 U.S. at 148 n.8).

For the reasons stated above as well as those set forth in the court's prior orders (Docket Nos. 16, 28), the court finds that plaintiff has still failed to allege facts sufficient to support her claims for violation of the First Amendment and First Amendment conspiracy.

IT IS THEREFORE ORDERED that defendant's motion to dismiss Claims 3 and 4 of the First Amended Complaint be, and the same hereby is, GRANTED without leave to amend.[2]

Dated: March 27, 2023

WILLIAM B. SCHUBB
UNITED STATES
DISTRICT JUDGE

[2] Because plaintiff was previously given leave to amend and is proceeding on six other claims, the motion is granted without leave to amend.

APPENDIX C

[FILED: JANUARY 11, 2023]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KATE ADAMS, Plaintiff, v. COUNTY OF SACRAMENTO, a political subdivision of the state of California; SHERIFF SCOTT JONES in his individual and official capacity as Sheriff of the County of Sacramento, and DOES 1-10 Defendants.	No. 2:22-cv-01499 WBS KJN MEMORANDM AND ORDER RE: DEFENDANTS' MOTION TO DISMISS

Plaintiff Kate Adams brought this action against the County of Sacramento, Sheriff Scott Jones, and Does 1 through 10 (collectively "defendants"), alleging violations of her federal civil rights and of state law stemming from events surrounding her resignation as Chief of Police of Rancho Cordova, California. (Compl. (Docket No. 1).) She asserts claims for (1) procedural due process under the Fourteenth Amendment; (2) violation of the First Amendment; (3) First Amendment conspiracy; (4) false light; (5) false light conspiracy; (6) violation of California's Fair Employment and Housing Act ("FEHA"), Cal. Gov. Code § 12940(h); (7) violation of the California Public Safety Officer Procedural Bill of Rights ("PBOR"), Cal. Gov. Code § 3300 et seq; (8) intentional interference with

prospective economic advantage; and (9) intentional infliction of emotional distress. (*Id.*) Defendants now move to dismiss plaintiff's complaint in its entirety. (Mot. (Docket No. 7-1).)

I. Factual Allegations

Plaintiff began working for the Sacramento County Sheriff's Office ("Department") in 1994. (Compl. ¶ 18.) In March 2020, plaintiff was selected as the Chief of Police for the City of Rancho Cordova. (*Id.* ¶ 34.)

Prior to her selection for Chief of Police, plaintiff was contacted in February 2019 about possible misconduct involving Sheriff's Captain LeeAnneDra Marchese. (*Id.* ¶ 28.) Plaintiff forwarded the allegation to the Department's Internal Affairs Division. (*Id.* ¶ 29.)

In November 2019, nine months after forwarding the complaint about Marchese, plaintiff alleges she received the first complaint ever filed against her in her 25 years as a law enforcement officer. (*Id.* ¶ 31.) Shortly after, two more complaints were filed against plaintiff alleging similar instances of misconduct.[1] (*Id.* ¶¶ 33, 35.) The Sheriff's Department's Internal Affairs Office investigated all threes complaints, formally concluded they were baseless, and cleared plaintiff of any wrongdoing. (*Id.* ¶¶ 32-33, 35.) Plaintiff alleges that she grew suspicious that either Marchese or Assistant

[1] The complaints alleged that plaintiff had (1) improperly used her home retention vehicle to transport her daughter to softball practice and (2) used a homophobic slur at one of her daughter's softball events. (*Id.* ¶¶ 32-33, 35.) All three complaints were anonymous. (*Id.*)

Commander Gail Vasquez[2] were responsible for the complaints.[3] (*Id.* ¶ 38.)

As a result of these complaints and her growing suspicions about who was responsible, plaintiff submitted a formal complaint with Sacramento County's Equal Employment Opportunity ("EEO") office against Marchese for harassment and retaliatory behavior. (*Id.* at 42.) Plaintiff alleges that when Marchese was interviewed regarding the EEO complaint, Marchese disclosed that plaintiff had sent text messages which included racist images[4] to her and Morrissey (Vasquez's husband) seven years earlier.[5] (*Id.* ¶ 43.) Marchese and Vasquez are the

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[2] Assistant Commander Vasquez is married to Sergeant Morrissey, who is the recipient of the racist images which set off the events underlying this case. (*Id.* ¶ 38.)

[3] Plaintiff alleges that she was suspicious the complaints were submitted by either Marchese or Vasquez because (1) they seemed to be written by someone in the Department who had known plaintiff for many years; (2) Marchese's daughter played in the same softball league as plaintiff's daughter; and (3) plaintiff had seen Marchese driving down her street when she had been assigned to work twenty-nine miles way. (*Id.* ¶¶ 37-41.)

[4] Plaintiff uses the term "meme" throughout the complaint to refer to these images. Merriam-Webster defines "meme" as "an amusing or interesting item (such as a captioned picture or video) or genre of items that is spread widely online especially through social media." *Meme*, Merriam-Webster.com Dictionary (Dec. 29, 2022), https://www.merriam-webster.com/dictionary/meme. The racist images at issue do not fit the definition of "meme" because they have not spread widely online nor are they amusing in any way. Therefore, the court will use the term "image."

[5] Plaintiff did not provide details about the racist image in her complaint. According to defendants' motion to dismiss, the image contained a depiction of a "white man wearing sunglasses and holding a beer, spraying a Black child in the back of the head with a garden hose. The caption reads: 'Go be a n[*****] somewhere else.'" (Mot. at 3.) Both defendants' motion and the Sacramento Bee article (which,

two people plaintiff had suspected were responsible for the three complaints filed against her.[6] (*Id.* ¶ 38.)

When Marchese shared the details of the text messages during the EEO investigation interview, she provided printed screenshots. (*Id.* ¶ 45.) Plaintiff alleges that Marchese had "miraculously" printed these screenshots, which failed to include the larger context of the text message conversation, despite having previously disposed of the phone on which she received the text messages. (*Id.*) Plaintiff similarly alleges that Marchese was also somehow aware that Morrisey had not only received the same text messages but had also printed screenshots. (*Id.* ¶¶ 48-49.) Plaintiff further alleges that Doe defendants "collectively hid and distorted the original context and language accompanying the images to suggest that [plaintiff] somehow endorsed or supported the images' racist message."[7] (*Id.* ¶ 51.)

At the time of the text messages, New Year's Eve 2013, plaintiff alleges she and Morrissey had been engaged in a "casual text message conversation," wishing one another Happy New Year's and sharing videos of

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as explained later, set off the chain of events leading to plaintiff's alleged constructive discharge) spell out the "N-word." However, the court declines to do so here because the word is extremely harmful and doing so is unnecessary to convey the meaning of the image's caption.

[6] Plaintiff does not offer an explanation as to why Marchese and Vasquez continually targeted plaintiff other than they were acting in retaliation for plaintiff previously forwarding the complaint regarding Marchese. (*Id.* ¶ 38.)

[7] While plaintiff only asserts this allegation explicitly against Doe defendants, she implies Morrisey was involved by explaining that Morrisey was a cell phone forensics specialist for the Department and "possesses extensive expertise in recovering lost, deleted, or erased cell phone content." (*Id.* ¶¶ 50-51.)

plaintiff's children playing. (*Id.* ¶ 22.). Plaintiff alleges that during this conversation she sent Morrissey the racist image along with the message: "Some rude racist just sent this!!" (*Id.* ¶ 24.) Morrissey replied: "That's not right." (*Id.* ¶ 24.) Plaintiff replied back with a similar image and text message stating: "Oh, and just in case u [sic] think I encourage this . . . ."[8] (*Id.* ¶ 24.) Notably, plaintiff does not mention that she sent the same text messages to Marchese nor who originally sent the racist images to her.

Upon learning about the text messages, the Department shifted its EEO investigation from investigating the anonymous complaints filed against plaintiff into an investigation about the text messages. (*Id.* ¶¶ 52-53.) Defendant Sheriff Jones selected John McGinnis,[9] allegedly a close personal friend and political endorser of Jones, to investigate. (*Id.* ¶ 62.) Plaintiff alleges that the standard procedure, however, is for the County's inspector general to conduct these types of investigations. (*Id.*)

At the conclusion of the investigation, plaintiff alleges the Department presented her with a choice: resign and avoid the racist images from becoming public or be terminated and risk her reputation. (*Id.* ¶ 58.) Plaintiff alleges the Department wanted plaintiff to resign "out of a desire to conceal from the public the fact that its officers had failed to report a purportedly racist communication

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[8] Plaintiff alleges that what was written after the ellipses remains unknown, as it was not included in the screenshots of the text message conversation. (*Id.* ¶ 24.)

[9] While neither plaintiff nor defendants provide any information about John McGinnis, the court is aware that McGinnis is a former Sacramento County Sheriff.

by a fellow officer for over seven years"[10] and "her resignation was the best way to avoid a 'media circus' that could harm the reputations and political futures of all involved."[11] (*Id.* ¶¶ 59-60.)

On September 12, 2021, plaintiff resigned as the Chief of Police for the City of Rancho Cordova. (*Id.* ¶ 21.) Plaintiff alleges that defendants' "threat to make the false allegations public unless she resigned, and the terrifying potential consequences for her family if those allegations played out in the media, was paramount in her decision to retire." (*Id.* ¶ 61.) At the time of her resignation, the text messages were not public.

However, on March 4, 2022, the Sacramento Bee ("Bee") published an article about plaintiff's resignation.[12] (Id. ¶ 71). The Bee article was based on an open letter published by the President of the Sacramento chapter of

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[10] Plaintiff alleges that it was department policy for "'[any] individual . . . who is aware of discrimination . . . in a [c]ounty work situation,' to 'immediately report such action or inaction.'" (*Id.* ¶ 47.)

[11] Plaintiff alleges that Jones was particularly concerned about his reputation and political future because he had announced his intention to run for Congress and "was perceived by many to have a negative track record on race relations." (*Id.* ¶ 60.)

[12] Defendants have requested that the court take judicial notice of the Bee article. (Docket No. 7-2.) An electronic copy of the article can be found online at <https://www.sacbee.com/news/local/article259055368.html>. Judicial notice may be taken of a fact "not subject to reasonable dispute in that it is capable of accurate and ready determine by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201. "Courts may take judicial notice of publications introduced to indicate what was in the public realm at the time, not whether the contents of those articles were in fact true." *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010). Accordingly, the court will take judicial notice of the article for the fact of the statements in the article, rather than the truth of these statements.

the NAACP[13] as well as statements made by a Sacramento County spokesperson in response to the Bee's request for comment. (*Id.* ¶ 72.) The Bee article stated: "A Sacramento County spokesperson . . . said the outside investigation concluded, and that the involved employee retired voluntarily before the Sheriff's Office could formally hand down discipline." (Defs.' Req. for Judicial Notice, Ex. A, at 6 (Docket No. 7-2).)

Six days after the Bee article was published, William Jessup University requested plaintiff resign from her position as adjunct professor. (*Id.* ¶ 78.) Roughly a month later, plaintiff was informed by the California Commission on Peace Officer Standards ("POST") that she could not be hired despite passing the entry exam with a score of 90 out of 100. (*Id.* ¶¶ 70, 79.) Plaintiff alleges that she then decided to "file this lawsuit to defend her reputation . . . ." (Opp'n at 5.)

