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 KERN COUNTY SUPERIOR COURT  
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 11 COUNTY OF KERN

15 **THE PEOPLE OF THE STATE OF  
 CALIFORNIA EX REL. ROB BONTA,  
 16 ATTORNEY GENERAL OF THE STATE  
 OF CALIFORNIA,**

17 Plaintiff,

18 v.

19 **COUNTY OF KERN,**

20 Defendant

**Case No. BCV-23-104076**

**[PROPOSED] STIPULATED  
 JUDGMENT**

**Division: L**  
**Judicial Officer: Gina M. Cervantes**  
**Action Filed: December 7, 2023**

22  
 23 **INTRODUCTION**

24 1. Plaintiff, the People of the State of California (People or Plaintiff), by and through  
 25 Rob Bonta, Attorney General of the State of California, and Defendant the County of Kern  
 26 (County) (collectively, the Parties, and any one of them a Party) having stipulated to the entry of  
 27 this judgment (Judgment) by the Court without the taking of proof and without trial or  
 28 adjudication of any fact or law, without this Judgment constituting evidence of or admission by

1 the County regarding any issue of law or fact alleged in the People’s Complaint for Injunctive  
2 Relief on file in this action or any of the allegations or conclusions set forth herein, and without  
3 the County admitting any liability;

4 2. The Parties having acknowledged that the events and statements of October 20, 2020,  
5 as set forth in the Complaint, occurred during the COVID-19 pandemic; and

6 3. With all Parties having waived their right to appeal, and the Court having considered  
7 the matter and good cause appearing,

8 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

9 4. The Kern County Superior Court has jurisdiction over the allegations and subject  
10 matter of the complaint filed in this action, and the Parties to this action; venue is proper in the  
11 County of Kern; and this Court has jurisdiction to enter this Judgment against the County.

12 **I. DEFINITIONS**

13 5. “Attorney General” means the Attorney General of the State of California, including  
14 his agents, and includes the Office of the Attorney General and the California Department of  
15 Justice.

16 6. “Board of Supervisors” and “Board” mean the Board of Supervisors for the County of  
17 Kern.

18 7. “Complaint” means a complaint alleging violations of the rights described in the Free  
19 Speech Policy made by contractors, employees, or applicants for employment.

20 8. “Contract Attorneys” means non-employee attorneys or investigators hired by the  
21 County of Kern to investigate and/or resolve EEO complaints against the County, and/or to  
22 review County contract business terms, legal terms and conditions, and approve those contracts as  
23 to form.

24 9. “County” means the County of Kern.

25 10. “County Complaint Coordinator” means the person designated to perform the  
26 functions to be performed by a “County Complaint Coordinator” as set forth in this Judgment,  
27 and includes any “Backup Complaint Coordinator.”  
28

1           11. “County-wide” means applicable to all agencies of the County, including, but not  
2 limited to, the County Board of Supervisors, all County departments, and all other County  
3 agencies.

4           12. “Court” means the Superior Court of the State of California, County of Kern.

5           13. “Day,” unless otherwise specified, means calendar day. If the date by which an action  
6 is to be performed or completed under this Judgment falls on a weekend or holiday, the date by  
7 which the action shall be performed shall be the next day that is not a weekend day or holiday.

8           14. “Effective Date” means the date the Court enters this signed Judgment as an order of  
9 the Court.

10           15. “Equal Employment Opportunity Officer” or “EEOO” means the person(s) identified  
11 in the Kern County Rules of the Civil Service Commission, Rule 1810.00, et seq., as the County’s  
12 Equal Employment Opportunity Officer, and their delegates.

13           16. “Free Speech Retained Expert” means the person designated to perform the functions  
14 to be performed by a “Free Speech Retained Expert” as set forth in this Judgment.

15           17. “Free Speech Policy” means the County-wide policy attached hereto as Exhibit A.

16           18. “Oversight Period” means the three-year period commencing either (a) the first day  
17 after the Effective Date that is not a weekend day or holiday, or (b) the first day after the “Date of  
18 Early Implementation of the Judgment,” as that term is defined in Paragraph 73 of this Judgment,  
19 whichever comes first.

20           **II. COUNTY’S FUTURE CONDUCT**

21           19. The County shall not take any adverse action or omission against any individual or  
22 entity to whom the County owes a legal duty under the California Constitution, article I, sections  
23 2(a) and 3(a), based on conduct protected by provisions in those sections relating to freedom of  
24 speech, the rights to freely associate and assemble, and the rights to petition the government for  
25 redress of grievances and instruct representatives.

1 **III. OVERSIGHT PERIOD AND ACCESS**

2 20. Compliance with the Judgment shall be overseen by the Attorney General and the  
3 Free Speech Retained Expert, whose reasonable costs and expenses shall be paid for by the  
4 County.

5 21. The Attorney General or Free Speech Retained Expert may request information and  
6 documents demonstrating compliance with any provision(s) of this Judgment from the County.  
7 The County shall furnish all such information and documents within its possession, custody, or  
8 control no later than seven business days after the request is made, unless the Parties agree in  
9 writing to another date. If the County believes it is unable to provide any of the requested  
10 information or documents, the County shall inform the Attorney General in writing by the date  
11 the production is due of the specific reasons why it believes it is unable to produce the  
12 information or documents at issue.

13 22. The Attorney General or Free Speech Retained Expert may also make reasonable  
14 requests to the County to speak with County personnel as part of their efforts to ensure  
15 compliance with and implementation of this Judgment. To the extent the County has jurisdiction  
16 over the personnel and documents—including, but not limited to, the ability to require personnel  
17 to speak with the Attorney General or Free Speech Retained Expert in their capacity as County  
18 employees, agents, or representatives—the Attorney General and the Free Speech Retained  
19 Expert shall have access to speak with such personnel, and the County shall make them available  
20 for such purpose. All County personnel the Attorney General speaks to pursuant to this section  
21 will be informed that their participation is voluntary and that they will have the option to request  
22 the presence of a person of their choice.

