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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BIG CITY COFFEE, LLC, dba, BIG CITY
COFFEE & CAFÉ, and SARAH JO FENDLEY,
an individual,

Plaintiffs,

v.

BOISE STATE UNIVERSITY, MARLENE
TROMP, individually and in her official capacity
as President of Boise State University, LESLIE
WEBB, individually and in her official capacity
as Vice President for Student Affairs and
Enrollment Management, ALICIA ESTEY,
individually and in her official capacity as
Vice President for University Affairs and Chief
of Staff, and FRANCISCO SALINAS,
individually, and in his official capacity as
Assistant to the Vice President for Equity
Initiatives, and DOES 1-20,

Defendants.

Case No. CV01-21-15332

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

COME NOW Plaintiffs, Big City Coffee LLC, dba, Big City Coffee & Cafe (“Big City”) and Sarah Jo Fendley (“Fendley,” and, together with Big City, the “Plaintiffs”), by and through their attorneys of record, Givens Pursley LLP, and for the claims and causes of action against Defendants, Boise State University (“BSU” or the “University”); Marlene Tromp, President (“Tromp”); Leslie Webb, former Vice President for Student Affairs and Enrollment Management (“Webb”); Alicia Estey, Vice President for University Affairs and Chief of Staff (“Estey”); and Francisco Salinas, Assistant to the Vice President for Equity Initiatives (“Salinas”) (collectively, the “Defendants”), hereby complain and allege as follows:

I. INTRODUCTION

1. In the Fall of 2020, Defendants forced Big City, a small, local business from the BSU campus for the sole reason that Fendley, its owner, supports law enforcement and is engaged to a retired Boise police officer, Kevin Holtry, which support and affiliation runs counter to the University Administration’s aggressive social justice agenda. This institutional and individual bias is important context in order to understand Defendants’ actions against Plaintiffs.

2. Defendants’ removal of Big City from the University campus was outrageous and the direct result of: (a) the content and perceived viewpoint of Plaintiffs’ free speech and expression; (b) Defendants’ own political viewpoints and prejudices; (c) complaints concerning Plaintiffs’ beliefs expressed by a vocal minority of students; and (d) Defendants’ acts and omissions in direct and indirect support of such vocal minority.

3. Defendants acted wrongfully and under the color of state law when committing the acts and omissions described herein. Such acts and omissions deprived Plaintiffs of constitutionally protected rights, privileges and immunities, and caused Plaintiffs additional harm and damage.

II. PARTIES

4. Plaintiff Big City is an Idaho limited liability company, doing business as Big City Coffee & Café, lawfully conducting business in the State of Idaho, County of Ada.

5. Plaintiff Fendley is an individual residing in the State of Idaho, County of Ada.

6. Defendant BSU is public research university organized and existing under the laws of the State of Idaho, which receives funding from the State to operate. Its primary campus is located in Boise, Idaho.

7. Defendant Tromp is the current president of BSU, and she held that position at all times relevant hereto. Upon information and belief, Tromp is a resident of the State of Idaho, County of Ada. She is sued in her individual and official capacities.

8. Defendant Webb is the former Vice President for Student Affairs and Enrollment Management at BSU, and she held those positions at all times relevant hereto. Upon information and belief, Webb is a resident of the State of Idaho, County of Ada. She is sued in her individual and official capacities.

9. Defendant Estey is the Vice President for University Affairs and Chief of Staff at BSU, and she held those positions at all times relevant hereto. Upon information and belief, Estey is a resident of the State of Idaho, County of Ada. She is sued in her individual and official capacities.

10. Defendant Salinas is the Assistant to the Vice President for Equity Initiatives, and he held that position at all times relevant hereto. Upon information and belief, Salinas is a resident of the State of Idaho, County of Ada. He is sued in his individual and official capacities.

11. Plaintiffs are unaware of the true names, identities or capacities of Defendants DOES 1-20, or any of them, and for this reason said Defendants are sued herein by such fictitious names. When Plaintiffs ascertain the true names, identities and capacities, whether corporate, individual, associate or otherwise of Defendants DOES 1-20, or any of them, Plaintiffs will amend this Complaint to allege the same. Plaintiffs allege that at all times relevant to the facts alleged herein, each such fictitiously named Defendant was or may have been partially responsible for some of the acts, occurrences, happenings and/or omissions hereinafter alleged, and they may be sued in their individual and/or official capacities.

III. JURISDICTION AND VENUE

12. This Court has personal jurisdiction over the parties.

13. This Court has subject matter jurisdiction over this action. Idaho District Courts are courts of general jurisdiction. I.C. § 1-705. Further, state courts have jurisdiction to entertain claims brought under 42 U.S.C. Section 1983. *Dana, Larson, Roubal & Assoc. v. Bd. of Comm'rs*, 124 Idaho 794, 798, 864 P.2d 632, 636 (Ct. App. 1993); *cf. Atlantic Richfield Company v. Christian*, 140 S.Ct. 1335, 1351 (2020) (stating that the United States Supreme Court has “recognized a ‘deeply rooted presumption in favor of concurrent state court jurisdiction’ over federal claims.”).

14. Venue is proper pursuant to Idaho Code Section 5-401, *et. seq.*

IV. GENERAL ALLEGATIONS

15. Plaintiffs repeat and reallege each and every allegation set forth above, as though fully set forth herein.

A. Details Regarding Plaintiffs.

16. Fendley is a 52-year old Idaho native from a modest family with deep roots in Idaho's Treasure Valley. She graduated from Meridian High School and attended BSU in 1987 and 1988. Fendley has been an enthusiastic supporter of the University for her entire adult life. Fendley is not a political activist, describes herself as a moderate and tends to vote Democrat.

17. Fendley is a successful entrepreneur and for the past 20+ years she has owned and operated Big City in downtown Boise. Fendley built the business on her own, through endless hours of hard work and sacrifice.