II. Discussion

A. Legal Standard

Federal Rule of Civil Procedure 12(b)(6) allows for dismissal when the plaintiff's complaint fails to state a claim upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(6). "A Rule 12(b)(6) motion tests the legal sufficiency of a claim." *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). The inquiry before the court is whether, accepting the allegations in the complaint as true and drawing all reasonable inferences in the plaintiff's favor, the complaint has alleged "sufficient facts . . . to support a cognizable legal theory," *id.*, and thereby stated "a claim

[13] At the hearing, plaintiff's counsel stated that, since the filing of the complaint, the NAACP had confirmed that it was the Department who had provided the NAACP with information about the text message incident and the internal investigation against plaintiff.

to relief that is plausible on its face," *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). In deciding such a motion, all material allegations of the complaint are accepted as true, as well as all reasonable inferences to be drawn from them. Id. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

B. Procedural Due Process (Claim 1)

To state a procedural due process claim in a § 1983 action, the plaintiff must establish: "(1) a liberty or property interest protected by the Constitution; (2) a deprivation of the interest by the government; and (3) lack of process." *Shanks v. Dressel*, 540 F.3d 1082, 1090 (9th Cir. 2008) (citation omitted). Here, defendants do not challenge that plaintiff had a property interest in her public employment as chief of police for the city of Rancho Cordova. Rather, defendants argue that plaintiff's procedural due process claim must fail because she voluntarily resigned.[14]

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[14] Defendants also argue plaintiff's procedural due process claim must fail because she failed to exhaust administrative remedies. (*See* Mot. at 9-10.) However, "exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to § 1983." *Patsy v. Bd. of Regents of State of Fla.*, 457 U.S. 496, 516 (1982). The overwhelming majority of cases hold that, under *Patsy*, 457 U.S. at 516, failure to exhaust does not bar a § 1983 claim. *See e.g.*, *Heck v. Humphrey*, 512 U.S. 477, 480 (1994) (distinguishing the lack of exhaustion requirement for § 1983 from the federal habeas corpus statute); *Heath v. Cleary*, 708 F.2d 1376, 1379 (9th Cir. 1983) (finding plaintiff did not need to exhaust under *Patsy*); *Rios v. Cnty. of Sacramento*, 562 F. Supp. 3d 999, (E.D. Cal. 2021) (J. Mueller) ("Exhaustion is not a prerequisite to an action under § 1983.") (citing *Patsy*, 457 U.S. at 102)); *Mahoney v. Hankin*, 539 F. Supp. 1171, 1174 (S.D. N.Y. 1984) ("[P]laintiff needed to exhaust neither the state

Plaintiff contends that she did not voluntarily resign but rather she was constructively discharged. (*See* Compl. ¶ 89.) A resignation "may be involuntary and constitute a deprivation of property for purposes of a due process claim" where "a reasonable person in [that] position would feel [they] had no choice but to [resign]." *Knappenberger v. City of Phoenix*, 566 F.3d 936, 940-41 (9th Cir. 2009) (no constructive discharge where plaintiff resigned to maintain his health insurance coverage because he had not been informed that he would be terminated and he had the ability to oppose investigation) (quoting *Kalvinskas v. Cal Inst. of Tech.*, 96 F.3d 1305, 1307-08 (9th Cir. 1996) (constructive discharge where plaintiff was given "no choice but to retire" because employer reduced his income stream to zero by offsetting his disability benefits with pension benefits that he could obtain only by retiring)).

Plaintiff alleges she was forced to resign to protect her ability to earn a living and was told that she would be terminated if she did not resign. (Compl. ¶¶ 58, 66.) Furthermore, she alleges she could not oppose her termination as doing so would publicize the racist text messages, and avoiding that publicity and inevitable backlash was driving force behind her decision to resign. (*Id.* ¶¶ 61, 66.) However, plaintiff does not state who informed her that she was to be terminated if she did not resign, or whether the person who notified plaintiff even had the authority to terminate her or to speak on behalf of whoever did have such authority. Further, plaintiff makes no allegations as to exactly what she was told regarding her alleged choice to resign or be terminated, for example whether she was told she would just be summarily terminated or that the procedures necessary

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administrative remedies nor the remedies under the collective bargaining agreement before the case could be heard . . . .").

to terminate her would be initiated. Plaintiff's allegations, without more, are not sufficient to allege a procedural due process violation based on a constructive discharge theory.

C. First Amendment (Claims 2 and 3)

Plaintiff asserts two claims arising out of the First Amendment: violation of First Amendment's protection on freedom of speech (Claim 2) and conspiracy to deprive plaintiff of her First Amendment right to free speech (Claim 3). To determine whether a government employer has violated the First Amendment, the Ninth Circuit applies a five-part test which asks:

> (1) whether the plaintiff spoke on a matter of public concern; (2) whether the plaintiff spoke as a private citizen or public employee; (3) whether the plaintiff's protected speech was a substantial or motivating factor in the adverse employment action; (4) whether the state had an adequate justification for treating the employee differently from other members of the general public; and (5) whether the state would have taken the adverse employment action even absent the protected speech.

Eng v. Cooley, 552 F.3d 1062, 1070 (9th Cir. 2009).

"Speech involves a matter of public concern when it can fairly be considered to relate to 'any matter of political, social, or other concern to the community.'" *Johnson v. Multnomah Cnty.*, 48 F.3d 420, 422 (9th Cir. 1995) (quoting *Connick v. Myers*, 461 U.S. 138, 146 (1983)). Conversely, "speech that deals with 'individual personnel disputes and grievances' and that would be of 'no relevance to the public's evaluation of the performance of governmental agencies' is generally not of 'public

concern.'" *Coszalter v. City of Salem*, 320 F.3d 968, 973 (9th Cir. 2003) (quoting *McKinley v. City of Eloy*, 705 F.2d 1110, 1114 (9th Cir. 1983). To determine "whether an employee's speech addresses a matter of public concern," a court must consider "the content, form, and context of a given statement, as revealed by the whole record." *Eng*, 552 F.3d at 1070 (citations and quotations omitted).

Here, plaintiff alleges her speech -- the text messages containing racist images -- was of public concern because she was condemning an example of racism. (*See* Compl. ¶ 98.) Certainly, acts of overt racism within a police force is a subject that would warrant public concern. *See Lamb v. Montrose Cnty. Sheriff's Off.*, No. 19-1275, 2022 WL 487105, at *8 (10th Cir. 2022) ("[R]acism and unprofessionalism in a public entity -- particularly law enforcement -- can be matters of public concern, in a general sense."). However, "[t]he Supreme Court has warned us that speech 'not otherwise of public concern does not attain that status because its subject matter could, in a different circumstance, have been the topic of communication to the public that might be of general interest.'" *Desrochers v. City of San Bernadino*, 572 F.3d 703, 717 (9th Cir. 2009) (quoting *Connick*, 461 U.S. at 148, n. 8).

Plaintiff fails to make any allegation that either the text messages or the surrounding context suggest any "conduct [which] amount[s] to 'actual or potential wrongdoing or breach of public trust.'" *Desrochers*, 572 F.3d at 712 (quoting *Connick*, 461 U.S. at 148); *see also McKinley*, 705 F.2d at 1114 ("[T]he competency of the police force is surely a matter of great public concern."). Plaintiff's speech as she herself characterized -- "condemning an example of racism to a friend" -- does not allege racist behaviors of any individual members of the Department nor the Department as a whole. Plaintiff

makes no allegation that the racist images were in any way related to her job as chief of police. Moreover, the text messages were not intended for public viewing, weighing against a finding of public concern. *See Lamb*, 2022 WL 487105, at *7 (explaining that a text message to a friend which is "not intended for public dissemination . . . weigh[s] against finding it involved a matter of public concern").

In viewing the facts in the light most favorable to plaintiff as the court must at this stage, the court finds that plaintiff's speech was not a matter of public concern because the speech was intended to be private and does not relate to the personnel or functioning of the Department. Because the speech was not a matter of public concern, the court's inquiry stops. *See Eng*, 552 F.3d at 1070. Accordingly, plaintiff has failed to allege facts sufficient to support a claim for violation of the First Amendment.

Because plaintiff's First Amendment claim fails, her First Amendment conspiracy claim must also fail. *See Crowe v. Cnty. of San Diego*, 608 F.3d 406, 440 (9th Cir. 2010) ("To establish liability for a conspiracy in a § 1983 case, a plaintiff must 'demonstrate the existence of an agreement or meeting of the minds' to violate constitutional rights."). Accordingly, the court finds plaintiff has failed to state a claim for conspiracy to violate the First Amendment.

D. False Light (Claims 4 and 5)

Plaintiff asserts two claims based on false light: false light (Claim 4) and conspiracy to place plaintiff in a false light (Claim 5). "False light is a species of invasion of privacy . . . ." *Balla v. Hall*, 59 Cal. App. 5th 652, 687 (4th Dist. 2021) (quotations and citations omitted). To state a claim for false light, a plaintiff must plead that "(1) the

defendant caused to be generated publicity of the plaintiff that was false or misleading, and (2) the publicity was offensive to a reasonable person." *Pacini v. Nationstar Mortg., LLC*, No. C 12-04606 SI, 2013 WL 2924441, at *9 (N.D. Cal. June 13, 2013) (citing *Fellows v. Nat'l Enquirer, Inc.*, 42 Cal.3d 234, 238-39 (1986)). "Even if they place the person in a less than flattering light, the published facts are not actionable if they are true or accurate." *Pacini*, 2013 WL 2924441, at *9 (citing *Fellows*, 42 Cal. 3d at 238).

Plaintiff's false light claim is based on the Bee article. Specifically, plaintiff contends that members of the Department provided misleading comments by telling the Bee that plaintiff retired to avoid discipline as opposed to explaining that the Department asked her to resign to avoid negative media coverage. (*See* Compl. ¶ 121-23.) The relevant portion of the Bee article states: "A Sacramento County spokesperson . . . [said] that the involved employee retired voluntarily before the Sheriff's Office could formally hand down discipline." (Defs.' Req. for Judicial Notice, Ex. A.) However, because plaintiff fails to make any allegation as to who from the Department spoke to the Bee or what information about the Department's investigation was shared with the Bee plaintiff has failed to allege facts sufficient to support a false light claim.

Because plaintiff's false light claim fails, her false light conspiracy claim also must fail.[15] See *Thompson v. Cal. Fair Plan Assn.*, 2221 Cal.App.3d 760, 767 (1990) ("A civil conspiracy does not give rise to a cause of action

[15] "The elements of an action for civil conspiracy are the formation and operation of the conspiracy and damage resulting to plaintiff from an act or acts done in furtherance of the common design." *See Doctors' Co. v. Super. Ct.*, 49 Cal. 3d 39, 44 (1989) (quotations and citations omitted).

unless a civil wrong has been committed resulting in damage.").

E. California Fair Housing and Employment Act (Claim 6)

FEHA provides in part that it is unlawful "[f]or any employer, labor organization, employment agency, or person to discharge, expel, or otherwise discriminate against any person because the person has opposed any practices forbidden under this part or because the person has filed a complaint, testified, or assisted in any proceeding under this part." Cal. Gov. Code § 12940(h). To state a claim of retaliation under Cal. Gov. Code § 12940(h), "a plaintiff must show (1) he or she engaged in a 'protected activity,' (2) the employer subjected the employee to an adverse employment action, and (3) a causal link existed between the protected activity and the employer's action." *Yanowitz v. L'Oreal USA, Inc.*, 36 Cal. 4th 1028, 1042 (2005). If plaintiff establishes a prima facie case, the employer is then "required to offer a legitimate, nonretaliatory basis for the adverse employment action in order to shift the burden back to the plaintiff, who must then prove intentional retaliation." *McCoy v. Pacific Mar. Ass'n*, 216 Cal. App. 4th 283, 298 (2nd Dist. 2013) (citing *Yanowitz*, 36 Cal. 4th at 1042).

