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18 Attorneys for Plaintiff June Sheldon

19 **UNITED STATES DISTRICT COURT**
20 **NORTHERN DISTRICT OF CALIFORNIA**
21 **SAN JOSE DIVISION**

22 **JUNE SHELDON,**

23 Plaintiff,

24 v.

25 The Trustees of the San José/Evergreen
Community College District: **BALBIR**
26 **DHILLON, MARIA FUENTES, AUTUMN**
27 **GUTIERREZ, RICHARD HOBBS,**
28 **RONALD J. LIND, RANDY OKAMURA,**
AND **RICHARD K. TANAKA**, all in their
individual and official capacities; **ROSA G.**

Case No. _____

VERIFIED COMPLAINT

1 **PÉREZ**, in her individual and official
2 capacities as Chancellor of the San
3 José/Evergreen Community College District;
4 **ANITA L. MORRIS**, in her individual and
5 official capacities as Vice Chancellor of Human
6 Resources for the San José/Evergreen
7 Community College District; **MICHAEL L.**
8 **BURKE**, in his individual and official
9 capacities as President of San José City
10 College; **LEANDRA MARTIN**, in her
11 individual and official capacities as Dean of the
12 Division of Math and Science at San José City
13 College,

14 Defendants.

15 Plaintiff June Sheldon, by and through counsel, and for her Verified Complaint against
16 Defendants Balbir Dhillon, Maria Fuentes, Autumn Gutierrez, Richard Hobbs, Ronald J. Lind, Randy
17 Okamura, Richard K. Tanaka, Rosa G. Pérez, Anita L. Morris, Michael L. Burke, and Leandra Martin,
18 hereby states as follows:

19 INTRODUCTION

20 1. The cornerstone of public higher education is the freedom of professors to discuss
21 competing theories and ideas in the classroom. This precious freedom, comprised of the freedom of
22 speech and academic freedom, guards the faculty of public colleges and universities so that they can
23 encourage students to ask innovative questions and then answer those questions with a variety of ideas
24 and theories. Unfortunately, at San José/Evergreen Community College District (the District) these
25 freedoms do not exist. When Plaintiff June Sheldon, an adjunct faculty member at San José City
26 College (SJCC), answered a student's science question during class, another student complained about
27 being "offended" by the answer. Instead of protecting Ms. Sheldon's right to answer the question,
28 Defendants fired her.

2. By terminating Ms. Sheldon for answering a student's question in class, Defendants
violated her First Amendment rights to freedom of speech, academic freedom, and protection from
retaliation, as well as her Fourteenth Amendment rights to due process and equal protection of law.

1 Defendants committed all of the actions alleged herein while acting under color of state law.
2 Defendants must be held accountable for their unconstitutional actions, restore Ms. Sheldon’s job, and
3 compensate Ms. Sheldon for violating her constitutional rights.

4 **JURISDICTION AND VENUE**

5 3. This action raises federal questions under the First and Fourteenth Amendments to the
6 United States Constitution and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

7 4. This Court has original jurisdiction over these federal claims pursuant to 28 U.S.C. §§
8 1331 and 1343.

9 5. This Court has authority to award the requested declaratory relief under 28 U.S.C. §
10 2201; the requested injunctive relief under 28 U.S.C. § 1343(3); the requested damages under 28
11 U.S.C. § 1343(3); and attorneys’ fees under 42 U.S.C. § 1988.

12 6. Venue is proper under 28 U.S.C. § 1391 in the Northern District of California because a
13 substantial part of the actions or omissions giving rise to this case occurred within the Northern District
14 and at least one Defendant resides in the Northern District.

15 **INTRADISTRICT ASSIGNMENT**

16 7. Pursuant to Civil L.R. 3-2(c)–(e) & 3-5, this is a civil rights case, in a non-excepted
17 category, suitable for assignment to the San Jose division because the civil action arose in Santa Clara
18 County.

19 **PLAINTIFF**

20 8. Plaintiff June Sheldon is a resident of Soquel, California. She is a former adjunct
21 lecturer at SJCC in the District.

22 **DEFENDANTS**

23 9. Defendants Balbir Dhillon, Maria Fuentes, Autumn Gutierrez, Richard Hobbs, Ronald J.
24 Lind, Randy Okamura, and Richard K. Tanaka are, and were at all times relevant to this Complaint,
25 members of the Board of Trustees of the District. These Defendants’ duties include the adoption of rules
26 and regulations pursuant to Cal. Educ. Code § 70902 that govern the California state community colleges,
27 including SJCC, and making final faculty employment decisions. These Defendants acted under color of
28

1 state law when they violated Ms. Sheldon’s First and Fourteenth Amendment rights. They are each sued in
2 their individual and official capacities.

3 10. Defendant Rosa G. Pérez is, and was at all times relevant to this Complaint, Chancellor
4 of the District. Chancellor Pérez’s duties include the oversight of the District, including SJCC, the
5 execution of policies and regulations that govern the District, and decision-making concerning faculty
6 employment. Defendant Pérez acted under color of state law when she violated Ms. Sheldon’s First
7 and Fourteenth Amendment rights. She is sued in her official and individual capacities.

8 11. Defendant Anita L. Morris is, and was at all times relevant to this Complaint, Vice
9 Chancellor of Human Resources for the District. Vice Chancellor Morris’ duties include the oversight
10 of the District, including SJCC, the execution of policies and regulations that govern the District, and
11 decision-making concerning faculty employment. Defendant Morris acted under color of state law
12 when she violated Ms. Sheldon’s First and Fourteenth Amendment rights. She is sued in her official
13 and individual capacities.