18. The restaurant life is a demanding one, which requires long and irregular hours. Despite her grueling schedule, Fendley makes time for others and enjoys the tremendous loyalty of the many young people who have worked for her over the years, as well as the loyalty of her dedicated customers.

19. Although Fendley has contributed a significant amount of time and money to a wide variety of causes, closest to her heart is an unwavering commitment to supporting first responders. Fendley's commitment began in Big City's early years, when Boise and Garden City police and fire personnel were among her best customers.

20. In addition, as a single woman running a business in a sometimes rough neighborhood, the police have assisted her in many potentially dangerous situations over the years and she is appreciative of such assistance. One of her brothers, Brian Fendley, is a Captain with the Eagle Fire Department. Fendley's other brother is a Major in the Air Force.

21. In Big City's downtown location, Fendley has displayed flags and other emblems indicating her support for first responders and the "Thin Blue Line" cause in particular, which honors and assists police officers injured or killed in the line of duty. She began doing so in

2016, following the ambush and murder of five Dallas police officers. Fendley does not seek monetary gain for her support of first responders and the “Thin Blue Line.” Her support is simply the free expression of her ideas and beliefs in a non-combative and non-hostile manner.

22. Fendley’s support of Thin Blue Line is not a statement in opposition to any race, group or other movement. Specifically, and in particular, she does not intend such support to be a repudiation of Black Lives Matter or an attack on Blacks or any other minority or disadvantaged group. There has never been a single report of racist acts or statements against anyone patronizing or working at Big City. Fendley is not and has never been a racist.

23. Holtry, Fendley’s fiancé, is 54 years old, an Idaho native and, like Fendley, graduated from Meridian High School. Upon graduation, Holtry enlisted in the U.S. Army, where he served for four years and was honorably discharged in 1989. Holtry later earned an Associate Degree from Boise State. After a stint as a fishing guide, he pursued a career in law enforcement, beginning with the Ada County Sheriff’s Office. He was in law enforcement for more than 22 years and recently retired as a sergeant from the Boise City Police Department.

24. On November 11, 2016, Holtry and the SWAT team he led were searching a Boise Bench neighborhood for an extremely dangerous fugitive, Marco Romero, a known gang member that had just shot two other people and carjacked an elderly woman the day before. During the search, Holtry located Romero, but Romero began firing before Holtry could level his weapon. Firing upward from a concealed position, Romero shot Holtry five times in his legs and under his protective vest. Boise Police K-9, Jardo, engaged Romero, but in the ensuing struggle Jardo was shot and another BPD officer, Chris Davis, was wounded. Brian Holland, Holtry’s partner and best friend, along with four other officers, returned fire and killed Romero. Jardo later died of his injuries.

25. As a result of the gunfight, Holtry was paralyzed from the waist down and lost his left leg, confining him to a wheelchair for the remainder of his life. Three bullets are still lodged in his body, including one in his spine, which causes near-constant pain. For their heroic actions that day, Holtry and Holland each received the BPD Medal of Honor.

26. Despite his injuries, Holtry maintains a cheerful, positive attitude and has dedicated his life to helping and inspiring others struggling with disabilities. Like Fendley, Holtry has been a life-long supporter of BSU. During a time when BSU had a different posture toward law enforcement, BSU actually hosted a funeral service for Jardo in what is now the Extra Mile Arena, which was attended by hundreds of Idahoans and policemen from around the country.

27. Fendley and Holtry began dating shortly after he was shot and they were engaged in 2020. Her relationship with Holtry reinforced Fendley's dedication to helping first responders including, most importantly, those injured or killed in the line of duty. It has become a passion for Fendley and one to which she is deeply committed. She donates money, volunteers her time and has displayed flags and other emblems at her downtown location, evidencing her support for Thin Blue Line, and continues to display a Thin Blue Line emblem on the door of her downtown restaurant.

B. Details Regarding Defendants.

28. Unfortunately, BSU and its Administration, including, but not limited to the Defendants, consider support for the police or causes such as Thin Blue Line to be antithetical to BSU's core mission. That mission seeks to elevate "*diversity and inclusivity*" above all else.

29. A review of Tromp's statements and positions, both before and during her tenure at BSU, leaves little doubt that she too is fully-committed to the social justice movement.

30. Although diversity and inclusivity sound benign on their face, in practice BSU's mission is anything but, and its implementation, rigid and unforgiving, has a hard edge when applied to people, businesses and ideas with which its proponents disagree.

31. BSU states in its official publication that the Inclusive Excellence Student Council ("IESC") was created to continue the legacy work of student activists at BSU. According to meeting minutes, at its October 26, 2020 meeting, various IESC members lamented that, "***I am a criminal justice major and all I learn about is how corrupt police officers are***" and "the system exists to put black people in prison" and "...***it is difficult growing up in a culture of white supremacy...***" Emphasis added.

32. The IESC is serious and it is not alone in its ideology and fervor. In fact, the IESC reflects and embodies Defendants' social justice agenda. This agenda is promoted and fostered by BSU and pervades the campus and curriculum.¹ Salinas and Webb, the latter of whom at all times relevant hereto reported directly to President Tromp, regularly attended IESC meetings and lent their support to the group's actions.

33. It is not just the Administration that has taken up the call to action; the faculty is also complicit. Jeremy Harper ("Harper") is a member of the BSU faculty and the director of Boise State Uniting for Inclusion and Leadership in Diversity ("BUILD"). Again, the mission would appear uncontroversial, stating that it "***helps all Boise State employees become***

¹ The negative consequences and repercussions of Defendants' social justice agenda have been well-publicized. In early March 2021, during its session this year, the Idaho legislature initially voted to delete \$409,000 from BSU's budget due to concerns that BSU was using State funds to indoctrinate students. And, on March 15, 2021, BSU suspended all of its UF-200 classes, *Foundations of Ethics and Diversity*, courses designed to examine and advance social justice concepts, because students "***have been humiliated and degraded in class on [the] campus for their beliefs and values.***" Emphasis added. The suspension affected 1,300 students and 52 classes. The suspension was later rescinded. Ultimately, and in further response to Defendants' left-wing activities, the Idaho legislature overwhelmingly passed H.B. 387, which was then signed by Governor Little, and which stripped \$1.5 million from BSU's budget.

leaders who are better prepared to foster a diverse, inclusive and equitable campus environment.” Emphasis added.