Here, plaintiff alleges she engaged in a protected activity by filing a formal complaint with Sacramento County's EEO. (Compl. ¶¶ 42, 135-36.) She further alleges that she was subjected to an adverse employment action because of the "hostile work environment"[16] and her

[16] The hostile work environment plaintiff describes relates almost entirely to the three complaints against her that were investigated and found to be baseless. Plaintiff filed a formal complaint with the EEO as a result of these complaints. (*Id.* ¶ 42.) Nevertheless, because

alleged constructive discharge.[17] (*Id.* ¶ 137.) Assuming the plausibility of these allegations, plaintiff's allegations as to the causal connection between her filing the EEO complaint and her constructive discharge, however, are attenuated at best. Although plaintiff alleges facts showing that the text messages at issue were revealed to the County by Marchese when Marchese was interviewed during the EEO investigation,[18] that the text came to light as a result of plaintiff's EEO complaint does not mean that she was "discharge[d], expel[led], or otherwise discriminate[d] against" because she filed the complaint.

On this point, *Flores v. City of Westminster* is instructive. *See* 873 F.3d 739 (9th Cir. 2017). In *Flores*, a police officer alleged that, as a result of his filing a discrimination complaint, he was removed from a list of officers chosen to perform extra duties, received negative comments from a supervisor in an entry log, and received his first written reprimand. *Id.* at 749. The officer alleged that he had not engaged in any other conduct which would have warranted these adverse employment actions. As such, the officer was able to establish a causal connection between his filing of the complaint and the adverse employment actions. *Id.* at 750-51.

Here, plaintiff alleges that Marchese disclosed the text messages when interviewed as part of the EEO investigation in "a blatant attempt . . . to distract from the

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these complaints occurred before plaintiff filed her EEO complaint, they could not have been filed in retaliation to her filing of the EEO complaint.

[17] A constructive discharge claim "is not necessary to find unlawful retaliation." *McCoy*, 216 Cal. App. 4th at 301 (citing *Yanowitz*, 36 Cal. 4th at 1053-54).

[18] Plaintiff suggests Marchese came forward with the text messages "to distract from the investigation into her own misconduct." (Compl. ¶ 44.)

investigation into her own misconduct." (Compl. ¶ 44.) Plaintiff also alleges she was constructively discharged by the County because of a shared desire to keep the text messages out of the public thereby avoiding a "media circus." (Id. ¶¶ 60-61.) Thus, by plaintiff's own telling, the County did not constructively discharge plaintiff in retaliation for filing the EEO complaint. Rather, the text messages that came to light during the investigation into the EEO complaint led to plaintiff's eventual resignation. Other than the County's reaction to the text messages and desire to keep them out of the public eye, plaintiff alleges no facts sufficient to show a causal connection between the filing of her EEO complaint and her constructive discharge. Accordingly, plaintiff has failed to state a claim under Cal. Gov. Code § 12940(h).

F. Public Safety Officer Procedural Bill of Rights (Claim 7)

The PBOR provides in part: "No chief of police may be removed by a public agency, or appointing authority, without providing the chief of police with written notice and the reason or reasons therefor and an opportunity for administrative appeal." Cal. Gov. Code § 3304. As explained above, plaintiff resigned before the County had the opportunity to provide her due process. Because she was not "removed", there was no requirement to provide her with the notice and opportunity for appeal referenced in § 3304. Plaintiff cannot decline to avail herself to the County's procedures and then claim that the procedures were unavailable. Accordingly, plaintiff has failed to allege facts sufficient to support a PBOR claim.

IT IS THEREFORE ORDERED that defendants' motion to dismiss the complaint (Docket No. 7-1) be, and the same hereby is, GRANTED.[19] Plaintiff has twenty days from the date of this Order to file an amended complaint, if she can do so consistent with this Order.

Dated: January 10, 2023

WILLIAM B. SCHUBB
UNITED STATES
DISTRICT JUDGE

[19] Plaintiff brought her eighth claim (intentional interference with prospective economic advantage) and ninth claim (intentional infliction of emotional distress) only against Doe defendants. (Compl. ¶¶ 151, 159.) Those claims are dismissed because plaintiff has failed to identify any specific individual responsible for the conduct alleged in them.

APPENDIX D

[FILED: JUNE 28, 2023]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

KATE ADAMS, Plaintiff-Petitioner, v. COUNTY OF SACRAMENTO; SCOTT JONES, Sheriff, Defendants-Respondents.	No. 23-80042 D.C. No. 2:22-cv-01499-WBS-KJN Eastern District of California, Sacramento ORDER

Before: R. NELSON and BUMATAY, Circuit Judges.

The petition for permission to appeal is granted. *See* 28 U.S.C. § 1292(b). Within 14 days, petitioner must comply with Federal Rule of Appellate Procedure 5(d)(1).

APPENDIX E

[FILED: MAY 12, 2023]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KATE ADAMS, Plaintiff, v. COUNTY OF SACRAMENTO, a political subdivision of the state of California; SHERIFF SCOTT JONES in his individual and official capacity as Sheriff of the County of Sacramento, and DOES 1-10, Defendants.	No. 2:22-cv-01499 WBS KJN ORDER GRANTING MOTION FOR INTERLOCUTORY APPEAL[1]

Plaintiff moves for certification of the court's March 27, 2023 Order (Docket No. 32) for interlocutory appeal pursuant to 28 U.S.C. § 1292(b). (Docket No. 37.) Defendants do not oppose the motion. (Docket No. 38.)

Under 28 U.S.C. § 1292(b), a district court may certify for appeal an interlocutory order which is not otherwise appealable if the district court is "of the opinion that such order [1] involves a controlling question of law as to which [2] there is substantial ground for difference of opinion

[1] The court takes this motion under submission on the papers, without oral argument, pursuant to Local Rule 230(g).

and that [3] an immediate appeal from the order may materially advance the ultimate outcome of the litigation." 28 U.S.C. § 1292(b). The party seeking to appeal has the burden of justifying a departure from the basic policy of postponing appellate review until after the entry of a final judgment. *In re Cement Antitrust Litig.*, 673 F.2d 1020, 1026 (9th Cir. 1982).

First, the court's dismissal of plaintiff's First Amendment and First Amendment conspiracy claims involves a controlling question of law. A question of law is controlling if "resolution of the issue on appeal could materially affect the outcome of litigation in the district court" and it is not collateral to the major issues of the case. *In re Cement*, 673 F.2d at 1026. However, "the Ninth Circuit has not limited 1292(b) motions to actions where the question is dispositive of the entire action: 'we do not hold that a question brought here on interlocutory appeal must be dispositive of the [entire] lawsuit in order to be regarded as controlling.'" *Finder v. Leprino Foods Co.*, 1:13-cv-02059 AWI BAM, 2016 WL 4095833, *3 (E.D. Cal. Aug. 1, 2016) (quoting *Ass'n of Irritated Residents v. Schakel Dairy*, 634 F. Supp. 2d 1081, 1093 (E.D. Cal. 2008) (quoting *U.S. v. Woodbury*, 263 F.2d 784, 787 (9th Cir. 1959)) (quotations omitted).

The question of law raised by plaintiff here is whether speech made in a private text message, purportedly condemning an example of racism to a friend, is protected First Amendment speech because it involves a matter of public concern. (Pl.'s Mot. at 2-3 (Docket No. 37).) If this issue were to be decided in plaintiff's favor, plaintiff would be able to proceed with her First Amendment claim. Her First Amendment conspiracy claim is also contingent on that question. Therefore, an immediate appeal would affect the outcome of both the third and fourth claims.

Counsel represents that these are the primary claims plaintiff wishes to assert at trial.

Second, there is substantial ground for difference of opinion on the question at issue. 28 U.S.C. § 1292(b). To determine whether a substantial ground for difference of opinion exists, the court "must examine to what extent the controlling law is unclear." *Couch v. Telescope Inc.*, 611 F.3d 629, 633 (9th Cir. 2010). Here, the question addresses whether the speech at issue constitutes a matter for public concern. The Ninth Circuit has "not articulated a precise definition of 'public concern,' recognizing instead that such inquiry is not an exact science." *Desrochers v. City of San Bernardino*, 572 F.3d 703, 709 (9th Cir. 2009) (citations and internal quotations omitted). Instead, to determine "whether an employee's speech addresses a matter of public concern," a court must consider "the content, form, and context of a given statement, as revealed by the whole record." *Eng*, 552 F.3d at 1070 (citations and quotations omitted). The Ninth Circuit has expressly recognized the "difficulty [in] deciding when speech deals with an issue of 'public concern.'" *Eng v. Cooley*, 552 F.3d 1062, 1070 (9th Cir. 2009) (quoting *McKinley v. City of Eloy*, 705 F.2d 1110, 1113-14 (9th Cir. 1983)).

Third, the immediate appeal from the order is likely to materially advance the ultimate outcome of the litigation. 28 U.S.C. § 1292(b). Within the Ninth Circuit, courts have held that "resolution of a question materially advances the termination of litigation if it 'facilitate[s] disposition of the action by getting a final decision on a controlling legal issue sooner, rather than later [in order to] save the courts and litigants unnecessary trouble and expense." *Finder*, 2016 WL 4095833, at *4 (citing *United States v. Adams Bros. Farming, Inc.*, 369 F. Supp. 2d 1180, 1182 (C.D. Cal. 2004)). Of course, whether an

immediate appeal would materially advance the ultimate outcome of the litigation usually depends on whether the appeal is successful.

Although plaintiff will still have pending claims against defendants regardless of her success on appeal, an immediate appeal need not resolve every claim. *See id.* ("[T]o materially advance litigation it is sufficient to remove a set of claims against defendants in the lawsuit; it need not remove all of the claims.") (citing *Reese v. BP Exploration (Alaska) Inc.*, F.3d 681, 688 (9th Cir. 2011)). And an immediate appeal could avoid the need for two separate trials in the event this court's dismissal of Claims 3 and 4 is reversed.

IT IS THEREFORE ORDERED that plaintiff's motion for certification of this court's March 27, 2023 Order for interlocutory appeal be, and the same hereby is, GRANTED.[2]

IT IS FURTHER ORDERED that all proceedings in this case are STAYED pending the outcome of such appeal. If no application is made to the United States Court of Appeals to the Ninth Circuit to accept the interlocutory appeal within ten (10) days as set forth in § 1292(b), or if the Ninth Circuit should deny any such

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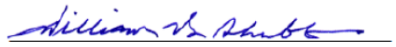
[2] Contrary to plaintiff's attorney's understanding, under 28 U.S.C. § 1292(b) the court may properly consider a motion for certification of interlocutory appeal and is not limited to issuing the certification *sua sponte*. In the federal courts, it is not uncommon to grant such formal motions to certify an interlocutory appeal. *See, e.g., Fed. Energy Reg. Comm'n v. Vitol Inc.*, No. 2:20-cv-00040-KJM-AC, 2022 WL 583998 (E.D. Cal. Feb. 25, 2022); *L.A. Lakers, Inc. v. Fed. Ins. Co.*, --- F. Supp. 3d. ---, 2022 WL 16571193 (C.D. Cal. Oct. 26, 2022); *Somberg v. Cooper*, 582 F. Supp. 3d 438 (E.D. Mich. 2022) (certifying a First Amendment question); *CFPB v. Navient Corp.*, 522 F. Supp. 3d 107 (M.D. Pa. 2021); *Tantaros v. Fox News Network, LLC*, 465 F. Supp. 3d 385 (S.D. N.Y. 2020).

application, the stay will automatically be lifted. If the Ninth Circuit should accept any such application, the parties shall file a joint status report within fourteen days after resolution of the interlocutory appeal.