23 **IV. AFFIRMATIVE ACTIONS**

24 23. During operation of this Judgment, the County shall carry out the following  
25 affirmative actions:

26 **A. County Complaint Coordinator**

27 24. The County Complaint Coordinator shall perform the functions assigned to the  
28 County Complaint Coordinator as set forth in this Judgment.

1           25. No later than 60 days after the County has entered into an effective contract with the  
2 Free Speech Retained Expert, the County Complaint Coordinator shall be trained by the Free  
3 Speech Retained Expert with regard to the Free Speech Policy and to receiving, investigating, and  
4 resolving complaints pursuant to the Free Speech Policy.

5           26. The County shall ensure that the County Complaint Coordinator is vested with  
6 sufficient authority and independence to perform the functions this Judgment assigns to the  
7 County Complaint Coordinator in an effective and unbiased manner, and without being unduly  
8 influenced by any other County employee, agent, or representative, subject to the Attorney  
9 General's approval.

10           27. If the County decides to replace the County Complaint Coordinator at any time  
11 during the Oversight Period, the County shall so inform the Attorney General, and shall meet and  
12 confer with the Attorney General to select a new County Complaint Coordinator, subject to the  
13 Attorney General's approval.

14           28. Any new County Complaint Coordinator shall be trained by the Free Speech Retained  
15 Expert within 30 days of starting employment as specified in Paragraph 25 above.

16           **B. Free Speech Retained Expert**

17           29. The Parties have agreed that the Free Speech Retained Expert shall be Barry  
18 McDonald.

19           30. The County shall enter into a fully approved and executed sole-source contract with  
20 the Free Speech Retained Expert such that the Free Speech Retained Expert is able to begin  
21 providing paid services under the contract no later than sixty (60) days after the Effective Date.  
22 The Free Speech Retained Expert's Scope of Work, to be approved by the Attorney General, shall  
23 be consistent with the terms of this Judgment.

24           31. If at any time the Free Speech Retained Expert is no longer able to serve, he or she  
25 shall inform the Parties in writing as soon as possible prior to ending services. Within 14 calendar  
26 days of receiving notice, the Parties will meet and confer regarding a replacement, to be approved  
27 by the Attorney General. The replacement will be selected no later than 60 calendar days after  
28 written notice is received, or as extended by agreement of the Parties. The County shall enter into

1 a fully approved and executed sole-source contract with the replacement Free Speech Retained  
2 Expert within 60 days of the Parties selecting the replacement Free Speech Retained Expert.

3 32. Should the Parties agree that the Free Speech Retained Expert, or a member of their  
4 staff, if any, has exceeded their authority; is not fulfilling their duties in accordance with this  
5 Judgment; or merits removal for other good cause, which may include: willful misconduct;  
6 inappropriate personal relationship with a Party, or any Party employee; conflicts of interest; or  
7 any criminal conduct during the pendency of this Judgment, the Parties may replace the Free  
8 Speech Retained Expert, or remove any member of the Free Speech Retained Expert's staff. If  
9 one Party alleges such conduct and, after good faith attempts to resolve such issues informally,  
10 the Parties are unable to reach agreement on the issue, the complaining Party may invoke the  
11 dispute resolution process in paragraph 69. If any Party becomes aware of egregious willful  
12 misconduct or criminal conduct during the pendency of this Judgment, that Party may, after  
13 providing immediate notice to the other Party, temporarily suspend the Free Speech Retained  
14 Expert or a member of their staff for a period not to exceed five days, to allow the Parties to meet  
15 and confer in a good faith and reasonable manner to resolve the matter. If a Party seeks to remove  
16 the Free Speech Retained Expert from its position on the basis of alleged egregious willful  
17 misconduct or criminal conduct, the Party seeking removal shall provide the other Party with any  
18 evidence to support the allegations of egregious willful misconduct or criminal conduct within  
19 two days of the temporary suspension. A temporary suspension under this paragraph shall remain  
20 in place for no longer than five days, at which point if the Parties cannot agree on a resolution, the  
21 Party seeking removal shall submit the matter to the Court for resolution on an ex parte basis.  
22 While the matter is pending resolution by the Court, the Free Speech Retained Expert or member  
23 of their staff shall continue their services pursuant to this Judgment. If the Free Speech Retained  
24 Expert is removed, the Parties shall promptly replace the Free Speech Retained Expert as  
25 specified in the prior paragraph.

26 33. The Free Speech Retained Expert shall provide the following services:

- 27 a. Assess the County's compliance with this Judgment and with the Free  
28 Speech Policy.

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- b. No later than 60 days after the County has entered into an effective contract with the Free Speech Retained Expert, provide a one-time training to the County Complaint Coordinator and Equal Employment Opportunity Officer (“EEOO”) on the Free Speech Policy and how to identify, investigate, evaluate, and resolve complaints, and provide training on material changes to the law as necessary throughout the Oversight Period.
- c. Review and approve any draft findings and recommended remedies for complaints proposed by the County Complaint Coordinator and EEOO before any such resolutions are issued, including review of the complaints, and all information and evidence received or developed by the County Complaint Coordinator and EEOO.
- d. Draft a report regarding any decisions of the Civil Service Commission as specified in paragraph 56 below.
- e. Prepare and submit three annual reports during the Oversight Period to the Attorney General and the County, for filing with the Court, that assess the County’s progress in implementing, and achieving compliance with, the Stipulated Judgment. The reports shall include assessments of (1) the County Complaint Coordinator and EEOO’s receipt, investigation, and resolution of complaints; (2) any Board of Supervisors decisions not to approve a proposed contract (including any actions by the Board or individual Supervisors that result in a proposed contract not being considered or voted upon, or have that effect); and, (3) any decisions by County departments to withdraw a proposed contract from consideration by the Board after it has been placed on the draft Board meeting agenda distributed to Board members. The reports will include an assessment of the County’s progress in implementing and achieving compliance with the Judgment, a finding of any County violations of the rights described in the Free Speech Policy, as well

1 as proposed corrective actions to address such violations and prevent future  
2 violations.