14 12. Defendant Michael L. Burke is, and was at all times relevant to this Complaint,
15 President of SJCC, a community college in the District. President Burke’s duties include the oversight
16 of SJCC, the execution of policies and regulations that govern the college, and decision-making
17 concerning faculty employment. Defendant Burke acted under color of state law when he violated Ms.
18 Sheldon’s First and Fourteenth Amendment rights. He is sued in his official and individual capacities.

19 13. Defendant Leandra Martin is, and was at all times relevant to this Complaint, Dean of
20 the Division of Math and Science at SJCC. Ms. Martin’s duties include overseeing division
21 administration and employment, including the policies and procedures that govern the college.
22 Defendant Marin acted under color of state law when she violated Ms. Sheldon’s First and Fourteenth
23 Amendment rights. She is sued in her official and individual capacities.

24 **FACTUAL BACKGROUND**

25 **A. MS. SHELDON’S TEACHING CAREER AT THE DISTRICT**

26 14. June Sheldon received a bachelor’s degree from San José State University in Molecular
27 Biology in 1975 and a master’s degree in Biology from San José State University in 1978.

1 genetic disorders using the internet, recognize genetic disorders and models of inheritance, and predict
2 the risk of inheritance of various genetic disorders.

3 26. The Human Heredity course used the seventh edition of a textbook entitled *Human*
4 *Genetics: Concepts and Applications* by Ricki Lewis.

5 27. On June 21, 2007, Ms. Sheldon lectured on Mendelian inheritance based on Chapter 4
6 of the course's textbook. Prior to the lecture Ms. Sheldon gave her students a quiz on Chapter 3 of the
7 textbook and discussed about five to ten (5–10) minutes of the preceding day's content.

8 28. After the quiz, but before the lecture, a student asked Ms. Sheldon how heredity affects
9 homosexual behavior in males and females. The student's question was based on a quiz question that
10 was based on the textbook's materials and Ms. Sheldon's previous investigation of the topic.

11 29. Even though the course covered the topic of homosexual behavior in males and females
12 later in Chapter 6 of the textbook, Ms. Sheldon answered the student's question by noting the
13 complexity of the issue, providing a genetic example mentioned in the textbook, and referring the
14 students to the perspective of a German scientist. At the time, Ms. Sheldon could not remember the
15 name of this scientist. Afterward she recalled it was Dr. Gunter Dörner.

16 30. In answering the student's question, Ms. Sheldon noted that a German scientist (Dr.
17 Dörner) found a correlation between maternal stress, maternal androgens, and male homosexual
18 orientation at birth. As to female homosexual conduct, Ms. Sheldon stated that she was unaware of the
19 German scientist (Dr. Dörner) finding a correlation between female homosexual conduct, maternal
20 stress, and maternal androgens in producing female homosexual orientation at birth. She referenced
21 that the German scientist's (Dr. Dörner) views were only one set of theories in the nature versus
22 nurture debate.

23 31. Dr. Gunter Dörner is a well-known German scientist in the nature versus nurture debate
24 about the determination of sexual orientation. Dr. Dörner's research is found through the *Online*
25 *Mendelian Inheritance in Man* website, <http://www.ncbi.nlm.nih.gov/sites/entrez?db=omim> that is
26 referred to by the textbook.

27 32. Ms. Sheldon also briefly described what the class would learn in Chapter 6, which is
28

1 that homosexual behavior may be influenced by both genes and the environment. She did not go into
2 depth on this topic because the class was scheduled to reach it during Chapter 6 of the textbook two
3 class periods later. A copy of Ms. Sheldon’s Chapter 6 PowerPoint lecture is attached as Exhibit 1 to
4 this Complaint.

5 33. Ms. Sheldon got her information about Dr. Dörner from a Stanford University database
6 in the medical library and confirmed her findings through the Human Heredity textbook.

7 34. Ms. Sheldon’s answer to the student’s in-class question addressed a matter of public
8 concern.

9 35. Ms. Sheldon’s answer to the student’s in-class question was protected speech.

10 **C. THE ALLEGED STUDENT “COMPLAINT”**

11 36. On or about August 2, 2007, SJCC’s Dean of Division of Math and Science, Defendant
12 Leandra Martin, sent Ms. Sheldon an email regarding an alleged “student complaint” she received. A
13 copy of Defendant Martin’s August 2, 2007 email to Ms. Sheldon is attached as Exhibit 2 to this
14 Complaint.

15 37. Ms. Sheldon requested a summary of the alleged student complaint from Defendant
16 Martin. Defendant Martin advised that the complaint was “from a student. Because of the nature of
17 the complaint I would rather discuss it with you in person rather than by e-mail.” (*See* Compl. Ex. 2.)

18 38. Defendant Martin did not advise whether the alleged complaint was made pursuant to
19 the District’s non-discrimination policy or a “community complaint” procedure outlined in the
20 District’s Collective Bargaining Agreement.

21 **D. THE DISTRICT’S POLICIES**

22 39. The District is organized under Cal. Educ. Code §§ 70900–70903.

23 40. The District serves approximately 20,000 students each semester.

24 41. The District is governed by the Board of Trustees pursuant to Cal. Educ. Code § 70902.

25 42. The Board of Trustees issues Board Policies that govern the District, including SJCC.

26 43. Board Policy 1300, the District Vision Statement, contains the following statement:
27 “Competent, well-rounded, resourceful, and intellectually versatile students are the single most
28

1 important indicators that we truly are meeting the goals of our collective vision.” A copy of Board
2 Policy 1300 is attached as Exhibit 3 to this Complaint.