Dated: May 12, 2023



WILLIAM B. SCHUBB
UNITED STATES
DISTRICT JUDGE

APPENDIX F

[FILED: JANUARY 30, 2023]

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

KATE ADAMS, Plaintiff, v. COUNTY OF SACRAMENTO, a political subdivision of the state of California; SHERIFF SCOTT JONES in his individual capacity, and DOES 1-10, Defendants.	Case Number. **2:22-cv-01499-WBS-KJN** **First Amended Complaint** **JURY TRIAL DEMANDED**

INTRODUCTION

1. Plaintiff Kate Adams (hereinafter "Ms. Adams" or "Plaintiff") was the Chief of Police for the city of Rancho Cordova, California, until the events giving rise to this action resulted in her forced resignation on September 14, 2021.

2. The Rancho Cordova Police Department falls within the jurisdiction of the Sacramento County Sheriff's Office ("SCS" or "the Department"), a subsidiary agency of the County of Sacramento, a Defendant in this action.

3. For over twenty-seven (27) years, Ms. Adams served as a Sheriff in the Sacramento County Sheriff's Office.

4. Plaintiff brings this action, pursuant to the laws of the State of California and 42 U.S.C. § 1983, for deprivation of her constitutional rights of procedural due process and freedom of speech, breach of contract, retaliation for engaging in a protected activity, invasion of privacy, interference with prospective economic advantage, and intentional infliction of emotional distress perpetuated by Defendants County of Sacramento ("Sacramento County"), Sheriff Scott Jones in his individual capacity, and DOES 1 through 10 ("Doe Defendants").

5. The Department and Defendant Jones constructively discharged Ms. Adams by threatening immediate termination for cause and the publication of false allegations of racism if she refused to resign quietly. In return for her agreement to retire quietly, the Department promised Ms. Adams the investigation would remain a part of her confidential personnel file and not be disclosed to the public.

6. Defendants constructively discharged Ms. Adams because she exercised her First Amendment right to freedom of speech pertaining to matters of public concern, namely, condemning racist images.

7. On information and belief, Defendants were motivated to force Ms. Adams to resign so that the Sacramento County Sheriff's Office, and Defendant Jones in particular, could avoid media coverage of (i) terminating Ms. Adams over the demonstrably false allegation that she had displayed racist beliefs by condemning an instance of racism to a friend; and (ii) its officers' failure to report Ms. Adams' purportedly racist communication for over seven (7) years.

8. In so doing, Defendants deprived Ms. Adams of her Fourteenth Amendment right to procedural due process by circumventing the established procedure afforded to discharged public employees, as set forth under the laws of the State of California, the municipal code of the County of Sacramento, and the internal policies of the Sacramento County Sheriff's Office.

9. Specifically, by forcing Ms. Adams' resignation, Defendants deprived Ms. Adams of the following procedural rights: (a) her right to notice of the proposed disciplinary action against her, and the evidence in support thereof; (b) her right to a "Skelly" Hearing; (c) her right to seek judicial review of an official determination made by Sacramento County; and (d) her right to an appeal, which includes the right to present witnesses and evidence, the right to confront and cross-examine adverse witnesses, and the right to have the matter determined by a neutral arbitrator with no connection to the Sacramento County Sheriff's Office.

10 Even worse, after Ms. Adams was constructively discharged, the Sheriff's Department published to the

NAACP and others false allegations and misleading documents in Ms. Adams' confidential personnel file. The Sheriff's Department shared—with the implicit suggestion they were true—anonymous allegations that Ms. Adams had made homophobic remarks when those allegations had been investigated by the Department and determined to be unfounded. The Sheriff's Department also told the NAACP that Ms. Adams had been placed on extended administrative leave before she had been forced to retire because she sent colleagues a racist image. The Department told the NAACP that no one in the Department, including Ms. Adams, had condemned the image. In fact, Ms. Adams had never been put on administrative leave—extended or otherwise—and Ms. Adams had herself contemporaneously condemned the racist image in the same text exchange where the image appeared.

11. As a result of these false allegations being made public, Ms. Adams can no longer find employment in law enforcement. The Department forced her to resign to try to save her reputation from lies, only to then destroy it anyway, essentially making her unemployable in the profession where she excelled and served honorably for a quarter of a century.

JURISDICTION AND VENUE

12. Ms. Adams brings this action pursuant to the laws of California and 28 U.S.C § 1983. Thus, this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331.

13. Venue is proper in the Eastern District of California pursuant to 28 U.S.C. § 1391(b)(1)-(2) because the unlawful practices alleged in this Complaint occurred in the Eastern District of California, and, on information

and belief, all Defendants are domiciled in the Eastern District of California.

PARTIES

14. Plaintiff Adams is a resident of Rocklin, California. She was employed by the Sacramento County Sheriff's Office from 1994 until her forced resignation on September 14, 2021.

15. Defendant Sacramento County was at all times alleged herein, a California governmental entity charged with overseeing the Sacramento County Sheriff's Office, which was responsible for appointing and promoting SCS employees, and for the supervision, training, instruction, discipline, control, and conduct of said employees.

16. At all times alleged herein, Defendant Sacramento County had the power, right, and duty to control the manner in which SCS, Defendant Jones, and DOES 1-10 carried out the objectives of their employment, and to ensure that all orders, rules, instructions, and regulations promulgated and enforced were consistent with the United States Constitution, the California Constitution, the laws of the United States, the laws of the State of California, and the laws of the municipality.

17. Defendant Scott Jones is sued here in his individual capacity for damages based on actions, inaction, or conduct taken or performed under the color of state law. He assumed office on December 10, 2010, and held the office of Sheriff throughout all of the relevant events discussed herein. As Sheriff, Defendant Jones was obligated under state law to supervise the official conduct of all officers and employees within the Sheriff's Office, to see that all offices under his command were filled, and that officers lawfully performed their duties. Defendant

Jones had the authority to determine whether an employee under his command was terminated, and to appoint and/or remove Ms. Adams, as well as the subordinate Doe Defendants included herein.

18. While Plaintiff has suspicions regarding the identity of many Doe Defendants, discovery is needed to determine who was responsible for the specific allegations contained herein. Plaintiff therefore sues these Defendants by fictitious names until such time as Doe Defendants' identities and level of involvement can be ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of these fictitiously named Defendants were responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately caused by their conduct.

GENERAL ALLEGATIONS

19. Plaintiff Kate Adams began her career in the Sacramento County Sheriff's Office ("SCS" or "the Department") in 1994.

20. For over twenty-seven (27) years, Ms. Adams served the citizens of Sacramento County, earning a reputation as a dedicated, kind, and community-oriented law enforcement officer.[1]

21. Ms. Adams was dedicated to eliminating racial profiling within the Department by training officers on

[1] Rancho Cordova Police Department Website: News, *Rancho Cordova Chief of Police Kate Adams Retires*, (Sep. 16, 2021), https://www.ranchocordovapd.com/Home/Components/News/News/4270/2312.

implicit bias and forming a collaborative partnership with the Sacramento Chapter of the NAACP.[2]

22. On September 14, 2021, Ms. Adams was forced to resign from her career in public service because, over seven (7) years earlier, she had engaged in private speech that condemned racist images she had received.

23. On information and belief, the Department and Doe Defendants publicly disseminated these images without providing the context in which they were sent in a deliberate effort to misrepresent Ms. Adams' intent and falsely depict her as a racist.

24. On information and belief, Doe Defendants were motivated to falsely depict Ms. Adams as a racist because of personal animus.

Chief Deputy LeeAnnDra Marchese's Hostility Towards Ms. Adams

25. As previously stated, Ms. Adams began working for the Department in the 1990s.

26. Around this time, Chief Deputy LeeAnnDra Marchese, Gail Vasquez, and Dan Morrissey also began working for the Department.

27. Ms. Adams quickly became very close friends with now-Chief Deputy Marchese and now-Captain Vasquez. Although she was not as close with now-Captain Vasquez initially, the two were friendly acquaintances.

28. Sometime in the early 2000s, Vasquez and Morrissey were married. Thereafter, Ms. Adams became closer friends with Morrissey.

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[2] *See* Letter from Ida Sydnor, President of Sacramento Chapter of NAACP, to Kate Adams (then Gooler), *Certificate of Appreciation*, Exhibit A.

29. In or around 2006, Ms. Adams' friendship with Marchese began to deteriorate when Ms. Adams and her first husband divorced. Marchese sided with Ms. Adams' ex-husband in the dispute.

30. From 2006 onward, the relationship between Ms. Adams and Marchese continued to worsen.

31. Sometime between 2013 and 2015, Marchese hosted a party for Vasquez who had recently been promoted. Ms. Adams was not invited. During a regularly scheduled workday, Morrissey was at Ms. Adams' assigned workspace conducting follow up on a joint assignment. Ms. Adams asked Morrissey if she had offended Vasquez in any way to discover why Ms. Adams had not been invited to her supposed friend's promotion party. Morrissey assured Ms. Adams the friendship was intact and explained that Marchese had determined not to invite Ms. Adams, and there was little that he or Vasquez could do given that the party was at Marchese's home. After this incident, Ms. Adams' friendships with Vasquez and Morrissey ended as well.

32. Despite their fractured personal relationships, Ms. Adams, Marchese, Vasquez, and Morrissey continued as co-workers in the Department.

33. Morrissey specialized in computer and cellphone forensics for the Department. His job duties required him to retrieve data from cellphones and oversee the Department's internal computer systems.

34. On and around 2013, Vasquez was the Fair Employment Officer for the Department. In this role, Vasquez had the sole responsibility of receiving internal and external complaints involving discrimination and harassment. From 2013 until the time of filing this complaint, Vasquez primarily served within the

Department's Internal Affairs Division, serving as the Assistant Commander and current Commander of Internal Affairs. Her job duties required her to review all incoming complaints and direct them to the appropriate person for investigation. During this timeframe, Vasquez also served as the Assistant to the Undersheriff.

35. On information and belief, up until 2015 Marchese held a higher rank than Ms. Adams and considered herself to be somewhat of a mentor to her former friend.

36. In or around 2015, Marchese was subject to discipline and received a resulting reduction in pay due to allegations of falsifying her timesheet. Early in her career with the Department, Marchese was also found to have misrepresented her higher education degree.

37. Around this same time, Ms. Adams was promoted to the position of Executive Lieutenant/Assistant Chief of Police for the City of Rancho Cordova.

38. On information and belief, Marchese was jealous of Ms. Adams being promoted to a more prestigious position than her.

39. As Marchese stated in an interview, "Kate obviously has been younger, [] I mentioned like my little sister, I always felt, you know, my relationship with her was also as a mentor at work and over time I just felt like it became super competitive too almost like it was us against her or her against us."

40. In or around 2015, Marchese and Ms. Adams' relationship further deteriorated when Marchese became close friends with Stacy Waggoner, the ex-wife of Ms. Adams' husband, who also worked for the Department.

41. Still, Ms. Adams and Marchese remained in close personal circles as both had daughters in the same Rocklin County Softball League.

Marchese's Retaliation Against Ms. Adams

42. In or around February 2019, a Rocklin city official contacted Ms. Adams and informed her of possible misconduct by Marchese. Specifically, the city official informed Ms. Adams that Marchese had misappropriated Sacramento County funds and instructed on-duty SCS officers to install unauthorized surveillance cameras at softball fields in Placer County. According to the complaint, Marchese had been specifically instructed not to do so by the then manager of the Rocklin Parks and Recreation Department.