34. When one looks deeper, however, it is clear that BUILD is focused intently on social justice themes, which include, in BUILD’s own words “... *Ableism and Fatphobia, [and] Intersectionality...*” Emphasis added. BUILD also directs BSU employees to left-wing primers on effecting social change. Harper figured prominently in libelous attacks against Plaintiffs, based solely on their support for Thin Blue Line.

35. In 2016, Harper took umbrage with Big City’s Thin Blue Line flags and emblems at its downtown location. He claimed, in social media posts, that Fendley was promoting “white supremacy” and called for a boycott of Big City. Despite having been a customer, Harper decided at some point and for some reason that the Thin Blue Line flags “*have been popularized as a direct response to the Black Lives Matter. Flying them is either a sign of ignorance about the realities of systemic racism that are well documented in our police and prison systems or a complete disregard for the harm that racism causes to Black people and communities across the country...it reinforces the white supremacist belief that police are above criticism...*” Emphasis added.

36. Defendants, in fact, consider themselves a resource for left-wing activist groups. For example, up until recently, BSU’s website linked an article by Dr. Arthur Scarritt, Chair of the University’s Department of Sociology, entitled *Selling Diversity, Promoting Racism: How Universities Pushing a Consumerist Form of Diversity Empowers Oppression*, to the Boise Black Lives Matter website, where it was cited as a resource.

37. On March 23, 2021, then-BSU Adjunct Professor and local Black Lives Matter leader, Terry Wilson, was arrested for defacing a statute of Abraham Lincoln in a Boise Park with feces and paint. He was also charged with drug possession and resisting arrest.² Defendants, together with groups such as IESC and faculty like Harper, Scarritt and Wilson, seek to solidify and expand their social justice aims.

C. Big City’s Relationship With Defendants.

38. In May 2020, Defendants decided that they would replace Starbucks with a local vendor, in the on-campus Albertson Library. Defendants solicited proposals from a number of Boise coffee shops and cafes, and Big City was ultimately selected as the winner. At the time, Fendley was told that BSU students had “overwhelmingly” chosen Big City and that she would be welcomed into the University community.

39. BSU maintains a policy of Non-Discrimination and Non-Harassment (University Policy 1060) (the “Policy”). The Policy states that it “applies to all Members of the University Community, including employees, students, affiliates, affiliate faculty, volunteers, *contractors, vendors, customers, visitors to the University*, and participants in a University-sponsored program or activity.” Emphasis added. In practice, the Policy serves only to protect causes and persons favored by the Left.

40. Before she entered into business on the BSU campus, Fendley disclosed fully the prior dispute with Harper and her subsequent engagement to Holtry, to Nicole Nimmons, Associate Vice President for Campus Services (“Nimmons”). Nimmons and Fendley discussed Big City’s 2016 exchange with Harper, but Nimmons assured Fendley that it would not be an

² https://www.idahopress.com/news/local/black-lives-matter-activist-charged-with-vandalism-injured-during-arrest/article_095272cb-6adc-5422-ad94-f0f9e73b924d.html. Wilson later admitted to defacing the statute as a part of his plea arrangement.

issue. In reliance upon the assurances of Nimmons (who is an agent and/or representative of Defendants), and in the midst of a devastating global pandemic, Fendley began preparations to open a second Big City Coffee location on the BSU campus.

41. Such preparations required a Herculean effort, as Fendley had to continue to operate her downtown location, while simultaneously hiring and training employees and buying equipment and supplies for the new location. Fendley has always tried to hire BSU students for her downtown location, in order to help the students pay for school. Between the two locations, Fendley *had 74 total employees, all but nine of which were BSU students.*

42. In order to open the new location, and in reliance on the assurances she had received, Fendley borrowed approximately \$150,000.00 from the Small Business Administration EIDL Program and spent all such monies and more to open the BSU location. Adding to her stress during this time was the fact that Fendley underwent major surgery on September 8, 2020 and was in the hospital or confined to her home for weeks. Despite these obstacles and setbacks, Fendley managed to fully open the BSU restaurant as planned.

43. Although the bulk of the communication and negotiation occurred with and through BSU representatives, the contract was technically between Big City and Aramark, as Aramark had the general contract for food and beverage services on the University campus. Such contract was signed on August 17, 2020 (the “Contract”).

D. The Growing Controversy Concealed from Fendley.

44. Between the date the Contract was signed and Big City’s opening in September 2020, BSU representatives and Fendley were in regular contact. During that period, Defendants did not give Fendley any indication that there was a growing controversy due to her support of law enforcement and her engagement to Holtry. Fendley would learn later that, during

such period, Defendants had ample notice that IESC and other radical elements on the BSU campus were aware that Big City was coming to BSU and that IESC strenuously objected due to Plaintiffs' law enforcement connection.³

³ In addition to the Big City issue, the IESC objected to the presence of the Boise Police Department on campus. On July 27, 2020, a member of IESC sent a letter to Tromp criticizing the school for contracting with the Boise Police Department for campus security. Portions of such letter are excerpted below:

I am contacting you today to urge you to end the Boise Police Department's contract with Boise State Universities [sic] Campus Security and Public Safety Department.

...

1. It will be fiscally irresponsible to renew a contract with a criminal enterprise that has already received a \$1 million increase from Boise City Council.

...

2. It is important to understand the history of policing and the messaging it sends to those historically affected by policing. We must first acknowledge that this practice only existed to police black and brown-bodies. Police existed as slave patrols. Unqualified white men harassing black and brown bodies, keeping them in their place. This practice obviously has evolved into a larger multi-faceted criminal enterprise, but it has not left behind it's [sic] sickening roots. The roots of this organization were to police, harrass [sic] and murder black and brown bodies to ensure the status quo and harmful narratives were normalized. The message that I receive as a person who occupies many identities historically policed is if this contract is renewed is, you and your team (who approve the recommendation) look past the trauma of my ancestors and the generational trauma I endure in the presence of police, thus invalidating my existence.