3 44. Board Policy 1300 also contains the following statement: “In pursuit of this vision, the
4 San Jose/Evergreen Community College District will: . . . Recruit, employ, value, and support a
5 dedicated and highly qualified and diverse faculty. . . .” (*See Compl. Ex. 3 § 12.*)

6 45. The Board of Trustees delegates some governing authority to the Chancellor, Defendant
7 Pérez, pursuant to Cal. Educ. Code § 70902(d).

8 46. Board Policy 2430, “Delegation of Authority to Chancellor,” contains the following
9 statement:

10 The Board delegates to the Chancellor the executive responsibility for administering the
11 policies adopted by the Board and executing all decisions of the Board requiring
administrative action.

12 The Chancellor may delegate any powers and duties entrusted to him or her by the
13 Board including the administration of the colleges, but will be specifically responsible
14 to the Board for the execution of such delegated powers and duties.

15 The Chancellor is empowered to reasonably interpret Board policy. In situations where
16 there is no Board policy direction, the Chancellor shall have the power to act, but such
decisions shall be subject to review by the Board. . . .

17 . . .

18 The Chancellor shall ensure that all relevant laws and regulations are complied with,
19 and that required reports are submitted in timely fashion.

20 . . .

21 The Chancellor shall act as the professional advisor to the Board in policy formation.

22 A copy of Board Policy 2430 is attached as Exhibit 4 to this Complaint.

23 47. The Board of Trustees is also responsible under Cal. Educ. Code 70902(b)(4) to
24 “employ and assign all personnel not inconsistent with the minimum standards adopted by the board of
25 governors, and establish employment practices, salaries, and benefits for all employees not inconsistent
26 with the laws of this state.”

27 48. The Board of Trustees is required under Cal. Admin. Code tit. 5, § 51023 to “adopt a
28

1 policy statement on academic freedom which shall be made available to faculty,” and “substantially
2 comply with district adopted policy and procedures adopted. . . .”

3 49. Proposed Board Policy 4030, “Academic Freedom,” contains the following statement:

4 Institutions of higher learning exist for the common good and not to further the interest
5 of either the individual instructor or the institution as a whole. The common good
6 depends on the free search for truth and its free expression; to this end, faculty and
7 students hold the right of full freedom of inquiry and expression.

8 Academic freedom is essential to these purposes and applies to both teaching and
9 research. Freedom is fundamental to the protection of the rights of the teacher in
10 teaching and of the student in learning.

11 Academic freedom cannot be separated from academic and professional responsibility.

12 Instructors

13 The instructor has the right to study and investigate, interpret his/her findings and
14 express resulting conclusions to students. The instructor has the responsibility to be
15 thorough in his/her investigations and to draw conclusions supported by the findings.
16 Because human knowledge is limited and changeable, the instructor may present views
17 which are controversial and evaluate opinions held by others while simultaneously
18 respecting and valuing their right of their free expression.

19 The Board of Trustees approved Proposed Board Policy 4030 in March 2008. A copy of Proposed
20 Board Policy 4030 is attached as Exhibit 5 to this Complaint.

21 50. Proposed Board Policy 4030 replaces Board Policy 6080.401, “Standards of Rights
22 Freedoms and Responsibilities,” which contained the following statement:

23 Instructors

24 The instructor has the right to study and investigate, interpret his/her findings and
25 express resulting conclusions to students. The instructor has the responsibility to be
26 thorough in his/her investigations and to draw conclusions supported by the findings.
27 Because human knowledge is limited and changeable, the instructor may present views
28 which are controversial and evaluate opinions held by others while simultaneously
respecting the right of their free expression.

The same academic freedom rights for faculty are contained in Proposed Board Policy 4030 and
former Board Policy 6080.401.

1 **E. THE DISTRICT’S COLLECTIVE BARGAINING AGREEMENT**

2 51. The District is party to a Collective Bargaining Agreement (CBA) with Faculty
3 Association AFT 6157. A copy of the July 1, 2006 through June 30, 2009 Collective Bargaining
4 Agreement is attached as Exhibit 6 to this Complaint.

5 52. All faculty employed by the District, whether tenured faculty, tenure track faculty,
6 adjunct instructional faculty, or adjunct non-instructional faculty, are included in the Faculty
7 Association and are parties to the CBA. (*See* Compl. Ex. 6 § 1.1.1.)

8 53. Article 4 of the CBA, “Additional Faculty Member Rights,” contains a section on
9 Academic Freedom that contains the following statement:

10 4.6.1 Institutions of higher learning exist for the common good and not to further the
11 interest of either the individual instructor or the institution as a whole. The
12 common good depends on the uninhibited search for truth and its open
13 expression, and to this end both faculty and students must hold the right of full
14 freedom of inquiry and expression.

14 4.6.2 Academic freedom is equally essential to both teaching and research. Freedom
15 in research is fundamental to the advancement of truth. Academic freedom is
16 fundamental to the protection of the rights of the instructor in teaching and to the
17 student in learning.

16 4.6.3 Academic freedom cannot be separated from academic and professional
17 responsibility.

18 4.6.4 Instructors have the right to study and investigate, to interpret their findings, and
19 express conclusions. Instructors may present views that are controversial and may
20 evaluate opinions held by others, while respecting the right of free expression.

21 Academic freedom does not include use of discriminatory, discourteous,
22 offensive, abusive conduct or language toward students, supervisors, other
23 employees, or the public while in performance of District employment.

22 (*See* Compl. Ex. 6 § 4.6.)