43. Pursuant to her duty as an SCS officer, Ms. Adams forwarded the allegation regarding Marchese to the Department's Internal Affairs Division.

44. The standard operating procedure for an Internal Affairs investigation required that Internal Affairs notify Marchese that Ms. Adams forwarded the complaint.

45. When interviewed, Marchese said that she was "quite angry . . . because being accused of being a thief is not okay."

46. Shortly after Ms. Adams forwarded that complaint, a slew of anonymous and false complaints were submitted accusing Ms. Adams of misconduct. Up until that point, Ms. Adams had an unblemished reputation for good conduct, never having had a complaint filed against her in over twenty-five (25) years of service as a law enforcement officer.

47. The first complaint, filed on November 11, 2019, alleged the following:

> On approximately September 17, 2019, our assistant coach, Kate Adams, was overheard by us making reference to people as "homos" in jest and we are disappointed to think your department may find this behavior okay. Officers should be more professional and considerate. We are also wondering why tax payers [sic.] in Sacramento are supporting an officer using a black Dodge Charger (Sacramento Sheriff car) to taxi her daughter and equipment around. This just doesn't seem right.

48. The Department's Internal Affairs Division fully investigated each of these allegations, and formally concluded that they were baseless (Ms. Adams had not even attended the specific softball event referenced in the complaint), clearing Ms. Adams of any wrongdoing.

49. On information and belief, because the specificity of the allegations strongly indicated that the anonymous complaint was filed by a fellow officer with ties to the Rocklin Softball League, Ms. Adams informed the internal affairs division that she suspected the complaint had been filed by Marchese.

50. To follow up on this suspicion, the Undersheriff who oversaw the internal affairs division directed Vasquez, his second in command, to informally ask her close friend Marchese if she had filed the complaint against Ms. Adams.

51. Vasquez claims that, when asked, Marchese denied filing the complaint.

52. When interviewed, Chief Chet Madison stated his understanding was that "LeeAnnDra Marchese[,] who is part of the softball Rocklin league, was part of [the first] complaint to a certain degree."

53. Less than two (2) months later, on January 1, 2020, Marchese called internal affairs and made an informal, verbal complaint to Vasquez that she had seen Ms. Adams improperly use her home retention vehicle to transport her daughter to softball practice, repeating the recently disproven allegation from the first complaint. She also made clear to Vasquez that she did not want Vasquez to reveal that Marchese was the one who had made the complaint.

54. After investigating this allegation for a second time, the Department again concluded that it was baseless, and Ms. Adams was cleared of any wrongdoing.

55. In March 2020, Ms. Adams was promoted to be the Chief of Police for the City of Rancho Cordova.

56. Soon after her promotion was announced, Ms. Adams received the following text message from Vasquez: "Dude sadly all that is true because i [sic.] remember [Lieutenant Alex] McCamy complaining about it when he went out to patrol and I was your [the Undersheriff who oversaw internal affair's] assistant (sad face emoji). I am just wondering how many people she actually said that shit to (disappointed face emoji with a sweat bead)."

57. In response, Ms. Adams asked "Is this directed towards me?" Vasquez then replied, "no sorry was for someone else."

58. In the moment, Ms. Adams thought little of the text and assumed it had been a misdirected text by Vasquez intended for the Undersheriff.

59. The next day, however, Ms. Adams learned from Chief Madison that a third anonymous complaint had been made against her, again rehashing the same allegations made in the previous two complaints. Ms.

Adams then realized that the text Vasquez had mistakenly sent her was regarding her.

60. When interviewed, Lieutenant McCamy said that he had never complained to Vasquez or any other officer that Ms. Adams engaged in the conduct alleged in the three anonymous complaints. According to Lieutenant McCamy, the allegation against Ms. Adams came "out of left field. The things that were said the anonymous complaints are not anything that I remember about working in Rancho."

61. The third anonymous complaint stated:

> Dear Sheriff Jones. We just heard about your chief pick for RPD [Rancho Police Department] and ask that you please reconsider. The morale here has been very low for the last several month due to poor leadership and bullying by supervisors. We were hoping you would select a chief who is stable, selfless, and experienced. We need a chief who is also thoughtful by putting our department and taking our best interests to heart vs. someone who has poor integrity, is morally unsound and unstable. During Lt. Adams last assignment here, many of us were subjected to her nonstop childish and unprofessional behavior that was not only distracting, but in violation of many of our county policies prohibiting harassment. Do you have any idea what it is like to have a supervisor who shares highly inappropriate videos and commentary about black people, homosexual people and other employees openly in front of other employees? We were repeatedly subjected to her terrible comments about her step son, ex-husband and ex-husband's wife by using vulgar,

> racist comments, videos and pictures. Some of these incidents were reported to Chief Goold, but nothing was done because he was retiring and didn't want any problems. Adams made negative comments about working with some of our city leaders. Her role here was strictly status and self-serving. The bottom line is, Captain Adams is unprofessional, and an overall bad pick for our department that won't bring about a positive change we really need. Just understand that her behavior will most likely create more complaints to the county EEO for a hopeful resolution. None of intend to put up with her juvenile and offensive behavior which created a hostile and offensive working environment last time. You have no idea what it has been like around here, and we need a professional and committed chief to fix the issues around here.

62. After conducting its own review, the City of Rancho Cordova concluded that the third anonymous complaint made against Ms. Adams in the span of four (4) months was baseless as well.

63. The third anonymous complaint not only included the same allegation of homophobic language by Ms. Adams found in the first complaint but was clearly written from the perspective of someone within the Department who had known Ms. Adams for many years.

64. On information and belief, the internal affairs division of the Department concluded that the first and third complaint had most likely been filed by the same individual.

65. In her tenure as Chief of Police for Rancho Cordova, there were no complaints filed against her to the county EEO as the third anonymous complaint implies.

On information and belief, this suggests that the individual worked within the Department but was not a member of the Rancho Cordova Police Department that served under Ms. Adams.

66. Increasingly, Ms. Adams became suspicious that Marchese was behind all the anonymous complaints. This suspicion was further supported by the similarity of the allegations, the fact that both Ms. Adams's and Marchese's daughters played in the same softball league, and that a softball event was the location where two of the incidents were falsely alleged to have taken place.

67. In July 2020, Ms. Adams was working from home, with authorization to do so, when she went to her vehicle to pick up lunch. As she sat in her vehicle preparing to leave, she noticed Marchese driving down her street. When Marchese noticed Ms. Adams, she became furtive, quickly made a U-turn, and sped away.

68. Ms. Adams' home residence at that time was located in a cul-de-sac.

69. On that day in July 2020, Marchese had no legitimate reason to be near Ms. Adams' home. Marchese did not live or work in the vicinity, and, on that day, she had been assigned to work twenty-nine (29) miles away at the County Courthouse in Downtown Sacramento.

70. Ms. Adams immediately notified her supervisor about the incident as she believed it provided compelling support to Ms. Adams' theory that Marchese was attempting to catch Ms. Adams violating some Department policy – such as unauthorized use of her service vehicle (as Marchese is believed to have previously reported regarding Ms. Adams) or working from home without authorization – to further retaliate against her. This theory was corroborated further by the fact that

Marchese had provided a photograph of Ms. Adams' former residence to the investigator and accused Ms. Adams of making a false accusation relating to property damage.

Ms. Adams Defends Herself From Marchese's Harassment

71. Deeply concerned, on July 24, 2020, Ms. Adams submitted a formal complaint with County of Sacramento's Equal Employment Opportunity (EEO) office against Marchese for harassment and retaliatory behavior.

72. When Marchese was interviewed regarding Ms. Adams' EEO complaint against her, Marchese denied having any knowledge that Ms. Adams had forwarded a complaint against her in February 2019. On information and belief, this statement by Marchese was false.

73. At first, Marchese denied having knowledge that any anonymous complaints had been filed against Ms. Adams. She went so far as to claim that "this is the first time I'm seeing these documents. I've never seen them before."

74. After the investigator, Susan Schoenig, reminded Marchese that she had sent the anonymous complaints against Ms. Adams to her counsel before the interview, Marchese admitted to having looked over the first anonymous complaint.

75. When Ms. Schoenig informed Marchese that the second anonymous complaint had been a phone call, Marchese confessed that in fact she was aware of the first anonymous complaint and had herself made the phone call because she believed that she had seen Ms. Adams driving her daughter in her patrol vehicle, as has been alleged in the first complaint.

76. According to Marchese, "[Ms. Adams] used to do this to her ex-husband all the time, she would ask me to go check his driveway to see if the patrol car or a take-home car was in his driveway if he was transporting the kids."

77. When asked why she drove by Ms. Adams' home in July 2020, when she was assigned to work 29 miles away, Marchese offered the explanation that she was picking up money from a photographer friend in Lincoln, CA. Although this particular friend lives 12 miles away in Rocklin, Marchese explained that they had agreed to meet at another mutual friend's home in Lincoln.

78. Marchese did not deny making a U-turn when she noticed Ms. Adams.

The Investigation Flips

79. During the interview with Ms. Schoenig, Marchese repeated many of the same false allegations against Ms. Adams that had appeared in the anonymous complaints, including that Ms. Adams had used homophobic language and exhibited racist beliefs.

80. While making these false accusations, Marchese first introduced the allegation that Ms. Adams had sent racist images to her and Morrisey on New Year's Eve, 2013.

81. In support, Marchese produced a computer printed piece of paper with a picture of a racist image that she alleged Ms. Adams had sent her.

82. However, Marchese did not provide the investigator, Susan Schoenig, with any proof that Marchese received the image from Ms. Adams; Marchese only provided a computer printed piece of paper of the image itself.

83. Marchese claimed that the phone on which she purportedly received the racist image was destroyed by water damage, yet she managed to print a screenshot of the image (but not the conversation itself) "and I held on to it because I felt that in the event something ever came back."

84. In her interview, Marchese went to great lengths to convey that she had made it "very clear" to her supervisors over the years that she had observed Ms. Adams displaying racist behavior; yet she did not explain why she waited over seven (7) years to report the image.

85. Marchese was sure to add that she "kn[ew] also that Captain Morrisey [sic.] received the same [image], the same one that I did. And if I know Captain Morrisey [sic.] and I have for years he will have them as well."

86. The investigation that began as an inquiry into Marchese's potential harassment of Ms. Adams morphed into an investigation into Ms. Adams herself, based on another false charge leveled by Marchese.

87. When interviewed, Morrissey—who, as mentioned, specializes in cell phone forensics for the Department and possesses extensive expertise in recovering lost, deleted, or erased cell phone content—produced his cell phone which showed conversations with Ms. Adams where the racist image that Marchese had produced was purportedly shared with him as well.

88. The conversation between Morrissey and Ms. Adams occurred on New Year's Eve, 2013. On that evening, Ms. Adams appeared to be engaged in a friendly, casual text message conversation with Morrissey. The two exchanged Happy New Year's wishes and Ms. Adams shared videos of her children playing.

89. During their text conversation on New Year's Eve, 2013, Ms. Adams purportedly sent Morrisey a message stating, "Some rude racist just sent this!!", along with two horribly racist images that she had received: one depicted a white man spraying a young black child with a hose and the text, "Go be a n***** somewhere else," and another featured an image of Will Ferrell and the text, "Black people started wearing their pants low, white people called it 'saggin.' Spell saggin backwards … Those sneaky white people." Morrisey replied, "That's not right." To underscore that she was condemning the content of these images and did not endorse their hateful, racist message, Ms. Adams answered, "Oh, and just in case u [sic.] think I encourage this . . ." What Ms. Adams stated in the texts following those ellipses is a mystery, as the later portions of the conversation were omitted from the grainy screenshots the investigator provided Ms. Adams.