3 i. At least 10 days before the anticipated filing of each report, the Free  
4 Speech Retained Expert will provide the Parties with a draft copy  
5 and a reasonable opportunity to respond within 30 days. The Free  
6 Speech Retained Expert will consider the Parties' responses and  
7 make appropriate changes before submitting a final report to the  
8 Parties.

9 f. Develop training, approved by the Attorney General, and provide three  
10 annual trainings during the Oversight Period to members of the Board of  
11 Supervisors, their district staff, members of the Civil Service Commission,  
12 County department heads, departmental staff with contracting  
13 responsibilities, and Contract Attorneys, on the rights described in the Free  
14 Speech Policy, the Free Speech Policy, and the County's obligations with  
15 respect thereto.

16 g. Consult with the Attorney General on matters related to the Free Speech  
17 Retained Expert's work under this Judgment and the County's fulfillment of  
18 its responsibilities under this Judgment and the Free Speech Policy.

19 34. The County shall be responsible for paying the Free Speech Retained Expert for all  
20 services the Free Speech Retained Expert performs relating to this Judgment.

21 35. In no event shall the Attorney General, the People, or the State of California be  
22 responsible for paying the Free Speech Retained Expert for any services performed relating to  
23 this Judgment.

24 **C. Section 501(c)(3) Trainer**

25 36. The Parties agree that the Section 501(c)(3) Trainer shall be Gene Takagi.

26 37. The County shall enter into a fully approved and executed sole-source contract with  
27 the Section 501(c)(3) Trainer, such that the Section 501(c)(3) Trainer is able to begin providing  
28 paid services under the contract no later than 60 days after the Effective Date. The Section



1 501(c)(3) Trainer's Scope of Work, to be approved by the Attorney General, shall be consistent  
2 with the terms of this Judgment.

3 38. If at any time the Section 501(c)(3) Trainer is no longer able to serve, he or she shall  
4 inform the Parties in writing as soon as possible prior to ending services. Within 14 calendar days  
5 of receiving notice, the Parties shall meet and confer regarding a replacement, to be approved by  
6 the Attorney General. The replacement shall be selected no later than 60 calendar days after  
7 written notice is received, or as extended by agreement of the Parties.

8 39. Should the Parties agree that the Section 501(c)(3) Trainer, or a member of their staff,  
9 if any, has exceeded their authority; is not fulfilling their duties in accordance with this Judgment;  
10 or merits removal for other good cause, which may include: willful misconduct; inappropriate  
11 personal relationship with a Party, or any Party employee; conflicts of interest; or any criminal  
12 conduct during the pendency of this Judgment, the Parties may replace the Section  
13 501(c)(3)Trainer, or remove any member of the Section 501(c)(3) Trainer's staff. If one Party  
14 alleges such conduct and, after good faith attempts to resolve such issues informally, the Parties  
15 are unable to reach agreement on the issue, the complaining Party may invoke the dispute  
16 resolution process in paragraph 69. If the 501(c)(3) Trainer is removed, the Parties shall promptly  
17 replace the 501(c)(3) Trainer as specified in the prior paragraph.

18 40. The Section 501(c)(3) Trainer shall provide the following services:

- 19 a. Develop training, approved by the Attorney General, and provide three  
20 annual trainings, virtually or in-person, during the Oversight Period to  
21 members of the Board of Supervisors, their district staff, County department  
22 heads, and departmental staff with contracting responsibilities, on the  
23 activities allowed under 26 U.S.C. § 501(c)(3), including the right of a  
24 26 U.S.C. § 501(c)(3) organization to attempt to influence legislation, so  
25 long as such activity is not a substantial part of the organization's activities  
26 and the organization does not incur excessive lobbying and grass roots  
27 expenditures.  
28

1                   b. Confer with the Attorney General regarding the Section 501(c)(3) Trainer’s  
2                   work under this Judgment.

3           41. The County shall be responsible for paying the Section 501(c)(3) Trainer for all  
4 services relating to this Judgment.

5           42. In no event shall the Attorney General, the People, or the State of California be  
6 responsible for paying the Section 501(c)(3) Trainer for any services relating to this Judgment.

7           **D. Free Speech Policy**

8           43. The Parties have agreed on a County-wide “Free Speech Policy,” which is attached  
9 hereto as Exhibit A. In summary, the Free Speech Policy states the rights of contractors,  
10 employees, and applicants for employment under California Constitution, article I, sections (2)(a)  
11 and 3(a), to free speech, to petition the government for redress of grievances, to instruct  
12 representatives, and to freely associate and assemble; and establishes procedures for filing  
13 complaints with a County Complaint Coordinator or Equal Employment Opportunity Officer and  
14 Free Speech Retained Expert. The County shall adopt and comply with the Free Speech Policy.

15           44. The County shall promptly update the Free Speech Policy with regard to any changes  
16 in the contact information for the County Complaint Coordinator or Free Retained Speech Expert,  
17 and ensure the updated version is promptly posted in all of the locations described in Section E  
18 below.

19           **E. Dissemination of Free Speech Policy**

20           45. The Free Speech Policy shall be (1) prominently posted through links on the  
21 County’s website, including all pages related to contracting or grants; all pages providing  
22 employee resources, policies, or manuals; the County Administrative Office’s “Doing Business  
23 with Kern County” page (or any successor page); the “Report” section of the “How Do I” page on  
24 the County’s website (or any successor section); and the home or first page for the Board of  
25 Supervisors; (2) posted in all physical locations where the County posts information about  
26 contracting or grant opportunities, or policies or procedures, or employee resources or policies, or  
27 employment or wage and hour laws, or workplace safety provisions, or information about public  
28 rights, inquiries, or complaints; (3) included in all County-issued requests for proposals and other

1 solicitations for contract or grant proposals; and (4) attached to all County contracting forms and  
2 templates and all relevant notices to contractors, employees, and employment applicants. In the  
3 event a contractor has entered into discussions with the County regarding a potential contract or  
4 grant, and the County has not otherwise provided the contractor with the Free Speech Policy by  
5 one of the foregoing means (other than posting on the County's website or physical locations), the  
6 County shall promptly provide a copy of the Free Speech Policy to the contractor. To the extent  
7 not already covered above, the Free Speech Policy shall be posted in all locations where the  
8 County posts its policy on equal employment opportunity, as discussed in the County's Equal  
9 Employment Opportunity Plan, Policies and Procedures (approved by the Board April 14, 2015).