23 54. The CBA does not define “discriminatory,” “discourteous,” “offensive,” or “abusive
24 conduct or language.” None of Ms. Sheldon’s statements in class on June 21, 2007 were
25 discriminatory, discourteous, offensive, or abusive.

26 55. Article 9 of the CBA, “Adjunct Faculty and Substitutes,” contains a section on Seniority
27 Rehire Rights that contains the following statement: “Adjunct faculty assigned a 33% or more load (not
28

1 to exceed 60% pursuant to Education Code Section 87482.5) may be granted Seniority Rehire Preference
2 (SRP). SRP status provides a qualified adjunct faculty member with seniority rehire preference rights
3 over other less senior adjunct faculty within the division.” (See Compl. Ex. 6 § 9.12.1.)

4 56. Ms. Sheldon was listed on the District’s Seniority Rehire Preference list.

5 57. Article 23 of the CBA, “Community Complaints/Discipline/Rare and Compelling
6 Circumstances,” outlines the procedures followed when a student, parent, or community member
7 wants to lodge a complaint against a District faculty member. (See Compl. Ex. 6 § 23.1.)

8 58. A complaint about a faculty member is presented to the “faculty member by the
9 administrator receiving the complaint as soon as possible but no later than ten (10) district instructional
10 days.” (See Compl. Ex. 6 § 23.1.)

11 59. The CBA contains the following statements:

12 The immediate administrator and the faculty member shall meet to review the
13 complaint. At the request of the faculty member, a Faculty Association officer or
14 member may accompany the faculty member to the meeting. The immediate
15 administrator shall also meet with the complainant to clarify the issue. If deemed
16 necessary by the administrator, a meeting shall be scheduled with both the faculty
17 member and the complainant in an effort to resolve the complaint. The faculty member
18 shall attend any such meetings called by the administrator.

17 If the matter is not resolved at the meeting to the satisfaction of the complainant, the
18 complaint shall be put in writing to the faculty member, with a copy to the faculty
19 member’s immediate administrator.

19 If the faculty member believes the complaint is false and/or based on hearsay, an
20 inquiry may be initiated to determine the validity of such complaint. . . .

21 (See Compl. Ex. 6 §§ 23.1.1–3.)

22 60. The District disciplines faculty pursuant to an informal progressive discipline schedule,
23 beginning with verbal reprimand and ending with written reprimand.

24 61. The District also enforces a Harassment and Unlawful Discrimination policy that allows
25 persons subject to harassment or discrimination to file either an informal or a formal complaint with
26 the District. A copy of the District’s Interim Administrative Procedures: Investigation and Resolution
27 of Complaints Regarding Harassment and Unlawful Discrimination policy is attached as Exhibit 7 to
28 this Complaint.

1 alleged student dropped Ms. Sheldon's class using a Faculty Requested Drop, but Ms. Sheldon did not
2 fill out or file any papers to drop a student from her class on June 21, 2007.

3 72. Ms. Sheldon left the September 6th meeting with Defendant Martin with the impression
4 that the alleged "complaint" would be resolved in a manner consistent with the District's informal
5 resolution procedures outlined in the CBA Community Complaint procedures or Harassment and
6 Unlawful Discrimination policy.

7 73. Although Ms. Sheldon requested to meet with the student complainant to resolve the
8 student's alleged concerns, she was not asked to participate in an informal resolution meeting with the
9 alleged student complainant.

10 74. On or about September 10, 2007, Ms. de la Rosa sent an email to Defendant Martin,
11 Ms. Hanfling, Ms. Sheldon, and herself discussing the September 6th meeting. Ms. DeLaRosa wrote
12 that during the meeting the group discussed the alleged student "complaint," academic freedom rights,
13 and prevailing mainstream scientific thought. She noted that Ms. Sheldon would meet with
14 appropriate full time biology instructors and discuss the following questions: "How are controversial
15 issues, such as race, gender and sexual preference, as they relate to course curriculum presented or
16 taught in the classroom? What criteria is [sic] used to present these issues in a fair and objective
17 manner?" Ms. DeLaRosa also wrote that "it is important that this initial meeting and a follow-up
18 meeting take place over the next month so this complaint and process does not drag on." Ms.
19 DeLaRosa also noted that Defendant Martin will contact the student complainant and let her know that
20 a meeting with Ms. Sheldon took place and that an investigation was under way. A copy of Ms.
21 DeLaRosa's September 10, 2007 email to Defendant Martin and others is attached as Exhibit 9 to this
22 Complaint.

23 75. At the September 6th meeting, Ms. Sheldon said she would be willing to discuss with her
24 colleagues the topic of mainstream scientific thought, and only after Thanksgiving, because she wanted
25 time to gather Dr. Dörner's research and other research so that she could present it to the faculty.

26 76. Ms. Sheldon has always presented scientific issues and topics in a fair and objective
27 manner in class.

1 77. Out of a desire to show her commitment to her students and the District’s policies, on
2 October 19, 2007, Ms. Sheldon attended a class entitled “Teaching to A Culturally Diverse Student
3 Population” at De Anza College in the Foothill-De Anza Community College District.

4 78. Ms. Hanfling notified Defendant Martin that Ms. Sheldon attended the diversity
5 workshop at De Anza College. Ms. Hanfling wrote that Ms. Sheldon “took this class because she took
6 seriously the concerns that were raised at the [September 6] meeting and hopes and anticipates that
7 perhaps the issues that were raised at the meeting could be better taken care of through her taking more
8 classes on diversity which could be mutually agreed upon.” Ms. Hanfling also stated that Ms. Sheldon
9 respectfully requested not to meet with the other science faculty members because she was concerned
10 about the fairness and objectivity of the proposed meeting. A copy of Barbara Hanfling’s October 22,
11 2007, email to Defendant Martin is attached as Exhibit 10 to this Complaint.