...

*After leading one of three Black Lives Matter Rally's [sic] in Boise I have been clinically diagnosed with Post Traumatic Stress Disorder. At this rally I was threatened by white supremacists that I would be shot and killed while my community watched, **no response from the police**. White accomplices were physically assaulted, **no response from the police**. White supremacists broke white barricades to protect the most vulnerable, **no response from the police**. This was not even the worst of it. The threats, the physical assaults were miniscule compared to the response of BPD. BPD showed up in riot gear and faced BLM protestors, not the wite [sic] supremacists committing actual crimes that were grounds for prosecution. BPD went up high, set up snipers and pointed their guns at us! Not the white supremacists. I was forced to end the rally early because of the real danger we were facing. For this event we had to contract third party security because we know **police don't equal protection. Police equal perpetrators of property over black and brown lives and perpetrators of white supremacy**. I hope as you are reading this story you are thinking that me, a 20-year old biracial woman should not have to go through this trauma and harm. If you are thinking this you are right. For the experience I have just wrote [sic] about and many I chose not to should be grounds and encouragement to end the contract with BPD.*

...

You will most likely receive a recommendation to renew the contract for one-year while the university has further discussion on a longer renewal or ending the contract all together. One-year may not sound so horrible as you occupy identities of privilege, but for black and brown folks with many intersectional identities this one year can be very harmful and re-traumatizing. This also gives cop sympathizers within your institution time to deliberate on why cops should be on campus (just to be clear: they should not!) (emphasis in original).

45. Emails obtained later through a records request indicate that Nimmons and Webb were discussing the potential for controversy as early as July 28, 2020. They, and other BSU administrators, continued to discuss the matter through October 2020. Minutes of IESC meetings, many of which were attended by Webb and Salinas, confirm that IESC's objections to Big City were continually a topic of discussion and protest.

46. Had Defendants not concealed this critical information, Plaintiffs would have not elected to open the second location, not borrowed over a hundred thousand dollars (during a global pandemic), not hired additional personnel, not purchased equipment, and would have had the opportunity to take other measures to mitigate the damage Plaintiffs would ultimately suffer.

47. In October, 2020, the ASBSU Chief of Staff created a Snapchat message protesting Big City's support of Thin Blue Line. In response, and unaware of the larger, escalating controversy, Fendley posted the following message on social media on October 21, 2020:

I was thrilled to be asked to open Big City at BSU this fall... not super thrilled it was during a pandemic but it gave me the opportunity to create a few dozen more jobs on campus and give some hours to people that we otherwise would be missing due to Corona and everything it entails. We were able to purchase local Cafe Mulé coffee and use some other local products there. I have explained before and if you scroll through the next two photos you will see my handsome guy- he's the short one... in the wheelchair. Almost four years ago on 11/11/16 he was shot five times, paralyzed instantly and lost his leg on the Boise bench protecting our city from a recently released from prison gang member that had already shot two people the day before and car-jacked and [sic] elderly woman all while running from the police. Police K9 Jardo lost his life protecting Holtry and If you want more details google it - if you want to know why I support first responders ask me ... I'll tell you and if your [sic] lucky you might get to meet my hero. He has extensive nerve damage and debilitating pain but he manages to smile through most of it and I love him. He never hesitated that day and he would do it again. We are lucky to have such great police, fire and EMS in our community. I support them because they support us. My brother is also a fireman and our younger brother is in the Air Force - service is in our blood and my decision to open on

a college campus knowing full well some wouldn't be happy was outweighed by the opportunity to do something during these past few months- being self employed is never easy, try self employed with a restaurant in a pandemic it's next level... I love Boise state and the staff we hired is wonderful and they deserve big thanks for serving the public when they could choose to stay home instead. I love my hero and I support him and always will - he is an officer of the highest regard and he was also a Bronco graduate.

48. IESC was outraged by Fendley's October 21 post and complained loudly to Defendants.

E. Defendants' Decision to Terminate Big City's Contract.

49. One day after Fendley's post, she was summoned to a meeting with Webb, the then-second highest ranking Administration official, reporting directly to Tromp, and Estey, Vice President for University Affairs and Chief of Staff, and the third highest ranking official at BSU, who also reports directly to Tromp. Fendley was not informed as to the agenda for the meeting, that Estey was an attorney or that Fendley might need legal counsel. The meeting, which commenced at approximately 4:30 in the afternoon, was intended as an ambush and Defendants did not want Fendley to be prepared.

50. Holtry accompanied Fendley to the meeting, along with the manager of the Big City campus location, Kyla Beavers. Also in attendance was Holtry's best friend, Brian Holland. An Aramark representative was also present. Tellingly, Nimmons left the group at the door of the meeting room, visibly upset, and told Fendley that Webb and Estey had forbid her from attending the meeting.

51. At that meeting, and for the first time, Defendants informed Fendley that Big City's presence on campus had triggered a "*firestorm*", and that a small but vocal minority was demanding that Defendants remove Big City from campus. A review of IESC minutes,

obtained by Fendley the next day, shows that the group had begun objecting to Big City by at least early September. Yet, Fendley was not informed by any of the Defendants about the uproar.

52. For example, on September 7, 2020, at an IESC meeting attended by Webb and Salinas, the group complained loudly about Big City's alleged racism and mistreatment of people of color, but then vacillated between demanding that the Contract be broken and Big City removed from campus, and demanding some type of compensation. Salinas, the BSU administrator in charge of diversity initiatives, suggested the situation "could be the beginning of a revolution" regarding corporate partnerships and stated that he "did not go to college in Idaho because of things I saw." Salinas did not elaborate on the things he allegedly saw.