10 **F. Complaints**

11 46. Within 60 days of the Effective Date, the County shall designate a person to be the  
12 County Complaint Coordinator and a person to be a Backup County Complaint Coordinator,  
13 subject to approval by the Attorney General. Prior to such approval, the County shall provide the  
14 Attorney General with the proposed County Complaint Coordinator's name, resume, and, upon  
15 request, other written statements of their qualifications.

16 47. Complaints shall be received, investigated, and resolved by the County Complaint  
17 Coordinator or Backup County Complaint Coordinator using the procedures established in the  
18 Free Speech Policy, subject to approval by the Free Speech Retained Expert, as set forth in  
19 paragraph 33.

20 48. The County Complaint Coordinator or Backup County Complaint Coordinator shall  
21 provide the draft findings and recommended remedies to the Free Speech Retained Expert for  
22 review and approval, with a courtesy copy provided to the Attorney General. The County  
23 Complaint Coordinator or Backup County Complaint Coordinator shall also provide the Free  
24 Speech Retained Expert and the Attorney General with, as applicable, a copy of the Complaint,  
25 all information and documentary evidence provided by the complainant, all witness interview  
26 materials and documents provided by witnesses, and all information and documentary evidence  
27 developed by the County Complaint Coordinator or Backup County Complaint Coordinator in  
28 conducting the investigation.

1           49. In the event that the Free Speech Retained Expert does not approve the County  
2 Complaint Coordinator’s or Backup County Complaint Coordinator’s draft findings and  
3 recommended remedies, the Free Speech Retained Expert shall prepare a written explanation of  
4 the reasons for non-approval. The Free Speech Retained Expert and County Complaint  
5 Coordinator or Backup County Complaint Coordinator shall meet and confer to resolve any  
6 disagreement or deficiencies, and they shall state their positions in writing. The County  
7 Complaint Coordinator or Backup County Complaint Coordinator shall then take all necessary  
8 steps to correct any deficiencies and re-submit the draft findings and recommended remedies to  
9 the Free Speech Retained Expert for review and approval. If the County or County Complaint  
10 Coordinator refuses or otherwise fails to adopt and implement the Free Speech Retained Expert’s  
11 decision regarding the proper resolution of a complaint, including complaints filed using the  
12 process detailed in Kern County Rules of the Civil Service Commission (“Civil Service Rules”)   
13 1820.00, et seq., that refusal or failure may be considered by the Free Speech Retained Expert or  
14 the Attorney General as a ground for determining that the County is not in substantial compliance  
15 with the Judgment.

16           50. In the case of any complaints in which there is an appearance of bias, conflict of  
17 interest, or insufficient independence with regard to the handling of the complaint by the County  
18 Complaint Coordinator, the Backup County Complaint Coordinator shall conduct the  
19 investigation. In the case of any complaints in which there is an appearance of bias, conflict of  
20 interest, or insufficient independence with regard to the handling of the complaint by the Backup  
21 County Complaint Coordinator, the Free Speech Retained Expert shall conduct the investigation.

22           **G. Complaints Within the Scope of Civil Service Rule 1810.00, et seq.**

23           51. A complainant whose complaint falls within the scope of both the Free Speech Policy  
24 and Civil Service Rules 1810.00 and 1820.00 may choose to file their complaint using the  
25 procedure described in the Civil Service Rules, commencing at section 1820.00, or using the  
26 procedure otherwise described in the Free Speech Policy, but not both. If a complainant invokes  
27 both procedures for the same complaint, the complainant shall be required to make a written  
28 election of which procedure they wish to have apply. If a complainant chooses to file the

1 complaint under Civil Service Rule 1820.00, et seq., the complaint and investigation procedure  
2 shall be consistent with the time limitations, procedure, and appellate rights set forth in Civil  
3 Service Rule 1820.00.

4 52. For complaints within the scope of the Free Speech Policy that are filed under Civil  
5 Service Rule 1820.00, et seq., the County Equal Employment Opportunity Officer (“EEOO”)  
6 shall promptly send a copy of the complaint to the Free Speech Retained Expert and the Attorney  
7 General, and as applicable, all information and documentary evidence provided by the  
8 complainant, all witness interview materials and documents provided by witnesses, and all  
9 information and documentary evidence developed by the EEOO.

10 53. The EEOO shall notify the Free Speech Retained Expert in writing if/when:

- 11 a. The EEOO resolves the complaint through the “Informal Investigation”  
12 process set forth in Civil Service Rule 1820.01. Such notice shall include a  
13 copy of the written resolution, or, if the resolution was not reduced to  
14 writing, a detailed, written description of the resolution;
- 15 b. The EEOO has been unable to resolve the complaint through the “Informal  
16 Investigation” process set forth in Civil Service Rule 1820.01, and will be  
17 proceeding with a “Formal Investigation” under Civil Service Rule 1820.02;  
18 or
- 19 c. The EEOO has been unable to resolve the complaint through the “Informal  
20 Investigation” process set forth in Civil Service Rule 1820.01 and does not  
21 believe there are grounds to proceed with a formal investigation of the  
22 complainant’s allegations under Civil Service Rule 1820.02. Such notice  
23 shall include a written explanation of why the EEOO does not believe there  
24 are grounds to proceed with a formal investigation. If the Free Speech  
25 Retained Expert disagrees with the EEOO’s determination, the Free Speech  
26 Retained Expert and the EEOO shall meet and confer to resolve the  
27 disagreement and both the Free Speech Retained Expert and the EEOO shall  
28 state their position in writing. If the EEOO refuses or otherwise fails to adopt

1 and implement the Free Speech Retained Expert’s recommended action, that  
2 refusal or failure may be considered by the Free Speech Retained Expert or  
3 the Attorney General as a ground for determining that the County is not in  
4 substantial compliance with the Judgment.