12 79. Defendant Martin never acknowledged receipt of Hanfling’s email or Ms. Sheldon’s
13 desire to alleviate the alleged student complainant’s concerns.

14 80. On October 19, 2007, Defendant Martin sent Ms. Sheldon an email offering her a
15 teaching assignment for the spring 2008 semester. The email did not mention the student “complaint”
16 and employment was not contingent on some sort of disciplinary condition. A copy of Defendant
17 Martin’s October 19, 2007 email to Ms. Sheldon is attached as Exhibit 11 to this Complaint.

18 81. On October 22, 2007, Ms. Sheldon emailed Defendant Martin and accepted the teaching
19 assignment for the spring 2008 semester. A copy of Ms. Sheldon’s October 22, 2007 email to
20 Defendant Martin is attached as Exhibit 12 to this Complaint.

21 82. In reliance on the teaching assignment, Ms. Sheldon made financial and professional
22 plans for the spring 2008 semester. She determined that she would not need to seek alternate
23 employment because SJCC promised to employ her.

24 83. On December 6, 2007, Defendant Martin issued a letter that concluded her
25 “investigation” into the alleged student “complaint.” Defendant Martin wrote that during her September
26 6, 2007 meeting with Ms. Sheldon, “June [Sheldon] admitted stating in her Human Heredity course that
27 mistreatment to pregnant women at a certain point in the pregnancy can cause male homosexuality. She
28

1 also stated that there was no such thing as true female homosexuality. She stated that she believed that
2 her opinions were consistent with mainstream scientific thought by the biology community.” A copy of
3 Defendant Martin’s December 6, 2007 letter is attached as Exhibit 13 to this Complaint.

4 84. Ms. Sheldon actually stated to her class that stress imposed on pregnant women could
5 cause male homosexual behavior, according to a German scientist’s (Dr. Dörner) research, but that the
6 topic was complex. Defendant Martin took the female homosexuality issue out of context. Ms.
7 Sheldon was unaware of any research by Dr. Dörner on the topic of female homosexual behavior.

8 85. The letter also noted that Defendant Martin met individually with the four full-time
9 biology faculty members at SJCC.

10 86. Defendant Martin wrote that she

11 asked each faculty member two questions. The first question was about their perception
12 of the mainstream scientific thought on the nature versus [sic] nurture question of
13 homosexuality. The second question was on their perception about the scientific
14 validity of the statement that there were no true female homosexuals. All four faculty
15 members expressed the same perception that the nature versus nurture question was
16 very complex and current scientific thought indicated that a combination of genetic and
17 environmental factors were involved in homosexuality. Three of the faculty members
18 strongly felt that the scientific community was in agreement that there were female
19 homosexuals. The fourth faculty member stated that she had done no reading and had
20 no information on that particular scientific topic.

21 (See Compl. Ex. 13.)

22 87. Defendant Martin also wrote that the textbook used in Ms. Sheldon’s Human Heredity
23 course “clearly stated that the causes for homosexuality were a subject of debate in the scientific
24 community.” (See Compl. Ex. 13.)

25 88. Ms. Sheldon never disputed the answers given by the four full-time biology faculty
26 members at SJCC. Her statements in class on June 21, 2007 were similar to the views of the four full-
27 time biology faculty members.

28 89. Nevertheless, Defendant Martin wrote that “based on my investigation I conclude that June
Sheldon was teaching misinformation as science in a science course. I feel that these statements were
grievous enough to warrant withdrawing her SRP status and Spring 08 assignment.” (See Compl. Ex. 13.)

90. Defendant Martin made her determination and sent her letter while acting under color of

1 state law.

2 91. Ms. Sheldon's answer to the student's question about heredity and homosexual behavior
3 was the motivating factor for Defendant Martin deciding to remove Ms. Sheldon's seniority rehire
4 preference and Spring 2008 teaching assignment. Defendant Martin would not have made the same
5 decision absent Ms. Sheldon's answer to the student's question on June 21, 2007.

6 92. Ms. Sheldon never received a verbal reprimand, written warning, or written reprimand
7 pursuant to the community complaint procedures outlined in the CBA or the District's Harassment and
8 Unlawful Discrimination policy.

9 93. On December 18, 2007, Ms. Hanfling sent Defendant Martin an email requesting a
10 response regarding the "complaint" against Ms. Sheldon. Ms. Hanfling discussed Ms. Sheldon's
11 spring 2008 teaching assignment and the diversity class she took at De Anza College. She also wrote:
12 "More than 90 days have passed since our initial meeting and there has been no movement from the
13 student toward anything formal. We need to find out what the status of the complaint is at this time
14 and why." A copy of Barbara Hanfling's December 18, 2007 email to Defendant Martin is attached as
15 Exhibit 14 to this Complaint.

16 94. On December 19, 2007, Defendant Martin responded to Ms. Hanfling's email by stating
17 "[t]his matter is now being handled by the HR department. A letter was mailed via Federal Express to
18 June Sheldon yesterday." A copy of Defendant Martin's December 19, 2007 email to Barbara
19 Hanfling is attached as Exhibit 15 to this Complaint.