53. A review of additional IESC minutes, also obtained after-the-fact, indicates that pressure on Defendants continued to build throughout September and October. At its September 21, 2020, meeting, one IESC leader stated that "IESC is drafting a statement regarding Boise State's failures and submission to white supremacy, in addition to its overt action of *perpetuating anti-blackness, and the entrance of Big City Coffee on Campus.*" Emphasis added.

54. And, on September 29, 2020, Webb and Salinas participated in an IESC meeting where Salinas suggested that Big City "fund students and employees to attend a conference regarding race and discrimination", presumably as the price of keeping the Contract. Webb, Salinas and IESC members went on to discuss the possible "contractual penalties" of Defendants causing the termination of the Contract with Big City. At some point, Salinas suggested "holding Big City accountable by providing scholarships to marginalized students." Such comments from Salinas, a BSU administrator, are further evidence of Defendants' bias against law enforcement and its supporters. *See also, footnote 4, infra.*

55. Eventually, one of the IESC leaders abandoned all pretext and simply stated to Webb and Salinas, I “want the administration to sign on to what we say and support us even if it is radical.” Apparently, Defendants took the demand seriously, because on October 22, 2020, Webb presided over the meeting where Big City and Fendley were forced off campus due to their support for law enforcement.

56. At the October 22, 2020 meeting, it was clear Defendants had already decided that they were going to force the termination of the Contract with Aramark, although Webb spent a fair amount of time attempting to explain why there was an issue in the first place. Ironically, Webb told Fendley and Holtry at the outset of the meeting that “*I know you’re not racists; I love Big City Coffee.*”

57. Of course, the real issue was that Fendley supported Thin Blue Line and was engaged to a police officer, which had caused a “firestorm.” Webb asked if Fendley or Holtry had anything to say. Fendley expressed her surprise and frustration that Defendants had chosen not to share their concerns about Big City with Fendley until nearly two months after Big City opened. They both spoke of their love for BSU, the fact that they were not racists and that Big City very much wanted to be on campus.

58. To Fendley’s knowledge, based on prior representations from Defendants, the overwhelming majority of students supported Big City. Holland stated that, as a Black man, he had no issues with Fendley or her business and noted the many BSU students that Big City employed. Fendley stated, again, that she had never displayed a Thin Blue Line flag or any other law enforcement related material at the campus location, had never requested to do so, but confirmed that she did display a Thin Blue Line emblem on the door of her downtown location.

59. Finally, toward the end of the one-hour meeting, Fendley asked Webb if Defendants would support her in the face of the unfair criticism. Webb said, “*That’s not going to happen.*” Then, the Aramark representative suggested that Fendley close the campus location until January to see if the matter would resolve itself. Fendley asked if, after such a temporary closing, Defendants would then support Big City. At that point, Estey said, “*I think it is best that we part ways.*”

60. Estey’s statement was not an invitation for further discussion or a mere observation. It was made in a manner and context that left no doubt that Big City’s time on the BSU campus had come to an end. In no way did Fendley agree with or consent to what had occurred and the last thing Holtry said to Webb and Estey was, “*Shame on you.*” Fendley passed Nimmons on the way out of the meeting and Nimmons was crying uncontrollably. Big City moved its equipment off the BSU campus on October 26, 2020.

61. Quite notably, 18 students lost their jobs—amid a pandemic—as a result of Defendants’ actions.

F. The Aftermath.

62. Defendants’ actions immediately after the October meeting further evidence Defendants’ culpability in this matter. Within minutes, Tromp called Boise Mayor Lauren McLean, presumably in an attempt to have Holtry and Holland silenced.

63. McLean is sympathetic to the University’s social justice agenda and has attempted to implement a similar agenda in Boise City.⁴ McLean then called Boise Chief of Police Ryan Lee who summoned Holtry and Fendley to a meeting in his office the following day, October

⁴ See *A More Equitable City for Everyone: A Final Transition Team Report for Mayor Lauren McLean* (<https://www.cityofboise.org/media/9915/transitionreport-equitablecity-final.pdf>). The report, steeped in diversity and inclusion, advocates, *inter alia*, for the limitation of law enforcement’s authority and discretion, and for greater accommodation of criminals. The report was written by a committee co-chaired by Defendant Salinas.

23, 2020. Fortunately, Chief Lee resisted the attempted strong-arm and expressed only support for his officers. Weeks later, however, Tromp called Chief Lee directly and shared her dismay at the public outcry over Big City's mistreatment, complaining that Defendants risked losing financial and political support due to the controversy.

64. And, there was an outcry.

65. No doubt to Defendants' surprise and consternation, the overwhelming majority of BSU students, Boise residents and Idahoans in general expressed support for Big City and condemned the University's actions. On October 30, 2020, at Big City's downtown location, hundreds of patrons lined up for blocks, waiting for a table and to demonstrate their support. Fendley and Holtry received a multitude of calls, cards and messages from current and former employees, customers and government officials, all conveying sympathy for what had happened to them.

66. Defendants have not been truthful in their statements about the events surrounding Big City's departure from the University campus. Defendants' official explanation of what occurred and why Big City left has changed repeatedly since October 22, 2020. Initially, the student newspaper, *The Arbiter*, reported that Big City had been "**removed**" as a vendor. The article quoted Webb and said that her announcement had been made at an IESC meeting on October 27, 2020. However, the Defendants quickly grew uncomfortable with that narrative.

67. Accordingly, the article was updated on October 28, 2020, to say that Big City had decided to be "**released**" from the Contract. Finally, on October 29, 2020, Defendants decided that their story would be that Big City had "**opted out**" of the Contract.

68. Tromp's statements on the matter, since October 2020, have been more obfuscating than accurate. To make clear, Big City was forced off the BSU campus by Defendants.

Defendants acknowledged as much when they twice attempted, after-the-fact, to have Fendley agree to a joint statement that Big City's departure had been mutual.