90. At no point in the text message exchange did Ms. Adams state or imply that she found the images humorous or agreed with their racist message.

91. Rather, a review of the only portions of the text message conversation which Ms. Adams was permitted to see demonstrates that Ms. Adams was condemning the images and their content.

92. Ms. Adams' career in law enforcement exposed her to frequent trauma and violent events. For instance, Ms. Adams previously served as the department as the Internet Crimes Against Children Task Force Commander. As part of her daily duties, she was subjected to disturbing, violent, and unconscionable images of infants, toddlers and adolescents being sexually exploited and sexually abused by adults. She also previously served on the Gang Suppression Unit

alongside Morrisey. To be able to cope, Ms. Adams had to make it a practice to forget the images to which she was exposed. As part of this coping process, Ms. Adams would often discuss and share disturbing details with trusted coworkers. *Cf.* Carolyn M. Aldwin & Loriena A. Yancura, *Coping*, ENCYCLOPEDIA OF APPLIED PSYCHOLOGY, Sep. 2, 2004, at 507-510 ("confiding in others after a trauma is generally associated with better outcomes"). Given that her regular practice was to force herself to forget disturbing images, and that she allegedly sent the image in 2013, Ms. Adams is not unable to recall who sent her the racist images. Additionally, Ms. Adams is not able to access her messages from this period to ascertain the identity of the original sender or the original recipients. Ms. Adams does not remember receiving, or sending, the images.

93. For the next seven years, neither Marchese nor Morrisey reported Ms. Adams' messages to a supervisor as inappropriate, nor even so much as mentioned the messages to Ms. Adams

94. Pursuant to SCS Policy #601, the Department directs "[a]ny individual who . . . is aware of discrimination . . . in a County work situation", to "immediately report such action or inaction." David Devine, et al., *Policy #601: Discrimination, Harassment, and Retaliation*, at 2-3, *rev.* (Aug. 2020).

95. Soon after informing the investigator that she had screenshots of the racist images that Ms. Adams had sent her, and completely unrelated to any question she had been asked, Marchese confidently stated: " . . . I know also that Morrisey received the same, the same one that I did. And if I know Morrisey and I have for years he will have it as well."

96. Somehow, Marchese was well aware that Morrisey had received and printed screenshots of the same images that she had received from Ms. Adams over seven (7) years ago, yet inexplicably, he also had failed to report them to his supervisors.

97. On information and belief, Doe Defendants collectively hid and distorted the original context and language accompanying the images to suggest that Ms. Adams somehow endorsed or supported the images' racist message.

98. Marchese's attempt to distract from the investigation into her own misconduct by levying incendiary but baseless charges against Ms. Adams proved successful: the investigation initially launched to determine whether Marchese had harassed Ms. Adams morphed into an investigation of Adams herself.

99. While the investigation concerning the false allegations against Ms. Adams was ongoing – despite the fact that she had been credibly accused of harassment and neglected to report a purportedly racist communication from a fellow Sheriff's Captain for over seven (7) years – the Department promoted Marchese.

100. At the direction of Defendant Jones, the Department deviated from its standard review procedure for investigations into officer misconduct as it investigated Ms. Adams: rather than allow the Sacramento County Inspector General to conduct the review of the investigation, Sheriff Jones selected John McGinnis – a close personal friend and political endorser – to perform the review.

101. McGinnis rubber-stamped the investigation without examining some of the glaring problems it raised. The Department never answered basic questions such as

why the investigator had failed to acquire the complete thread of text messages between Ms. Adams and Morrisey, why there had been no forensic examination of Morrisey's phone or Marchese's phone, or why no one had reported these text messages for seven years. McGinnis also never discussed the multiple, baseless accusations made against Ms. Adams. On information and belief, McGinnis's report was a conclusion in search of an investigation, rather than the other way around.

SCS Violates Ms. Adams' Right to Due Process

102. When SCS seeks to discipline an employee, Department policy clearly states that "management bears the burden of proving that: (1) there is 'good cause' to discipline the employee, and (2) the level of discipline is appropriate given the offense and any other relevant considerations." Sacramento County Sheriff's Office, *County Discipline Manual*, at 12, *rev.* (Nov. 2016) (hereafter, "Discipline Manual").

103. The Department's Discipline Manual provides supervisors with the following advice: "Bearing the burden of proof means that management must have evidence – testimony, business records, etc., to support the facts outlined in the order of discipline. YOU MUST PROVE THE FACTS." *Discipline Manual*, at 14 (emphasis in original).

104. Before the Department may administer formal discipline against an employee, the SCS Discipline Manual sets forth a five (5) step procedure that must be followed:

> a) Notice of Proposed Disciplinary Action: To initiate the process, the employee first must be provided with a notice that "outlines the reasons for the discipline and the proposed penalty. . . . . At this point the

discipline is only proposed, not final. The employee has the right to have copies of **all** the materials upon which the disciplinary action is based."

b) Skelly Hearing: "Before the final Order can be administered, the employee has the option to request . . . an informal meeting with the Department Head's designated representative," known as a "Skelly" Hearing. *See generally Skelly v. State Personnel Bd.*, 539 P.2d 774 (Cal. 1975). This hearing is intended to offer the employee a "chance to present information demonstrating or asserting that the facts are wrong or incomplete, the discipline is too severe because there are mitigating factors, or it is being imposed unfairly." After the employee has been provided with "an opportunity . . . to articulate his/her defense to the proposed charges as well as to identify any mitigating circumstances," the officer overseeing the hearing is allowed to present his or her view "regarding the appropriateness of the proposed penalty", which the "appointing authority" overseeing the investigation is free to accept or reject.

c) Order of Disciplinary Action: "After the Skelly hearing and before discipline is imposed, the employee must receive a final 'Order of Disciplinary Action'," containing: "[i] a statement of the reasons for the disciplinary action; [ii] the effective date of the discipline; [iii] the facts upon which the discipline is based; [and] [iv] a statement of appeal rights."

d) Appeal hearing with Civil Service Commission or Arbitrator: After an employee receives an Order of Disciplinary action, he or she "has fifteen (15) calendar days to file an appeal with the Office of Labor Relations (if represented) or the Civil Service Commission (if unrepresented)." Appeals filed by

> "represented employees go to binding arbitration." In an appeal heard before an arbitrator, the employee is given an opportunity to present his or her case to a neutral party, confront his or her accusers, call witnesses who testify under penalty of perjury, and to cross examine those witnesses.
>
> e) Adoption, modification, final decision on arbitration or Civil Service Commission decision: If an appeal hearing is conducted by binding arbitration, the arbitrator issues the final decision on the matter. The Department's Civil Service Commission may not amend or alter the arbitrator's decision. *Discipline Manual*, at 28-30 (emphasis original).

105. Rather than following the process as outlined, upon conclusion of the "investigation," the Sheriff instead discretely decided to offer Ms. Adams a Hobson's choice: (a) be terminated by SCS and publicly mischaracterized as a racist, thereby tarnishing her reputation, destroying her career, and subjecting her family to ridicule and potentially in danger of violence; or (b) quietly resign from a career she had built over twenty-seven (27) years and avoid being falsely maligned as a racist in the press.

106. Sheriff Jones had a call with Ms. Adams where he discussed with her the potential for significant unfavorable media attention if the investigation became public. Sheriff Jones represented to Ms. Adams that the impetus for the discussion was that the city of Rancho Cordova had expressed a concern about the investigation creating negative press. In fact, when this call took place, Ms. Adams had just had a conversation with Rancho Cordova's city manager who, with knowledge of the allegations for which Ms. Adams was being investigated, represented to Ms. Adams that the city wanted her to continue in her current role.

107. On Thursday, August 19, 2021, Ms. Adams' union counsel, Daniel Thompson, met with James Woods, Deputy County Counsel of the County. Woods made clear to Mr. Thompson that the offer he was presenting to Ms. Adams came directly from Sheriff Scott Jones. Sheriff Scott Jones has the final policymaking authority to determine whether an employee under his command is terminated.

108. Woods communicated that the Sheriff would terminate Ms. Adams unless she agreed to retire.

109. Woods communicated that, if Ms. Adams agreed to resign, the Department would not issue preliminary findings or propose discipline. Woods further communicated that the investigation would never become public, insinuating that then neither Ms. Adams, nor the County, would have to deal with the collateral fallout. Should Ms. Adams refuse the offer, Woods stated that the investigation would fuel a "media circus," Ms. Adams could expect the images would be placed on the front page of the local newspaper, and she would be publicly maligned as a racist.

110. Woods also communicated that this matter was highly confidential and would be kept that way if Ms. Adams agreed. Woods stated that the only people who knew about the offer and the proposed findings of the investigation, other than himself and the investigators involved, were the Sheriff and the Undersheriff. Woods suggested that, if Ms. Adams accepted the offer, the matter would never become part of the public record.

111. Woods was clear that the Sheriff had already made up his mind to terminate Ms. Adams. The choice offered to Ms. Adams was not resign or go through an investigation so that, if charges were substantiated, she

would be terminated; her choice was resign or be terminated and reputationally destroyed in the press.

112. Rather than subject herself and her family to a predictable slew of unfavorable, sensationalized media coverage that defamed her character and could potentially put her family in danger to fight a battle where the outcome was already predetermined, Ms. Adams opted to resign under duress on September 14, 2021. The Department and Sheriff Jones' threat to make the false allegations public unless she resigned, and the terrifying potential consequences for her family if those allegations played out in the media, was paramount in her decision to retire.

113. At no point during the investigation did the Department place Ms. Adams on administrative leave. Ms. Adams served as the Rancho Cordova Chief of Police until the end of her tenure with the Department, and she resigned in good standing.

114. On September 7, 2021, the Rancho Cordova City Council publicly thanked and heaped praise upon Ms. Adams as she officially announced her 'retirement' as the City's Chief of Police.[3]

The Defamatory Campaign Against Ms. Adams

115. On March 4, 2022, the President of the Sacramento chapter of the NAACP, Betty Williams, published an open letter regarding Ms. Adams. A true and correct copy of this open letter is attached as Exhibit B.

116. The NAACP has since confirmed to Ms. Adams' counsel that the allegations in the NAACP's letter came directly "from the Sheriff's Department." A true and

[3] *See* https://youtu.be/CnzS5pogri4?t=800.

correct copy of a letter from the NAACP's counsel is attached as Exhibit C.

117. The Department's Lead Counsel represented to Ms. Adams that only the Sheriff and Undersheriff had access to the investigation materials and findings. On information and belief, one of these individuals – or another acting with their consent and approval – shared Ms. Adams' confidential files with the NAACP.

118. The NAACP letter contained confidential materials from Ms. Adams' files including the racist images Ms. Adams condemned by text message eight years prior, and the details from the anonymous complaints filed against her. Tellingly, the information published from Ms. Adams' files was selectively chosen to portray a false narrative about Ms. Adams.

119. The information provided to the NAACP suggested that Chief Adams was placed on "extended administrative leave before she retired last year" In fact, Chief Adams was never placed on administrative leave, extended or otherwise.

120. The information provided to the NAACP insinuated that no one condemned the content of the racist image, when the actual record showed Chief Adams specifically condemned the horribly racist content as a part of her text and after the fact.