20 **G. THE DISTRICT'S UNCONSTITUTIONAL TERMINATION OF MS. SHELDON.**

21 95. On December 18, 2007, Defendant Anita Morris, the District's Vice Chancellor of
22 Human Resources, sent a letter to Ms. Sheldon concerning a "Student Complaint." A copy of
23 Defendant Morris' December 18, 2007 letter to Ms. Sheldon is attached as Exhibit 16 to this
24 Complaint.

25 96. The letter states: "[D]uring the Fall 2007 semester, we received a student complaint
26 regarding statements you made in your Human Heredity regarding homosexuality. An investigation
27 has sustained the complaint." (See Compl. Ex. 16.)

1 97. The letter also states that “the District is entitled to remove you from the adjunct
2 seniority rehire preference list (‘SRP’) on the basis of a student complaint. Please be advised that the
3 District has exercised its rights, and you are now removed from the SRP.” (*See* Compl. Ex. 16.)

4 98. The District may only remove adjunct seniority rehire preference on the basis of a
5 faculty member needing to improve performance or performance problems substantiated by multiple
6 student complaints or surveys. (*See* CBA § 9.12.5.)

7 99. One informal student complaint is an insufficient basis for removing an adjunct faculty
8 member from the seniority rehire preference list.

9 100. Finally, the letter stated that “the District has an independent right pursuant to
10 Education Code section 87665 to terminate adjunct employees without cause at the end of any day or
11 week. Thus, I am also advising you that pursuant to Section 87665 you are hereby terminated, subject
12 to final approval of the Board of Trustees. This matter will go before the Board at its next regularly
13 scheduled meeting on January 8, 2008.” (*See* Compl. Ex. 16.)

14 101. Defendant Morris’ letter and determination was made while acting under color of state law.

15 102. Ms. Sheldon’s answer to the student’s question about heredity and homosexual behavior
16 was the motivating factor for Defendant Morris deciding to terminate Ms. Sheldon’s employment.
17 Defendant Morris would not have made the same decision absent Ms. Sheldon’s answer to the
18 student’s question on June 21, 2007.

19 103. The Board of Trustees’ review of Ms. Sheldon’s employment was subsequently
20 removed from the January 8, 2008 Board of Trustees’ agenda.

21 104. On or about January 8, 2008, Anu Kotha, a student in Ms. Sheldon’s fall 2007
22 Microbiology class, delivered a letter to Defendant Martin. The letter contained a handwritten note from
23 Kotha stating that some students from the fall 2007 Microbiology class noticed that Ms. Sheldon was not
24 listed as teaching in spring 2008 and wanted Defendant Martin to know about their concern. Enclosed
25 with the handwritten letter is a letter from the “Students of Micro Lab” stating that Sheldon was an
26 “excellent teacher,” an “excellent lab teacher with loads of knowledge,” who was “very very patient even
27 with some dumb questions we asked,” and that the class wanted to “strongly recommend her as an
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1 excellent Micro lab instructor.” The letter is signed by sixteen (16) students from the class. A copy of
2 Anu Kotha’s January 8, 2008 letter to Defendant Martin is attached as Exhibit 17 to this Complaint.

3 105. On February 1, 2008, Defendant Morris sent Ms. Sheldon a letter regarding her right to
4 request an open session of the Board of Trustees meeting on February 12, 2008 when the Board was
5 scheduled to vote on whether Ms. Sheldon would be released from her teaching position. This letter
6 was subsequently placed in Ms. Sheldon’s employment file. A copy of Defendant Morris’ February 1,
7 2008 letter to Ms. Sheldon is attached as Exhibit 18 to this Complaint.

8 106. On February 6, 2008, the Foundation for Individual Rights in Education (FIRE) sent a
9 letter to Defendant Tanaka, the other members of the District Board of Trustees, Defendant Pérez, and
10 Ms. Morris, advising them that if the District terminated Ms. Sheldon it would violate her rights to
11 academic freedom and due process. Defendant Tanaka and the other recipients of the letter never
12 responded to FIRE. A copy of FIRE’s February 6, 2008 letter to Defendant Tanaka is attached as
13 Exhibit 19 to this Complaint.

14 107. On February 7, 2008, Defendant Morris sent a second letter to Ms. Sheldon regarding
15 her right to request that her termination hearing be held in open session of the District’s Board of
16 Trustees meeting on February 12, 2008.

17 108. Ms. Morris also wrote: “Chancellor Pérez, intends to recommend to the Board of
18 Trustees that you be released from your temporary teaching position, effective immediately.” A copy of
19 Defendant Morris’ February 7, 2008 letter to Ms. Sheldon is attached as Exhibit 20 to this Complaint.

20 109. On February 12, 2008, at a regularly scheduled District Board of Trustees meeting,
21 Defendant Michael L. Burke recommended that the Board of Trustees terminate Ms. Sheldon
22 immediately based on the alleged complaint and offense experienced by one unnamed student.
23 Defendants Balbir Dhillon, Maria Fuentes, Autumn Gutierrez, Richard Hobbs, Richard K. Tanaka,
24 Rosa Pérez, Michael L. Burke, and Leandra Martin were in attendance at the meeting.

25 110. Defendant Burke’s decision and recommendation was made while acting under color of
26 state law.

27 111. Counsel for Ms. Sheldon addressed the Board of Trustees and informed them that
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1 terminating Ms. Sheldon based on an alleged student “complaint” and what she said during class
2 violated her First Amendment rights to free speech and academic freedom. Ms. Sheldon also
3 submitted written materials in her defense.