5 54. In the event the EEOO conducts a formal investigation under Civil Service Rule  
6 1820.02, the EEOO shall promptly send the Free Speech Retained Expert a copy of the findings  
7 of fact and recommended remedies and, as applicable, all witness interview materials and  
8 documents provided by witnesses, and all information and documentary evidence developed by  
9 the EEOO in conducting the investigation. The Free Speech Retained Expert shall review and  
10 approve the EEOO’s findings of fact and recommended remedies.

11 55. In the event the Free Speech Retained Expert does not approve the EEOO’s findings  
12 of fact and recommended remedies, the Free Speech Retained Expert shall prepare a written  
13 explanation of the reasons for non-approval. The Free Speech Retained Expert and the EEOO  
14 shall meet and confer to resolve any disagreement or deficiencies, and the Free Speech Retained  
15 Expert and the EEOO shall state their positions in writing. The EEOO shall then take all  
16 necessary steps to correct any deficiencies and re-submit the draft findings and recommended  
17 remedies to the Free Speech Retained Expert for review and approval.

18 56. If a complainant or impacted County department files a request for a hearing before  
19 the Civil Service Commission under Civil Service Rule 1830.00-1830.02, the Free Speech  
20 Retained Expert shall review the final decision of the Civil Service Commission and provide a  
21 report to the Parties and the complainant regarding any comments, concerns, or recommendations  
22 related to the Commission’s final decision, within 60 to 120 days of that decision. Nothing in this  
23 paragraph will require the County to prepare an administrative record of the Civil Service  
24 Commission’s evidentiary hearing for the Free Speech Retained Expert’s review, but if the  
25 County is already preparing one, then the County shall make an electronic copy for the Free  
26 Speech Retained Expert.

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1           **H. Training for County Officials and Staff**

2           57. Members of the Board of Supervisors, their district staff, members of the Civil  
3 Service Commission, County department heads, departmental staff with contracting  
4 responsibilities, and Contract Attorneys, shall attend three annual trainings during the Oversight  
5 Period on the Free Speech Policy. The annual trainings shall be developed by the Free Speech  
6 Retained Expert, approved by the Attorney General, and provided by the Free Speech Retained  
7 Expert. Within 180 days of the Effective Date, all required officials and staff shall attend the first  
8 of the three annual trainings described in this paragraph. The first annual trainings shall be  
9 conducted in-person. Thereafter, these trainings may be conducted virtually, provided the  
10 trainings are sufficiently interactive to verify participation by all required attendees.

11           58. Members of the Board of Supervisors, their district staff, County department heads,  
12 and departmental staff with contracting responsibilities, shall attend three annual trainings during  
13 the Oversight Period on the activities allowed under 26 U.S.C. § 501(c)(3), including the right of  
14 a 26 U.S.C. § 501(c)(3) organization to attempt to influence legislation, so long as such activity is  
15 not a substantial part of the organization’s activities and the organization does not incur excessive  
16 lobbying and grass roots expenditures. The annual trainings shall be developed by the Section  
17 501(c)(3) Trainer, and approved by the Attorney General, and provided by the Section 501(c)(3)  
18 Trainer. Within 180 days of the Effective Date, all required officials and staff shall attend the first  
19 of the three annual trainings described in this paragraph.

20           59. The County shall provide evidence to the Attorney General that all required officials  
21 and staff have attended the trainings described in this section no later than 30 days after the  
22 conclusion of the training. The County shall also obtain from the Section 501(c)(3) Trainer a copy  
23 of all training materials—including agendas, handouts, and PowerPoint slides (including  
24 presenter talking points) or similar/comparable presentation materials used—and provide copies  
25 of such materials to the Attorney General, also no later than 30 days after the conclusion of the  
26 training.

27           60. All persons required to undergo training under this Section who are hired, appointed,  
28 elected, or contracted with after the initial trainings provided for in paragraphs 57 and 58 shall

1 receive the trainings from the Free Speech Retained Expert and Section 501(c)(3) Trainer within  
2 30 days of the date they were hired, appointed, elected, contracted, or otherwise began their  
3 county contracting responsibilities. This requirement may be satisfied by having such persons  
4 watch a recording of the initial training provided by the Free Speech Retained Expert and Section  
5 501(c)(3) Trainer, if a recording was made and is still available, or by having such persons trained  
6 by the Free Speech Retained Expert or Section 501(c)(3) Trainer virtually.

7 **I. Amendment of County Contract Templates**

8 61. The County shall amend County contract templates, and otherwise include language  
9 in all executed County contracts, to state that: “No person performing any service or providing  
10 any goods designated under this contract shall participate in any political or religious activity on  
11 County time or in any manner involving the use of County property or expenditure of public  
12 funds nor conveying the implication of County endorsement or support for a candidate for local,  
13 state, or federal office.”

14 **J. Other Affirmative Actions**

15 62. County Counsel shall immediately instruct members of the Board of Supervisors,  
16 their district staff, County department heads, and departmental staff with contracting  
17 responsibilities, that they shall not retaliate or discriminate against, including by limiting their  
18 communications with, any person or entity because of that person or entity’s legally protected  
19 conduct, including but not limited to, the entities named in the first pages of and in the Scope of  
20 Work sections of the County’s proposed retroactive agreements with Building Healthy  
21 Communities Kern (BHCK) and Adelante Strategies (Adelante) that were presented to the Board  
22 of Supervisors for approval at the Board’s October 20, 2020 meeting. County Counsel shall  
23 provide the Attorney General with the proposed language for the instruction for review and  
24 approval, before sending it to County staff or officials.