121. The information provided to the NAACP relayed the confidential anonymous complaints that Chief Adams had made homophobic slurs yet omitted the conclusions from Ms. Adams' file that these allegations were investigated and dismissed as unfounded.

122. These false allegations the Sheriff's Department relayed to the NAACP were then repeated in a March 4, 2022, article in The Sacramento Bee ("the Bee"). A

Sacramento County Spokesperson responded to the Bee's request for comment but did not correct any of false statements made regarding the confidential information in Ms. Adams' file or the false portrayal of the circumstances surrounding Ms. Adams' retirement.

123. On information and belief, Ms. Adams' confidential personnel records related to the investigation were also released on or about April 28, 2022, in response to a public records request made to the County.

124. Chief Adams had retired six months before this defamation campaign. After her retirement from the Department, Ms. Adams taught as an adjunct professor at William Jessup University while she looked for other employment, a position she had held since 2017. These allegations came to light just as Ms. Adams was being considered for a highly coveted position within the California Commission on Peace Officer Standards (POST). After passing POST's entry exam with the exemplary score of 90 out of 100, an interview was scheduled for April 13, 2022.

125. After the Bee article published its article, Ms. Adams endured a series of negative employment determinations due to the false portrayal of Ms. Adams as homophobic and racist.

126. On March 10, 2022, William Jessup University requested that Ms. Adams resign from her position as adjunct professor. Ms. Adams did so.

127. On April 13, 2022, POST informed Ms. Adams that, in light of the article, it could not hire her, despite her extensive experience and excellent exam scores.

128. On October 20, 2022, Senior Vice President and Executive Recruiter for Bob Murray & Associates, Joel Bryden, contacted Ms. Adams about a current job

opening with the City of Davis. The position was for a second in command who could ascend to Chief of Police following the current Chief's retirement. Mr. Bryden stated, "I am hoping you might have some interest in this position." When Ms. Adams let him know she was interested and would be applying, Mr. Bryden even offered to extend the application deadline to give her time to apply. Ms. Adams officially applied for the position, but on October 27, 2022, Mr. Bryden contacted Ms. Adams to let her know he had conducted a preliminary Google search and the Sacramento Bee's article about her was a "non-starter" to begin the hiring process.

129. As a direct result of Defendants' falsehoods and retaliation, Ms. Adams was forced to endure significant blows to her professional career and personal reputation.

130. Since June 2021, Ms. Adams has sought counseling to treat the anxiety, stress, and depression caused by the false allegations asserted against her, the sham investigation that resulted in her forced resignation, the NAACP letter and the Bee article that falsely maligned her character, the unsupported personal attacks, and her resulting inability to find alternative employment.

COUNT I
DENIAL OF PROCEDURAL DUE PROCESS
(42 U.S.C. § 1983) AGAINST DEFENDANT
SACRAMENTO COUNTYAND DEFENDANT
JONES IN HIS INDIVIDUAL CAPACITY

131. Ms. Adams realleges and reincorporates Paragraphs 1 through 130 as if set forth fully herein.

132. "Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the

Due Process Clause of the Fifth 'or Fourteenth Amendment." *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).

133. Public employment constitutes a protected property interest under the Fourteenth Amendment. *Hufford v. McEnaney*, 249 F.3d 1142, 1150 (9th Cir. 2001).

134. Before a governmental entity may take punitive action against a permanent civil service employee, the California Supreme Court has ruled that procedural due process requires, "at a minimum, . . . notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline." *Skelly*, 539 P.2d at 788–89.

135. In addition, procedural due process requires that investigations into alleged misconduct by a public employee be conducted by a "reasonably impartial, noninvolved reviewer." *Stanton v. City of W. Sacramento*, 226 Cal. App. 3d 1438, 1443, 277 Cal. Rptr. 478, 481 (Ct. App. 1991).

136. When a public employee is "terminated for reasons 'sufficiently serious to stigmatize or otherwise burden the individual so that he is not able to take advantage of other employment opportunities,' and the public employer publicizes those stigmatizing charges,' 'the process' that must be afforded to the employee is a 'name-clearing' hearing." *Fitzgerald v. City of Fresno*, No. 121CV01409AWISAB, 2022 WL 1204707, at *11 (E.D. Cal. Apr. 22, 2022) (citing *Perez v. City of Roseville*, 926 F.3d 511, 523 (9th Cir. 2019)).

137. As the above allegations demonstrate, the Municipal Defendants constructively discharged Ms.

Adams by informing her that if she did not resign, they would terminate her and falsely malign her in the press. Ms. Adams did not voluntarily resign her position but was coerced into doing so by the Municipal Defendants under threat of character assassination. These threats came directly from Sheriff Scott Jones, an individual with final decision-making authority to hire or fire within the department.

138. Because the Municipal Defendants constructively discharged Ms. Adams, Ms. Adams was denied the procedure afforded to discharged employees – as required by SCS policy, the Sacramento County Municipal Code, the California Government Code, and the United States Constitution – including: notice of the proposed disciplinary action against her; a Skelly hearing; a "name clearing hearing"; an official order of disciplinary action; and the right to request an appeal hearing, which encompasses the attendant rights of presenting evidence and testimony, confronting and cross-examining adverse witnesses, and having her matter decided by a neutral arbitrator. *See* Cal. Gov't Code Ann. § 3304.5; Sac. Cnty. Sheriff's Office, *Discipline Manual*, at 28-30; *Skelly*, 539 P.2d at 788–89.

139. That Defendant Jones selected John McGinnis, a close personal friend and political endorser, to review the propriety of the investigation into Ms. Adams, rather than the Sacramento County Inspector General as is the standard practice for Internal Affairs investigations, violates the procedural due process requirement that such investigations be conducted by a "reasonably impartial, noninvolved reviewer." *Stanton*, 226 Cal. App. 3d at 1443, 277 Cal. Rptr. at 481.

140. Additionally, Jones and the Department let Ms. Adams know that the outcome of any due process they

would have afforded her was a foregone conclusion. Her options were resign or be terminated, not resign or face an investigation which could result in her termination after a fair process.

141. The Municipal Defendants' actions, as alleged, deprived Ms. Adams of her public employment, a property interest protected under the Fourteenth Amendment.

142. WHEREFORE, Ms. Adams requests that judgment be entered against Municipal Defendants, ordering:

a) Declaratory relief declaring that Municipal Defendants' conduct, as set forth above, violated Ms. Adams' constitutional right to procedural due process under the Fourteenth Amendment;

b) An award for reasonable attorney's fees and costs pursuant to 42 U.S.C. § 1988;

c) An award for general, specific, presumed, and nominal damages according to proof; and

d) Other relief as determined appropriate by the Court.

COUNT II
BREACH OF CONTRACT
AGAINST DEFENDANT SACRAMENTO COUNTY
AND DEFENDANT SCOTT JONES

143. Ms. Adams realleges and reincorporates Paragraphs 1 through 142 as if set forth fully herein.

144. "[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the

plaintiff." *Oasis West Realty, LLC v. Goldman* 250 P.3d 1115, 1121 (Cal.4th 2011).

145. Ms. Adams entered an oral contract with Defendant Sacramento County and Sheriff Scott Jones, whereby Ms. Adams agreed to retire in exchange for Sacramento County and Scott Jones agreeing not to publicly disclose Ms. Adams' confidential investigation file.

146. Ms. Adams accepted the offer.

147. Ms. Adams performed her part of the contract and resigned.

148. Sacramento County, the Sheriff's Department, and Scott Jones breached the contract by disseminating materials and allegations from Ms. Adams' investigative files to the NAACP.

149. Sacramento County additionally breached the contract by releasing portions of Ms. Adams' personnel files pursuant to a public records request.

150. As a result of this breach, Ms. Adams has suffered general damages including, but not limited to, the loss of future income, the loss of employee benefits, the loss of future employment opportunities, and severe reputational damage.

151. WHEREFORE, Ms. Adams requests that judgment be entered against Defendants Sacramento County and Scott Jones, ordering:

a) An award for general, specific, presumed, and nominal damages according to proof; and

b) Other relief as determined appropriate by the Court.

COUNT III
DEPRIVATION OF FIRST AMENDMENT RIGHT TO FREEDOM OF SPEECH (42 U.S.C. § 1983) AGAINST DEFENDANT SACRAMENTO COUNTY AND DEFENDANT JONES IN HIS INDIVIDUAL CAPACITY

152. Ms. Adams realleges and reincorporates the allegations made in Paragraphs 1 through 151 as if set forth fully herein.

153. Ms. Adams brings this claim against Defendant Sacramento County and Defendant Jones in his individual capacity ("Municipal Defendants"), under federal statute 42 U.S.C. § 1983, which provides that any person or persons who, under color of state law, deprives another of any rights, privileges, or immunities secured by the Constitution or laws of the United States shall be liable to the injured party.

154. The First Amendment of the United States Constitution states: "Congress shall make no law abridging the freedom of speech, or the press." The First Amendment has been interpreted to apply to all government organizations in the United States. It applies to state and local governments through operation of the Fourteenth Amendment Due Process Clause, which incorporates the free speech protections of the First Amendment.

155. Public employees have the right not to have the government restrict their speech based on the speech's viewpoint. Such restrictions are rarely permitted. *Rosenberger v. Rector and Visitors of the University of Virginia,* 515 U.S. 819, 829 (1995). The rationale for prohibiting the suppression of public employee speech pertaining to matters of public interest is to protect employees from their superiors who may exercise their

authority because the superior disagrees with the content of the employee's speech. *Rankin v. McPherson*, 483 U.S. 378 (1987). The government must meet a high standard for restricting speech in a public forum. State action designed to retaliate against, and chill free speech strikes at the very heart of the First Amendment.

156. The United States Supreme Court has developed a test to determine when First Amendment protection attaches to a public employee's speech. A public employee's speech is protected if, (1) the speech is a matter of "public concern"; (2) the employee spoke as a private citizen and not a public employee (i.e., the speech is not pursuant to "official duties"); and (3) the employee's speech interest outweighs the agency's interest in efficiency and effectiveness. *Eng v. Cooley*, 552 F.3d 1062, 1070-71 (9th Cir. 2009).

157. A matter of public concern is any "[s]peech that can fairly be considered as relating to any matter of political, social, or other concern to the community is constitutionally protected." *Gillete v. Delmore*, 886 F.2d 1194, 1197 (9th Cir. 1989).

158. The Municipal Defendants deprived Ms. Adams of her rights under the First Amendment when they forced her to resign based on private speech that she made regarding a matter of public concern, namely, condemning racism to a friend.

159. Ms. Adams' speech was a substantial or motivating factor for the adverse employment actions taken against her by Defendants because it served as the basis for her forced resignation.

160. The conduct of the Municipal Defendants, in their official and/or individual capacities violated Ms. Adams' First Amendment Rights under color of state law.

161. Defendants' actions, inaction, and conduct have caused and continue to cause Ms. Adams a substantial loss of reputation, professional injury, promotional opportunities and other employment benefits, attorneys' fees, medical expenses, humiliation, embarrassment, and anguish.

162. Defendants' actions, as alleged herein, were intentional, outrageous, despicable, oppressive, and done with substantial certainty that they would injure Ms. Adams and cause her mental anguish, anxiety, and distress. Defendants' acts were done in conscious disregard of the risk of severe emotional harm to Ms. Adams, constituting actual malice, and thereby entitling Ms. Adams to punitive damages against the Defendants.