69. Fendley refused to agree to the statement, both times, because it was simply not true.

V. CLAIMS FOR RELIEF

COUNT ONE: Violation of Plaintiffs' First Amendment Right to Freedom of Speech (42 U.S.C. §§ 1983 and 1988)

70. Plaintiffs repeat and reallege each and every allegation set forth above, as though fully set forth herein.

71. Speech, including public oral expression, is entitled to comprehensive protection under the First Amendment to the United States Constitution.

72. The First Amendment rights of free speech and press extend to the campuses of state colleges. *See e.g. Healy v. James*, 408 U.S. 169, 187-88 (1972) (holding that a public college or university, acting as instrumentality of the state, "may not restrict speech or association simply because it finds the views expressed by any group to be abhorrent.")⁵

73. By supporting first responders, supporting the Thin Blue Line, and displaying a Thin Blue Line emblem at Big City's downtown location, Plaintiffs engaged in expressive conduct and speech that addressed a matter of public concern.

74. As a direct result of Plaintiffs' conduct and exercise of their beliefs and speech, Defendants took adverse actions against Plaintiffs by, among other things: (a) forcing the termination of the Contract; (b) declining to support or defend Plaintiffs against a defamatory

⁵ *See also Communist Party v. Subversive Activities Control Board*, 367 U.S. 1, 137 (1961) (dissenting opinion) ("I do not believe that it can be too often repeated that the freedoms of speech, press, petition and assembly guaranteed by the First Amendment must be accorded to the ideas we hate or sooner or later they will be denied to the ideas we cherish.")

attack by a vocal minority claiming that Plaintiffs were racists and support racism; (c) not informing Plaintiffs of the campus “firestorm” prior to signing the Contract; (d) forcing Plaintiffs to close their campus location and/or manufacturing a situation where Big City would have no choice but to leave BSU; and (e) creating a hostile environment for Plaintiffs on the BSU campus. Plaintiffs’ expressive conduct and belief was a substantial or motivating factor for such adverse actions by Defendants.

75. Plaintiffs’ free speech interest outweighs any interest Defendants may have in promoting efficient service-delivery and avoiding disruption.

76. Defendants would not have taken the same actions in the absence of the Plaintiffs’ expressive conduct.

77. Accordingly, by engaging in the acts and omissions outlined herein, Defendants have violated Plaintiffs’ right to free speech as guaranteed by the First Amendment to the United States Constitution.

78. Because of Defendants’ acts and omissions, Plaintiffs have suffered, and continue to suffer, irreparable harm, as well as monetary damages in an amount to be proven at trial, but not less than \$10,000,000.00. Plaintiffs are also entitled to a declaration that Defendants violated Plaintiffs’ First Amendment right to freedom of speech.

COUNT TWO: Violation of Plaintiffs’ Fifth and Fourteenth Amendment Rights to Procedural and Substantive Due Process of Law (42 U.S.C. §§ 1983 and 1988)

79. Plaintiffs repeat and reallege each and every allegation set forth above, as though fully set forth herein.

80. As guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution, the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner.

81. Defendants' acts and omissions caused the deprivation of a constitutionally protected liberty (i.e., speech and expression) or property interest (i.e., Plaintiffs' interests under the Contract and to conduct operations on BSU's campus) without any process whatsoever, much less due process.

82. Defendants' acts and omissions constitute grave unfairness by them in their discharge of their respective legal responsibilities and were carried out arbitrarily and irrationally, and without any adequate justification.

83. Because of Defendants' acts and omissions, Plaintiffs have suffered, and continue to suffer, irreparable harm, as well as monetary damages in an amount to be proven at trial, but not less than \$10,000,000.00. Plaintiffs are also entitled to a declaration that Defendants violated Plaintiffs' Fifth and Fourteenth Amendment rights to due process of law.

COUNT THREE: Violation of Plaintiffs' Fourteenth Amendment Right to Equal Protection Under the Law (42 U.S.C. §§ 1983 and 1988)

84. Plaintiffs repeat and reallege each and every allegation set forth above, as though fully set forth herein.

85. The equal protection clause of the Fourteenth Amendment to the United States Constitution secures every person against intentional and arbitrary discrimination.

86. Defendants took adverse action against Plaintiffs by, among other things: (a) forcing termination of the Contract; (b) declining to support or defend Plaintiffs against a defamatory attack by a vocal minority claiming that Plaintiffs were racists and support racism; (c) not informing Plaintiffs of the campus "firestorm" prior to signing the Contract; (d) forcing Plaintiffs to close their campus location and/or manufacturing a situation where Big City would have no choice but to leave BSU; and (e) creating a hostile environment for Plaintiffs on the BSU campus.

87. Defendants carried out such adverse actions under the color of law and deprived Plaintiffs of civil rights and liberties and constitutional rights, privileges and immunities.

88. Defendants' adverse actions were not in good faith and constituted knowing and willful denials, deprivations and/or violations of Plaintiffs' civil rights and liberties and constitutional rights, privileges and immunities.

89. In directly taking the adverse actions, and/or participating in/authorizing the adverse actions on constitutionally impermissible bases, and acting under color of law, Defendants knowingly and willfully denied Plaintiffs the equal protection of the law and, thus, knowingly and willfully denied, deprived and/or violated Plaintiffs' civil rights and liberties and constitutional rights, privileges and immunities.

90. Defendants knowingly and willfully treated Plaintiffs differently from other contractors, vendors and/or visitors to the university (which were otherwise similarly situated to Plaintiffs in all material respects) on the bases of Plaintiffs' exercise of their constitutional rights and/or Plaintiffs' status (or perceived status) as supporters of first responders (including police) and the Thin Blue Line.

91. Defendants intentionally chose not to explain the real reasons for their adverse actions against Plaintiffs. Instead, Defendants intentionally chose to cite false, pretextual justifications for the adverse actions in order to impede Plaintiffs' ability to exercise and vindicate Plaintiffs' constitutional rights, and/or to otherwise harm Plaintiffs due to Defendants' animus against Plaintiffs.