4 112. During the Board of Trustees meeting, Defendants Dhillon, Fuentes, Gutierrez, Hobbs,
5 and Tanaka reviewed evidence submitted by Ms. Sheldon in her defense and then voted unanimously
6 during closed session to terminate Ms. Sheldon. A copy of the minutes from the Board of Trustees’
7 February 12, 2008 meeting is attached as Exhibit 21 to this Complaint.

8 113. Defendants Dhillon, Fuentes, Gutierrez, Hobbs, Lind, Okamura, and Tanaka are final
9 decision makers for the District. Their decision on February 12, 2008, was made while acting under
10 color of state law.

11 114. Ms. Sheldon’s answer to the student’s question about heredity and homosexual behavior
12 was the motivating factor for Defendants Dhillon, Fuentes, Gutierrez, Hobbs, Lind, Okamura, and
13 Tanaka’s decision to terminate Ms. Sheldon’s employment. Defendants Dhillon, Fuentes, Gutierrez,
14 Hobbs, Lind, Okamura, and Tanaka would not have made the same decision absent Ms. Sheldon’s
15 answer to the student’s question on June 21, 2007.

16 115. On February 14, 2008, Defendant Morris sent Ms. Sheldon a letter confirming that the
17 District’s Board of Trustees voted at the February 12, 2008 meeting to release Ms. Sheldon from her
18 teaching position. The Board of Trustees action took effect February 13, 2008. A copy of Defendant
19 Morris’ February 14, 2008 letter to Ms. Sheldon is attached as Exhibit 22 to this Complaint.

20 116. On February 14, 2008, Defendant Pérez sent Ms. Sheldon a letter confirming that during
21 the February 12, 2008 Board of Trustees meeting, the Board of Trustees “did accept your written materials;
22 they were distributed to each member; and the members had the opportunity to review the material prior to
23 making their final determination” regarding Ms. Sheldon’s employment. A copy of Defendant Pérez’s
24 February 14, 2008 letter to Ms. Sheldon is attached as Exhibit 23 to this Complaint.

25 117. On information and belief, other adjunct lecturers and faculty in the District have not
26 been investigated and terminated for answering a student’s question about class material.

27 118. On March 20, 2008, Ms. Sheldon timely filed a Level I grievance pursuant to CBA §
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1 3.2.5. A copy of Ms. Sheldon’s Level I grievance is attached as Exhibit 24 to this Complaint.

2 119. Article 3 of the CBA, “Complaint/Grievance Procedure,” outlines the process and rights
3 faculty members have in filing a complaint or grievance against a decision of the District or its
4 employees. (*See* Compl. Ex. 6 § 3.)

5 120. The Complaint/Grievance Procedure contains the following statement: “A grievance is
6 a written complaint by a faculty member (or other proper party as defined in Section 3.3) regarding a
7 violation or misapplication by the District, its officers, or agents of this contract. Resolution of matters
8 for which other procedures are specifically provided by Federal or State law shall be undertaken
9 through the appropriate procedures.” (*See* Compl. Ex. 6 § 3.1.4.)

10 121. When a faculty member wishes to initiate a grievance, he or she files a notice of the
11 grievance “with the Vice Chancellor of Human Resources with copies [sent] to the President of the
12 Faculty Association and the college President.” (*See* Compl. Ex. 6 § 3.2.5.) This begins Level I of the
13 grievance process.

14 122. Upon receipt of a Level I grievance, the “immediate administrator shall communicate
15 his/her decision to the faculty member in writing, within ten (10) days after receiving grievance,
16 stating the administrator’s reasons for the decision.” (*See* Compl. Ex. 6 § 3.6.2.)

17 123. On April 4, 2008, Ms. Sheldon received an email letter from Defendant Martin denying
18 her grievance. A copy of Defendant Martin’s email to Ms. Sheldon is attached as Exhibit 25 to this
19 Complaint.

20 124. After determination of a Level I grievance, the faculty member can appeal a Level I
21 grievance to Level II.

22 125. The CBA’s Complaint/Grievance Procedure contains the following statement on Level
23 II grievances:

24 3.7.1 The grievant may appeal a Level I decision to Level II by writing to the office of
25 the Chancellor or designee within fifteen (15) days after receiving the Level I
26 decision. A copy of the appeal, written in the same format as outlined in Section
3.2, shall be furnished to the Level I administrator and the college President.

27 3.7.2 The Chancellor or designee shall investigate the details of the grievance and
28 meet with the grievant and/or a Faculty Association representative within fifteen

1 (15) days of receipt of the grievance appeal in order to resolve the issue.

2 3.7.3 The Chancellor or designee shall communicate in writing his/her decision to the
3 grievant, the Faculty Association, and the affected administrator within fifteen
4 (15) days after the grievance meeting(s).

5 (*See Compl. Ex. 6 § 3.7.*)

6 126. After determination of a Level II grievance by the District Chancellor, a grievant may
7 file a Level III grievance only if represented by Faculty Association AFT 6157.

8 127. Pursuant to CBA § 3.7.1, Ms. Sheldon had fifteen (15) days to file a Level II grievance
9 appealing Defendant Martin's decision. Days are defined as any day that the District office is open
10 (*See Compl. Ex. 6 § 3.5.1.*) Fifteen (15) calendar days after April 4, 2008, is April 19, 2008.

11 128. Ms. Sheldon appealed the Level I denial by filing a timely Level II grievance on April
12 17, 2008. She delivered the grievance to the Chancellor's Office on April 17, 2008. A copy of the
13 date-stamped Level II grievance Ms. Sheldon filed is attached as Exhibit 26 to this Complaint.