163. WHEREFORE, Ms. Adams requests that judgment be entered against Defendants Sacramento County and Jones, ordering that:

a) Declaratory relief declaring the Defendants' conduct, as set forth above, violated Ms. Adams Constitutional right to free speech;

b) Preliminary and permanent injunctions requiring all Defendants to, in good faith, issue public retractions that correct the factual record regarding the investigation that led to Ms. Adams' forced resignation, and the context in which the images were sent;

c) An award for reasonable attorney's fees and costs, pursuant to 42 U.S.C. § 1988;

d) An award for general, specific, presumed, nominal, and punitive damages according to proof; and

e) Other relief as determined appropriate by the Court.

COUNT IV
CONSPIRACY TO DEPRIVE PLAINTIFF OF FIRST AMENDMENT RIGHTS (42 U.S.C. § 1983) AGAINST ALL DEFENDANTS

164. Ms. Adams realleges and reincorporates Paragraphs 1 through 163 as if set forth fully herein.

165. Ms. Adams brings this claim against all Defendants under federal statute 42 U.S.C. § 1983, which, as stated above, provides that any person or persons who, under color of state law, deprives another of any rights, privileges, or immunities secured by the Constitution or laws of the United States shall be liable to the injured party.

166. To establish a conspiracy under § 1983, a plaintiff is required to show "(1) the existence of an express or implied agreement among the defendant[s] [] to deprive him of his constitutional rights, and (2) an actual deprivation of those rights resulting from that agreement." *Avalos v. Baca*, 517 F. Supp. 2d 1156, 1169 (C.D. Cal. 2007), *aff'd*, 596 F.3d 583 (9th Cir. 2010).

167. The "requisite causal connection" between a given defendant's actions and an actual deprivation of the plaintiff's constitutional rights "can be established not only by some kind of direct personal participation in the deprivation, but also by **setting in motion a series of acts by others** which the actor **knows or reasonably should know would cause others to inflict the constitutional injury**." *Armstrong v. Reynolds*, 22 F.4th 1058, 1070 (9th Cir. 2022) (emphasis added) (internal citation omitted).

168. A public employee may be found liable for actions taken in a private capacity under § 1983 "if [he] [or] she conspired or entered joint action with a state actor." *Id.* (citation omitted).

169. "[T]he existence of an agreement or meeting of the minds to violate constitutional rights. . . . may be inferred on the basis of circumstantial evidence. . . . [E]ach participant in the conspiracy need not know the exact details of the plan, but each participant must at least share the common objective of the conspiracy." *Crowe v. Cnty. of San Diego*, 608 F.3d 406, 440 (9th Cir. 2010) (internal quotation omitted). A plaintiff is not required to show that such an agreement was "overt." *Id.* (citation omitted).

170. As the Ninth Circuit has held, a showing that the alleged conspirators have committed acts that " 'are unlikely to have been undertaken without an agreement' may allow a jury to infer the existence of a conspiracy." *Mendocino Env't Ctr. v. Mendocino Cnty.*, 192 F.3d 1283, 1301 (9th Cir. 1999) (quoting *Kunik v. Racine County*, 946 F.2d 1574, 1580 (7th Cir.1991)).

171. On information and belief, Sacramento County, Sheriff Jones, and Doe Defendants entered into an implicit or explicit agreement to mischaracterize Ms. Adams' past communications to falsely depict her as a racist.

172. Doe Defendants knew or should have known that such conduct would set in motion a series of events that would deprive Ms. Adams of her constitutional rights, namely, her forced resignation for exercising her First Amendment right to free speech as a private citizen.

173. That multiple Doe Defendants appear to have each printed out screenshots of their text message conversations with Ms. Adams from seven (7) years prior, yet stopped short of reporting the incident to their supervisors, and that one Doe Defendant appeared certain, in her interview regarding Ms. Adams allegation of harassment against her, that not only had other Doe Defendants received the images, but had printed them out

as well, are actions that are unlikely to have been taken without an agreement, and therefore, strongly supports the inference of a conspiracy.

174. As explained more fully above, Defendant Sacramento County and Defendant Jones deprived Ms. Adams of her rights under the First Amendment when they forced her to resign based on private speech that she made condemning an example of racism to a friend.

175. On information and belief, Ms. Adams alleges that the Doe Defendants entered into a conspiracy with the Municipal Defendants, whereby the parties shared the implicit objective of terminating Ms. Adams for engaging in First Amendment protected speech.

176. WHEREFORE, Ms. Adams requests that judgment be entered against Defendants, ordering:

a) Declaratory relief declaring the Defendants' conduct, as set forth above, violated Ms. Adams' Constitutional right to free speech;

b) Preliminary and permanent injunctions requiring all Defendants to comply in good faith and issue public retractions that correct the factual record regarding the investigation that led Ms. Adams resignation, and the context in which the text messages were sent.

c) An award for reasonable attorney's fees and costs, pursuant to 42 U.S.C. § 1988;

d) An award for general, specific, presumed, and nominal damages according to proof; and

e) Other relief as determined appropriate by the Court.

COUNT V
INVASION OF PRIVACY (FALSE LIGHT)
AGAINST ALL DEFENDANTS

177. Ms. Adams realleges and reincorporates Paragraphs 1 through 176 as if set forth fully herein.

178. Defendants published materials and narratives which depicted Ms. Adams in a false light.

179. Defendants published the false allegation that Ms. Adams was put on extended administrative leave for sending racist images in support of their content, when, in fact, Ms. Adams was never put on administrative leave, and the context of her text communications showed she condemned the racist images. The Defendants' mischaracterized Ms. Adams' communications and placed her in a false light as a racist.

180. The false light created by Defendants' disclosure – that Ms. Adams was terminated for exhibiting racist behavior and making homophobic comments – is, and would be, highly offensive to a reasonable person in Ms. Adams' position.

181. The Defendants knew that the mischaracterization provided to the NAACP would create a false impression about Ms. Adams, and their purposeful omissions of content coupled with their false statements were maliciously intended to create that false impression.

182. In conducting these acts or omissions, Defendants acted deliberately and intentionally, and with malice.

183. As a proximate result of Defendants' conduct, Ms. Adams has suffered irreparable injury and damage, and she will continue to suffer actual injury, including emotional distress resulting from the loss of career

opportunities and damage to her mental health and personal reputation.

184. The career opportunities lost by Ms. Adams because of the Defendants' action include, but are not limited to, her position as an adjunct professor for William and Jessup University, her likely hiring by POST, and her consideration for employment with the City of Davis.

185. WHEREFORE, Ms. Adams requests that judgment be entered against Defendants, ordering:

a) An award for general, specific, presumed, and nominal damages according to proof; and

b) Other relief as determined appropriate by the Court.

COUNT VI
CONSPIRACY TO COMMIT INVASION OF PRIVACY (FALSE LIGHT) AGAINST DOE DEFENDANTS

186. Ms. Adams realleges and reincorporates Paragraphs 1 through 185 as if set forth fully herein.

187. To establish a civil conspiracy under California law, a plaintiff must establish: "(1) formation and operation of the conspiracy and (2) damage resulting to plaintiff (3) from an act done in furtherance of the common design." *I-CA Enterprises, Inc. v. Palram Americas, Inc.*, 235 Cal. App. 4th 257, 272, fn. 2, 185 Cal. Rptr. 3d 24, 36, fn. 2 (2015) (internal quotations and citations omitted).

188. As previously alleged, in attempts to discredit Ms. Adams, the Doe Defendants published materials and narratives which depict Ms. Adams in a false light, out of the context in which the communications were made.

189. On information and belief, the Doe Defendants formed and operated a conspiracy to malign Ms. Adams'

reputation by falsely depicting her as racist and homophobic.

190. As a result, Ms. Adams suffered damages, including, but not limited to, the loss of income, the loss of employee benefits, the loss of future employment opportunities, the cost of seeing a therapist, attorneys' fees, and other damages.

191. WHEREFORE, Ms. Adams requests that judgment be entered against Doe Defendants, ordering:

a) An award for general, specific, presumed, nominal, and punitive damages according to proof; and

b) Other relief as determined appropriate by the Court.

COUNT VII
INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE – AGAINST DOE DEFENDANTS

192. Ms. Adams realleges and reincorporates Paragraphs 1 through 191 as if set forth fully herein.

193. To state a claim for intentional interference with prospective economic advantage, a plaintiff must show: "(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) the defendant's intentional acts designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the defendant's acts. *Reeves v. Hanlon*, 95 P.3d 513, 520, fn. 6 (2004).

194. Under California law, "a plaintiff may recover damages for intentional interference with an at-will employment relation under the same California standard

applicable to claims for intentional interference with prospective economic advantage." *Id.*

195. Ms. Adams was in an economic relationship with SCS, with the probability of future economic benefit.

196. Doe Defendants had actual knowledge of Ms. Adams' economic relationship with SCS.

197. As alleged above, Doe Defendants' intentionally mischaracterized the context of communications that Ms. Adams had sent, in a bad faith effort to persuade SCS to terminate Ms. Adams.

198. Doe Defendants' intentional disruption of Ms. Adams' employment relationship ultimately led SCS to force Ms. Adams' resignation.

199. As a result of the Doe Defendants' actions, Ms. Adams suffered economic harm, including, but not limited to, the loss of future income, the loss of employee benefits, and the loss of future employment opportunities.

200. WHEREFORE, Ms. Adams requests that judgment be entered against Doe Defendants, ordering:

a) An award for general, specific, presumed, nominal, and punitive damages according to proof; and

b) Other relief as determined appropriate by the Court.

COUNT VIII
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (IIED) AGAINST DOE DEFENDANTS

201. Ms. Adams realleges and reincorporates Paragraphs 1 through 200 as if set forth fully herein.

202. To state a claim for IIED, "a plaintiff must show: (1) outrageous conduct by the defendant; (2) the defendant's intention of causing or reckless disregard of

the probability of causing emotional distress; (3) the plaintiff's suffering severe or extreme emotional distress; and (4) actual and proximate causation of the emotional distress by the defendant's outrageous conduct." *Yau v. Santa Margarita Ford, Inc.*, 229 Cal. App. 4th 144, 160, 176 Cal. Rptr. 3d 824, 836 (2014) (internal quotations and citations omitted).

203. Conduct is deemed "outrageous" when it is found to "be so extreme as to exceed all bounds of that usually tolerated in a civilized society." *Id.* (internal quotations and citations omitted).

204. Doe Defendants' false depiction of Ms. Adams as racist and homophobic constitutes outrageous conduct because it is so extreme as to exceed all bounds of that usually tolerated in a civilized society.

205. As the circumstances described above demonstrate, Doe Defendants' inflicted emotional distress on Ms. Adams with the intention or reckless disregard of causing her emotional stress.

206. As shown by the extensive counseling that Ms. Adams has had to seek in order to treat the significant stress, depression, and anxiety caused by Doe Defendants' conduct, Ms. Adams has suffered severe or extreme emotional distress.

207. Doe Defendants' outrageous conduct, as alleged herein, was the actual and proximate cause of Ms. Adams' emotional distress.

208. WHEREFORE, Ms. Adams requests that judgment be entered against Doe Defendants, ordering that:

a) Declaratory relief declaring the Doe Defendants intentionally inflicted economic distress on Ms. Adams;

b) An award for reasonable attorney's fees and costs; and

c) An award for general, specific, presumed, nominal, and punitive damages according to proof; and

d) Other relief as determined appropriate by the Court.

Date: January 30, 2023 **DHILLON LAW GROUP INC.**

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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands trial by jury on all claims in this action of all issues so triable.

Date: January 30, 2023 **DHILLON LAW GROUP INC.**

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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2023, I electronically filed the above document with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to all registered counsel.

Date: January 30, 2023 **DHILLON LAW GROUP INC.**

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