92. Because of Defendants' acts and omissions, Plaintiffs have suffered, and continue to suffer, irreparable harm, as well as monetary damages in an amount to be proven at

trial, but not less than \$10,000,000.00. Plaintiffs are also entitled to a declaration that Defendants violated Plaintiffs' Fourteenth Amendment right to equal protection of the law.

COUNT FOUR: Violation of Plaintiffs' Right to Freedom of Speech Under the Idaho Constitution

93. Plaintiffs repeat and reallege each and every allegation set forth above, as though fully set forth herein.

94. Speech, including public oral expression, is entitled to comprehensive protection under Idaho's Constitution, including Article I, Section 9 thereof.

95. The rights of free speech extend to the campuses of state colleges.

96. By supporting first responders, supporting the Thin Blue Line, and displaying a Thin Blue Line emblem at Big City's downtown location, Plaintiffs engaged in expressive conduct and speech that addressed a matter of public concern.

97. As a direct result of Plaintiffs' conduct and exercise of their beliefs and speech, Defendants took adverse actions against Plaintiffs by, among other things: (a) forcing the termination of the Contract; (b) declining to support or defend Plaintiffs against a defamatory attack by a vocal minority claiming that Plaintiffs were racists and support racism; (c) not informing Plaintiffs of the campus "firestorm" prior to signing the Contract; (d) forcing Plaintiffs to close their campus location and/or manufacturing a situation where Big City would have no choice but to leave BSU; and (e) creating a hostile environment for Plaintiffs on the BSU campus. Plaintiffs' expressive conduct and belief was a substantial or motivating factor for such adverse actions.

98. Plaintiffs' free speech interest outweighs any interest Defendants may have in promoting efficient service-delivery and avoiding disruption.

99. Defendants would not have taken the same actions in the absence of the Plaintiffs' expressive conduct.

100. Accordingly, by engaging in the acts and omissions outlined herein, Defendants have violated Plaintiffs' right to free speech as guaranteed by the Idaho Constitution.

101. Because of Defendants' acts and omissions, Plaintiffs have suffered, and continue to suffer, irreparable harm, as well as monetary damages in an amount to be proven at trial, but not less than \$10,000,000.00. Plaintiffs are also entitled to a declaration that Defendants violated Plaintiffs' right to freedom of speech under the Idaho Constitution.

COUNT FIVE: Violation of Plaintiffs' Right to Due Process of Law Under the Idaho Constitution

102. Plaintiffs repeat and reallege each and every allegation set forth above, as though fully set forth herein.

103. Due process of law, including the opportunity to be heard at a meaningful time and in a meaningful manner, is protected by the Idaho Constitution, including Article 1, Sections 2, 13, and 18 thereof.

104. Defendants' acts and omissions caused the deprivation of a constitutionally protected liberty (i.e., speech and expression) or property interest (i.e., Plaintiffs' interests under the Contract and to conduct operations on BSU's campus) without any process whatsoever, much less due process.

105. Defendants' acts and omissions constitute grave unfairness by them in their discharge of their respective legal responsibilities and were carried out arbitrarily and irrationally, and without any adequate justification.

106. Because of Defendants' acts and omissions, Plaintiffs have suffered, and continue to suffer, irreparable harm, as well as monetary damages in an amount to be proven at

trial, but not less than \$10,000,000.00. Plaintiffs are also entitled to a declaration that Defendants violated Plaintiffs' rights to due process of law under the Idaho Constitution.

COUNT SIX: Violation of Plaintiffs' Right to Equal Protection Under the Idaho Constitution

107. Plaintiffs repeat and reallege each and every allegation set forth above, as though fully set forth herein.

108. Equal protection, including the protection of every person against intentional and arbitrary discrimination, is guaranteed by the Idaho Constitution, including Article I, Sections 1 and 2 thereof.

109. Defendants took adverse actions against Plaintiffs by, among other things: (a) forcing the termination of the Contract; (b) declining to support or defend Plaintiffs against a defamatory attack by a vocal minority claiming that Plaintiffs were racists and support racism; (c) not informing Plaintiffs of the campus "firestorm" prior to signing the Contract; (d) forcing Plaintiffs to close their campus location and/or manufacturing a situation where Big City would have no choice but to leave BSU; and (e) creating a hostile environment for Plaintiffs on the BSU campus.

110. Defendants carried out the adverse action under the color of law and deprived Plaintiffs of civil rights and liberties and constitutional rights, privileges and immunities.

111. Defendants' adverse actions were not in good faith and constituted knowing and willful denials, deprivations and/or violations of Plaintiffs' civil rights and liberties and constitutional rights, privileges and immunities.

112. In directly taking the adverse actions, and/or participating in and/or authorizing the adverse actions on constitutionally impermissible bases, and acting under color of law, Defendants knowingly and willfully denied Plaintiffs the equal protection of the law and,

thus, knowingly and willfully denied, deprived, and/or violated Plaintiffs' civil rights and liberties and constitutional rights, privileges and immunities.

113. Defendants knowingly and willfully treated Plaintiffs differently from other contractors, vendors and/or visitors to the university (which were otherwise similarly situated to Plaintiffs in all material respects) on the bases of Plaintiffs' exercise of their constitutional rights and/or Plaintiffs' status (or perceived status) as a supporter of first responders (including police) and the Thin Blue Line.

114. Defendants intentionally chose not to explain the true reasons for their adverse actions against Plaintiffs, and Defendants intentionally chose to cite false, pretextual justifications for the adverse actions in order to impede Plaintiffs' ability to exercise and vindicate Plaintiffs' constitutional rights, and/or to harm Plaintiffs due to Defendants' animus against Plaintiffs.

115. Because of Defendants' acts and omissions, Plaintiffs have suffered, and continue to suffer, irreparable harm, as well as monetary damages in an amount to be proven at trial, but not less than \$10,000,000.00. Plaintiffs are also entitled to a declaration that Defendants violated Plaintiffs' right to equal protection of the law under the Idaho Constitution.