25 63. The Parties acknowledge that members of the Kern County Board of Supervisors  
26 previously expressed during the Board’s October 20, 2020 meeting the County’s willingness to  
27 pay for the work performed prior to October 20, 2020, by any of the entities identified in  
28 paragraph 62 of this Stipulated Judgment. The Parties further acknowledge that the County has



1 fully paid the only entity that has previously submitted an invoice for such work. Upon receipt of  
2 an appropriate invoice(s) and any other paperwork reasonably required for payment (e.g., Form  
3 W-9), the County shall promptly pay other invoicing persons or organizations for any work  
4 performed, or costs incurred, by any of the entities referenced in paragraph 62, that are the subject  
5 of the Complaint, between October 1, 2020, and October 20, 2020, to provide the services under  
6 those proposed retroactive agreements. The deadline to submit invoices shall be six (6) months  
7 from the Effective Date of this Judgment, and may be submitted to Kern County Counsel,  
8 Attention: Jennifer Feige. The County shall notify the entities referred to in paragraph 62 of the  
9 opportunity to request payment as specified in this paragraph within 14 days of the Effective Date  
10 of this Judgment. The County shall provide the Attorney General with monthly, written status  
11 reports showing any invoices that have been submitted, the amounts of the invoices, the payment  
12 status, and any issues preventing payment.

13         64. During the Oversight Period, the County shall include on the County's website a link  
14 which invites interested contractors to opt-in to receive email notifications of available public  
15 health outreach and/or public health outreach and marketing, and/or initiative outsourcing funding  
16 opportunities. The County shall maintain an email notification list for those interested contractors  
17 to receive notice of any County contracts or other funding opportunities for public health outreach  
18 and/or marketing. Contractors on the list shall automatically receive email notifications of such  
19 contract or other funding opportunities from the County, including automatic transmittal of bid  
20 solicitations. During the Oversight Period, the County shall ensure that all of the entities  
21 referenced in paragraph 62 are included in the email notification list, such that they receive all of  
22 the email notifications described above, including automatic transmittal of bid solicitations,  
23 without requiring any of them to take any affirmative action to be included. The County shall  
24 provide the Attorney General with written confirmation of the email addresses included in the  
25 email notification list for all of the entities referenced in paragraph 62. If the County removes any  
26 of these entities from the email notification list at the conclusion of the Oversight Period, the  
27 County shall notify such entities of their removal, so that they can affirmatively sign up to be  
28 included in any continuing email notification list.

1           65. Nothing in this section, nor in any communication by the County in compliance with  
2 this section, shall be construed to require or authorize the County to give any preference to any  
3 entity or individual in the awarding of any County contract.

4           **K. Improved Litigation Holds**

5           66. Within 90 days of the Effective Date, the County shall adopt and implement  
6 improved instructions and processes, to be approved by the Attorney General, for implementing  
7 litigation holds County-wide, including the preservation of all information that may be responsive  
8 to investigative discovery issued or promulgated by the Attorney General, or any other State  
9 department, pursuant to California Government Code section 11181. Such instructions and  
10 processes shall include instructing all custodians of potentially relevant or responsive information  
11 to disable any auto-delete functions on their work and personal phones, and backing up any  
12 failing hardware before destroying it.

13           67. Within 180 days of the Effective Date, the County shall develop training and train,  
14 approved by the Attorney General, for all members of the Board of Supervisors and their district  
15 staff, to ensure compliance with their obligations to preserve official records under, but not  
16 limited to, the Kern County Administrative Bulletin No. 11: Retention and Destruction of County  
17 Records.

18           68. The County shall provide this training annually on three occasions during the  
19 Oversight Period, before July 1 of each year, and shall provide evidence to the Attorney General  
20 that all members of the Board of Supervisors and their district staff have attended the training  
21 within 30 days of the conclusion of each training.

22           **V. DISPUTE RESOLUTION**

23           69. It is the Parties' intent to work collaboratively to address any disputes related to, or  
24 non-compliance with, this Judgment. Unless a different timeframe is specified in this Judgment,  
25 should a dispute arise, or should the Attorney General believe that the County is not in substantial  
26 compliance with any part of this Judgment, the Parties shall, within five working days, initiate the  
27 meet and confer process. The Parties shall meet and confer in a good faith and reasonable manner  
28 to resolve disputes related to, or non-compliance with, this Judgment. The Parties shall spend no

1 more than 10 working days to meet and confer. If, after the 10 working days, the Parties are  
2 unable to reach resolution, either Party, or the Parties jointly, may thereafter submit the matter(s)  
3 upon which they disagree to the Court for further proceedings on an ex parte basis, or noticed  
4 motion, at the Party's election.

5 **VI. SCOPE OF JUDGMENT**

6 70. Nothing in this Judgment alters the requirements of federal or state law to the extent  
7 these laws may currently, or upon future amendment will, offer greater protection.

8 71. Nothing in this Judgment alters the right of any person who believes the County has  
9 violated the person's rights under any law to file a civil action or other proceeding seeking redress  
10 for the alleged violation(s).

11 72. Nothing in this Judgment limits in any way the powers vested in the Attorney General  
12 by the California Constitution and state statutory law, regulation, and common law, including but  
13 not limited to, Government Code section 11180 et seq., to oversee and enforce any California  
14 laws and regulations, which the Attorney General may use to monitor the County's compliance  
15 with the Judgment. Nothing in this Judgment limits the Attorney General's jurisdiction or ability  
16 to conduct any investigation or enforcement action with regard to the County's compliance with  
17 this Judgment, or with any California law, regulation, or practice, whether related or unrelated to  
18 this Judgment.

19 **VII. EARLY IMPLEMENTATION OF JUDGMENT**

20 73. For purposes of determining the date on which the three-year Oversight Period  
21 commences, the County may demonstrate, subject to approval by the Attorney General, that the  
22 County has achieved what shall be referred to as "Early Implementation of the Judgment." The  
23 "Date of Early Implementation of the Judgment" shall be the date on which the County  
24 demonstrates that all of the compliance measures listed in paragraph 74 have been completed,  
25 which date shall be determined by the Attorney General and communicated by the Attorney  
26 General to the County in writing.