14 129. On June 6, 2008, Ms. Sheldon received a letter dated June 2, 2008, from Defendant
15 Morris responding on behalf of Defendant Pérez and notifying Ms. Sheldon that her Level II grievance
16 was denied. Defendant Morris wrote that Ms. Sheldon's Level II grievance was denied because she
17 did not file it within fifteen (15) days of Defendant Martin's response. A copy of Defendant Morris'
18 June 2, 2008 letter to Ms. Sheldon is attached as Exhibit 27 to this Complaint.

19 130. Defendants Pérez and Morris failed to address Ms. Sheldon's timely filed Level II
20 grievance.

21 131. Defendants Pérez and Morris took these actions while acting under color of state law.

22 132. Ms. Sheldon's answer to the student's question about heredity and homosexual behavior
23 was the motivating factor for Defendants Pérez's and Morris' decision to terminate Ms. Sheldon's
24 employment. Defendants Pérez and Morris would not have made the same decision absent Ms.
25 Sheldon's answer to the student's question on June 21, 2007.

26 **H. THE INJURIES SUSTAINED BY MS. SHELDON**

27 133. Each of the adverse actions outlined above, from the improper investigation of Ms.
28 Sheldon's protected speech activities to termination of Ms. Sheldon's employment based on one

1 alleged student complaint were based in whole or in part upon her in-class statements regarding human
2 heredity that lasted about five to ten (5–10) minutes on June 21, 2007.

3 134. Defendants’ actions eliminated Ms. Sheldon’s source of income, damaged her
4 reputation, caused her physical and emotional injuries, and irreparably injured her constitutional rights
5 to free speech, academic freedom, due process of law, and equal protection of law.

6 135. It is extremely distressing to Ms. Sheldon that her name is linked on campus (and
7 probably elsewhere) with allegations of “offensive” conduct, unprofessional behavior, and teaching
8 “non-science.” No amount of diligence and discovery by Ms. Sheldon, in the context of litigation or
9 otherwise, could ever determine the extent to which her name is now linked with those allegations in
10 the minds of people, known and unknown to her.

11 136. Ms. Sheldon has also been irreparably harmed in her chosen profession as a college
12 science teacher. Not only are accusations of offending a student and teaching non-science toxic to any
13 opportunity for employment, especially within the public sphere for which Ms. Sheldon received her
14 training, but public accusations like those made by Defendants poisons her opportunities in the field of
15 higher education science teaching. While Ms. Sheldon has mitigated her damages by attempting to
16 attain other employment, she desires reinstatement at the District under circumstances in which her
17 constitutional rights and academic freedom will be protected. In addition, she desires damages for the
18 injuries sustained as a result of Defendants’ unlawful conduct.

19 **FIRST CAUSE OF ACTION**

20 **First Amendment Retaliation**
21 **Violation of Freedom of Speech (42 U.S.C. § 1983)**

22 137. Plaintiff repeats and realleges each of the foregoing allegations in this Complaint.

23 138. By subjecting Ms. Sheldon to a lengthy and intrusive investigation and terminating her
24 employment based on her protected expression in answering a student’s in-class question on a matter of
25 public concern, among other things, Defendants, by policy and practice, have retaliated against Plaintiff
26 because of her free expression and deprived her of her ability to freely express her ideas on issues of
27 public concern at SJCC.

- 1 B. A permanent injunction requiring the Defendants to reinstate Plaintiff as an adjunct lecturer
2 in the District at the same level of seniority or status she had before she was terminated;
- 3 C. A permanent injunction requiring the Defendants to reinstate Plaintiff to her previous
4 status, plus any lost status, on the Seniority Rehire Preference list maintained by the
5 Defendants;
- 6 D. An order requiring the Defendants to expunge from Plaintiff's personnel file any negative
7 evaluations, findings, determinations, evidence, or documents relating to the District's
8 investigation and termination;
- 9 E. Monetary compensatory damages from the Defendants in their individual capacities to
10 compensate Plaintiff for her lost wages, damage to reputation, and physical and/or
11 emotional injury and distress as a result of Defendants violating Plaintiff's First
12 Amendment rights to freedom of speech and academic freedom and Fourteenth
13 Amendment rights to due process and equal protection of law;
- 14 F. Monetary punitive damages from the Defendants in their individual capacities for their
15 actions in violating Plaintiff's First Amendment rights to freedom of speech and academic
16 freedom and Fourteenth Amendment rights to due process and equal protection of law;
- 17 G. Nominal damages from Defendants in their individual capacities for their actions in
18 violating Plaintiff's First Amendment rights to freedom of speech and academic freedom
19 and Fourteenth Amendment rights to due process and equal protection of law;
- 20 H. Plaintiff's reasonable costs and expenses of this action, including attorneys' fees, in
21 accordance with 42 U.S.C. § 1988 and other applicable law;
- 22 I. All other further relief to which Plaintiff may be entitled; and
- 23 J. That this Court retain jurisdiction of this matter for the purpose of enforcing this Court's
24 orders.
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1 Respectfully submitted this 15th day of July, 2008,

2 By: 

3 DAVID J. HACKER
4 California Bar No. 249272
5 Illinois Bar No. 6283022
6 ADF CENTER FOR ACADEMIC FREEDOM
7 *Attorneys for Plaintiff*
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1 **VERIFICATION OF COMPLAINT**

2 I, June Sheldon, a citizen of the United States and resident of the State of California, hereby
3 declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that I have read the foregoing Verified
4 Complaint and the factual allegations therein, and the facts as alleged are true and correct.

5 Executed this 10th day of July, 2008, at Soquel, California.

6 
7 June Sheldon