COUNT SEVEN: Tortious Interference With a Contract

116. Plaintiffs repeat and reallege each and every allegation set forth above, as though fully set forth herein.

117. The Contract is a valid and enforceable agreement.

118. Defendants each knew of the existence of the Contract.

119. Defendants each knowingly, wrongfully and intentionally interfered with the Contract, thereby causing the Contract's termination.

120. As a direct and proximate result of Plaintiffs' actions, Defendants have suffered damages in an amount to be proven at trial, but not less than \$10,000,000.00. Such damages include, but are not limited to, the profits that Plaintiffs would have made under the Contract if it had not been terminated.

COUNT EIGHT: Fraud by Omission

121. Plaintiffs repeat and reallege each and every allegation set forth above, as though fully set forth herein.

122. Defendants failed to disclose material information to the Plaintiffs that Defendants had a duty to disclose to Plaintiffs and of which Defendants knew Plaintiffs were ignorant. That material information consisted of, among other things, the animosity and rancor directed toward the Plaintiffs based on their beliefs and expression, and that Defendants directly (or by tacit approval) fomented on the BSU campus. The material information likewise includes the animosity and rancor of others on BSU's campus aimed at Plaintiffs based on their beliefs and expression.

123. Plaintiffs relied upon Defendants' omissions, justifiably and rightfully, to their detriment by, among other things, borrowing money to establish Big City's on-campus location, incurring costs, dedicating time and resources, foregoing other business opportunities and hiring employees.

124. Had Plaintiffs known of the facts Defendants deliberately withheld, Plaintiffs would not have engaged in the actions set forth in the preceding paragraph.

125. As a direct and proximate result of Plaintiffs' actions, Defendants have suffered damages in an amount to be proven at trial, but not less than \$10,000,000.00.

COUNT NINE: Violation of the Idaho Consumer Protection Act

126. Plaintiffs repeat and reallege each and every allegation set forth above, as though fully set forth herein.

127. The Idaho Consumer Protection Act is codified at Idaho Code §§ 48-601, *et. seq.* The I.C.P.A. was promulgated to protect consumers against unfair methods of competition, unfair or deceptive acts or practices in the conduct of trade or commerce, and to provide efficient and economical procedures to secure such protection. The I.C.P.A. is remedial in nature and is to be liberally construed.

128. Idaho Code § 48-608(1) is the portion of the I.C.P.A.'s giving rise to a private right of action. It states:

*Any person who purchases or leases goods or services and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a **method, act or practice declared unlawful by this chapter**, may treat any agreement incident thereto as voidable or, in the alternative, may bring an action to recover actual damages or one thousand dollars (\$1,000), whichever is the greater[.]*

Emphasis added.

129. Idaho Code § 48-603 sets forth the methods, acts, and practices referred to in the preceding section. It states, essentially, that it is unlawful for a person who knows, or in the exercise of due care should know, that he or she has in the past or is engaging in any act or practice which is otherwise misleading, false, or deceptive to consumers. Additionally, it is unlawful to engage in any unconscionable method, act or practice in the conduct of trade or commerce. *See also* IDAPA 04.02.01.030 (“It is an unfair and deceptive act or practice for a seller to make any claim or representation concerning goods or services which directly or by implication, has the

capacity, tendency, or effect of deceiving or misleading a consumer acting reasonably under the circumstances”).

130. Plaintiffs have suffered an ascertainable loss as a direct and proximate result of Defendants’ acts and omissions described herein, all of which are declared unlawful under Idaho Code § 48-603, as supplemented by relevant IDAPA regulations.

131. Plaintiffs are entitled to an award of damages resulting from Defendants’ conduct in an amount to be proven at trial, but not less than \$10,000,000.00.

COUNT TEN: Declaratory Relief
(Idaho Code § 10-1201, *et. seq.* and 28 U.S.C. § 2201)

132. Plaintiffs repeat and reallege each and every allegation set forth above, as though fully set forth herein.

133. Idaho Code § 10-1201 provides for “[d]eclaratory judgments” and further states that “[c]ourts of record within their respective jurisdictions shall have power to declare rights, status, and other legal relations, whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declarations shall have the force and effect of a final judgment or decree.” I.C. § 10-1201; *cf.* 28 U.S.C. § 2201(a) (“In a case of actual controversy within its jurisdiction ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.”).

134. Plaintiffs are entitled to a declaration stating that Defendants each violated the constitutional rights of Plaintiffs enumerated herein and that Plaintiffs are entitled to, at an absolute minimum, nominal damages.

VI. EXEMPLARY/PUNITIVE DAMAGES

135. Defendants' acts and omissions were, among other things, repeated, flagrant, reckless, oppressive, fraudulent, malicious and outrageous. Defendants' acts and omissions were likewise made with a reckless or callous indifference to the federally protected rights of Plaintiffs. As a result, Plaintiffs are entitled to exemplary and punitive damages against each of the Defendants.

VII. DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all matters so triable herein.

VIII. ATTORNEYS' FEES AND COSTS

Because of the Defendants' actions and omissions as alleged herein, Plaintiffs have been forced to retain counsel to bring this action, and as a result have reasonably and necessarily incurred attorneys' fees and costs. The Plaintiffs are entitled to an award of attorneys' fees and costs pursuant to Idaho Code Sections 10-1210, 12-117, 12-120(3), 12-121, 12-123, 48-608, 42 U.S.C. §§ 1983 and 1988, and Rule 54 of the Idaho Rules of Civil Procedure (and Federal Rules of Civil Procedure), and any other applicable provision of law in the event Defendants contest this litigation in any manner.

IX. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray for the following relief from this Court:

1. For judgment in accordance with the relief sought above;

2. For recovery of attorney fees and costs incurred in connection with this lawsuit, and in the event that Defendants fail to appear and contest this matter, that such amount be in the amount of \$25,000.00; and

3. For such other and further relief as this Court may deem appropriate under the circumstances.

DATED this 1st day of October, 2021.

GIVENS PURSLEY LLP

By /s/ Michael O. Roe
Michael O. Roe – Of the Firm
Attorneys for Plaintiffs