1           74. To demonstrate that the County has achieved Early Implementation of the Judgment,  
2 the County must demonstrate, in writing and with supporting documentation, and subject to  
3 approval by the Attorney General, that prior to the Effective Date of this Judgment, the County:

- 4           a. Agreed to the identity of the Free Speech Retained Expert, approved by the  
5           Attorney General, as required by paragraph 29 of this Judgment;
- 6           b. Adopted and disseminated the Free Speech Policy pursuant to paragraphs  
7           19, 43, 45, and 47 of this Judgment, and, if any complaints of violations of  
8           the Free Speech Policy were received prior to the Effective Date, followed  
9           the complaint procedure set forth in the Free Speech Policy as to such  
10          complaints, including but not limited to, by ensuring the Free Speech  
11          Retained Expert subsequently reviewed and approved any draft findings and  
12          recommended remedies for complaints received prior to the Effective Date,  
13          as required by the Free Speech Policy;
- 14          c. Designated a County Complaint Coordinator and Backup County Complaint  
15          Coordinator approved by the Attorney General, as required in paragraph 46  
16          of this Judgment;
- 17          d. Entered into a fully approved and executed sole-source contract with the  
18          501(c)(3) Trainer, approved by the Attorney General, as required under  
19          paragraphs 36 and 37 of this Judgment;
- 20          e. Amended County contract templates, and otherwise included language in all  
21          executed County contracts, as required by this Judgment in Section IV(I),  
22          and;
- 23          f. Completed the affirmative actions stated in Section IV(J).

24 **VIII. TERMINATION OF JUDGMENT**

25           75. The term of the Judgment is three years from the Effective Date, and the Judgment  
26 will terminate automatically three years from the Effective Date, if the County is in substantial  
27 compliance with the Judgment.

1           76. To achieve substantial compliance under this Judgment, the County must demonstrate  
2 that it has (a) adopted the Free Speech Policy, and disseminated the Free Speech Policy as  
3 specified in the Judgment in Section IV(D) and (E); (b) trained the relevant County officials and  
4 staff as required by this Judgment in Section IV(H); (c) amended County contract templates, and  
5 otherwise included language in all executed County contracts as required by this Judgment in  
6 Section IV(I); (d) achieved compliance with all other provisions of this Judgment; and (e) ensured  
7 that the requirements of the Judgment and Free Speech Policy are being implemented in practice.  
8 Non-compliance with mere technicalities, or temporary failure to comply coupled with prompt  
9 and appropriate remedial measures during a period of otherwise sustained substantial compliance,  
10 will not constitute failure to maintain substantial compliance. At the same time, temporary  
11 compliance during a period of otherwise sustained noncompliance will not constitute substantial  
12 compliance with this Judgment.

13           77. Within 90 days prior to the termination date, if the Attorney General determines that  
14 the County is not in substantial compliance with the Judgment, then the Parties shall initiate a  
15 meet and confer process which shall not extend more than 30 days. The Free Speech Retained  
16 Expert will certify whether, in his or her expert opinion, the County is in substantial compliance  
17 with the Judgment. If the Parties cannot agree on the length of time that the Judgment shall be  
18 extended to allow the County to reach substantial compliance, the Attorney General may move  
19 the Court for such an extension within 60 days of the close of the meet and confer timeline,  
20 during the pendency of which motion this Judgment shall remain in full force and effect. The  
21 Parties agree to be bound by the Court's decision and forego any appeal rights they might  
22 otherwise have. At all times, the County shall bear the burden of demonstrating substantial  
23 compliance with this Judgment.

24           78. Jurisdiction is retained by the Court to enforce the Judgment for a period of three  
25 years, and for any extended period beyond that pursuant to paragraphs 75-77, for the purpose of  
26 enabling any Party to apply to the Court at any time for such further orders and directions as may  
27 be necessary or appropriate for the interpretation or carrying out of this Judgment, for the  
28

1 modification of any of the injunctive provisions hereof, for enforcement of compliance herewith,  
2 and for the punishment of violations hereof, if any.

3 **IX. CHANGES TO THE JUDGMENT**

4 79. The Attorney General and the County may jointly stipulate to make changes,  
5 modifications, and amendments to the Judgment, which shall be effective after a joint motion is  
6 filed by the Parties and is granted by the Court.

7 80. Any time limits for compliance with this Judgment may be extended by the Parties'  
8 written, mutual agreement, or by the Court on a showing of good cause. This provision does not  
9 apply to possible extensions of the term of this Judgment, which are provided for in paragraph 77.

10 **ENTRY OF JUDGMENT**

11 81. The Clerk is ordered to enter this Judgment forthwith.

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**[PROPOSED] JUDGMENT**

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Dated: 12/08/2023

Signed: 12/8/2023 01:52 PM



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Court Commissioner

# **EXHIBIT A**



## **Free Speech Policy**

### **Purpose**

The purpose of this Free Speech Policy is to inform all employees, employment applicants, and contractors of their constitutional rights to free speech, to petition the government for redress of grievances, to instruct representatives, and to freely associate and assemble. Unlawful discrimination based on the exercise of these rights is unacceptable and incompatible with the County's standards, as well as being a violation of the law. This Free Speech Policy also establishes the complaint and investigation procedure for alleged violations of these rights.

### **First Amendment Rights**

Every County employee, employment applicant, and contractor has a constitutional right to free speech, to petition the government for redress of grievances, to instruct representatives, and to freely associate and assemble.<sup>1</sup> For simplicity, this policy shall refer to such rights as "First Amendment Rights."

Every County employee, employment applicant, and contractor shall be free from any unlawful discrimination or retaliation by the County of Kern for exercising their First Amendment Rights while employed, while seeking employment, or while doing or seeking to do business for or with the County.

### **Free Speech Policy**

The County of Kern remains committed to creating a professional environment in which the First Amendment Rights of all County employees, employment applicants, and contractors are protected.

It is a violation of the Constitutions of the United States and California for the County to unlawfully discriminate against County employees, employment applicants, or contractors because they exercised their First Amendment Rights.

Every County employee, and other person acting on behalf of the County, including members of the Board of Supervisors, is prohibited from unlawfully discriminating against, harassing, or retaliating against an employee, employment applicant, or contractor because the employee, employment applicant, or contractor exercised their First Amendment Rights, or because they filed a complaint or participated in an investigation under this Free Speech Policy.

All County employees and other persons acting on behalf of the County, including members of the Board of Supervisors, shall uphold and abide by this Free Speech Policy by cooperating fully in any investigation of a complaint of unlawful discrimination, harassment, or retaliation under this Free Speech Policy.

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<sup>1</sup> California Constitution, article I, sections 2(a) and 3(a); U.S. Constitution, amend. I.

Persons in positions of authority, including managers and supervisors, shall act immediately on potential violations of this Free Speech Policy. They are responsible for knowing and enforcing this Policy and creating and maintaining a workplace free of discrimination, harassment, and retaliation, and should address potential problems before they become serious.

This Free Speech Policy applies at every level of the County and to every aspect of the workplace environment, including but not limited to, County events that occur outside of the physical workplace.

This Free Speech Policy shall be posted on the Kern County websites and in designated physical locations, and shall be attached to all County-issued Requests for Proposals (RFPs) and other solicitations for contract or grant proposals, County contracting forms and templates, and relevant notices to employees, employment applicants, and contractors.

Examples of unlawful discrimination:

- A department head recommends that a contract not be renewed because the contractor is politically active, regardless of their political position.
- A supervisor declines to recommend a supervisee for a promotion, or assigns a supervisee to less favorable job duties or to a less favorable location, because of the supervisee's union activity.
- A manager gives a supervisee poor job evaluations because the manager does not agree with their supervisee's political views.
- A county decision-maker declines to award a contract to provide social services to a particular community based organization because that organization actively campaigns for a particular bill or social movement.
- A county decision maker stops communicating with a potential contractor about a contract because the contractor has threatened to file lawsuit against the County in an unrelated case.

The California and U.S. Constitutions also provide specific First Amendment protection for County elected officials and other persons acting on behalf of the County, including volunteers and interns. This policy does not address such persons' rights.

### **Complaint and Investigation Procedure**

Each employee, employment applicant, or contractor who believes that they have experienced unlawful discrimination or harassment described in this Policy may file a written complaint setting forth the specific facts and evidence supporting the complaint with the County Complaint Coordinator (see below). Such complaints shall be promptly forwarded to the Free Speech Retained Expert (see below). The complainant shall provide all documentary evidence, names of

potential witnesses, and any other information believed by the complainant to be relevant to the complaint.

The County Complaint Coordinator shall initiate a formal investigation of the allegations in the complaint, interview all witnesses to the incident giving rise to the complaint (including the complainant and the person(s) against whom the complaint is directed), and issue written findings as to the merits of the complaint and the remedies that should be implemented to resolve the complaint under existing County ordinances, policies, and procedures. The County Complaint Coordinator shall have a period of not more than 75 business days from receipt of the complaint to conduct the investigation and to issue appropriate draft findings and recommended remedies. The 75-day time period may be extended due to the unavailability of a material witness, or with the written agreement of the complainant.

The County Complaint Coordinator shall provide the draft findings and recommended remedies to the Free Speech Retained Expert for review and approval. The County Complaint Coordinator shall also provide the Free Speech Retained Expert with a copy of the complaint, all information and documentary evidence provided by the complainant, all witness interview materials and documents provided by witnesses, and all information and documentary evidence developed by the County Complaint Coordinator in conducting the investigation.

In the event that the Free Speech Retained Expert does not approve the County Complaint Coordinator's draft findings and recommended remedies, the Free Speech Retained Expert shall prepare a written explanation of the reasons for non-approval. The Free Speech Retained Expert and County Complaint Coordinator shall meet and confer to resolve any disagreement or deficiencies, and both parties shall state their positions in writing. The County Complaint Coordinator shall then take all necessary steps to correct any deficiencies and re-submit the draft findings and recommended remedies to the Free Speech Retained Expert for review and approval.

In the case of any complaints in which there is an appearance of bias, conflict of interest, or insufficient independence with regard to the handling of the complaint by the County Complaint Coordinator, the Backup Complaint Coordinator (see below) shall conduct the investigation, and the Free Speech Retained Expert shall review and approve in the same manner as any investigation conducted by the County Complaint Coordinator.

The Free Speech Retained Expert shall conduct the investigation if both the Complaint Coordinator and the Backup Complaint Coordinator are conflicted. The County shall implement the Free Speech Retained Expert's findings and remedies.

Department heads shall be responsible for ensuring that all new employees and contract staff in their department receive a copy of this policy and sign an acknowledgment which shall be retained in the employee's personnel file (or a similar file for contract staff). In addition, department heads shall ensure that, on an annual basis, each employee in their department receives a copy of this policy and that an acknowledgment of receipt is contained in each employee's personnel file.

Department heads may establish departmental policies and internal complaint procedures provided that those policies and procedures are consistent with this Policy.

Nothing in this Policy shall abrogate any legal evidentiary standards in a court of law.

**Complaints Within the Scope of Civil Service Commission Rule 1810.00, et seq.**

The Kern County Rules of the Civil Service Commission (“Civil Service Rules”) provide a voluntary complaint procedure for some complaints that fall within the scope of this Policy. These Civil Service Rules apply to civil service employees or applicants for civil service employment complaining of unlawful discrimination, harassment, or retaliation based on religious, union, or political affiliation, or due to their participation in a government investigation.

A complainant whose complaint falls within the scope of both the Civil Service Rules and this Policy may choose to file their complaint using the procedure described in the Civil Service Rules, commencing at section 1820.00, or using the procedure otherwise described in this Policy, but not both. If a complainant invokes both procedures for the same complaint, the complainant shall be required to make a written election of which procedure they wish to have apply.

The Free Speech Retained Expert will review all such complaints consistent with the time limitations, procedure, and appellate rights set forth in Civil Service Rule 1820.00. The Free Speech Retained Expert will review and approve findings of fact and recommended remedies issued by the Equal Employment Opportunity Officer.

Under Civil Service Rule 1830.00-1830.02, either the complainant or the County may request a hearing before the Civil Service Commission. The Free Speech Retained Expert does not review the Civil Service Commission’s decision for approval but will provide a report to the County and complainant regarding any comments, concerns, or recommendations related to the Commission’s final decision, within 60-120 days of that decision.

**County Complaint Coordinator:** [Title and contact info]

**Backup County Complaint Coordinator:** [Title and contact info]

**Free Speech Retained Expert:**

Barry McDonald, (310) 506-4668; barry.mcdonald@pepperdine.edu