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9 MICHELE LYONS, on her own behalf, and on behalf of
10 her minor children, C.L., M.L., S.L., and R.L.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION

14 MICHELE LYONS, on her own behalf, and on
15 behalf of her minor children, C.L., M.L., S.L., and
16 R.L.,
17 Plaintiffs,

18 v.

19 CARMEL UNIFIED SCHOOL DISTRICT;
20 TED KNIGHT, in his official capacity as
21 Superintendent of Carmel Unified School District;
22 JAY MARDEN, in his official capacity as
23 Principal of Carmel River Elementary School,
24 Defendants.

Case No.

Complaint For Declaratory And Injunctive
Relief Based On:

1. Violation Of The Establishment Clause Of The First Amendment To The United States Constitution
2. Violation Of The Free Speech Clause Of The First Amendment To The United States Constitution
3. Violation Of The Free Exercise Clause Of The First Amendment To The United States Constitution
4. Violation Of The Equal Protection Clause Of The Fourteenth Amendment To The United States Constitution And 42 U.S.C. § 1983
5. Retaliation In Violation Of The First Amendment To The United States Constitution

***Motion For Temporary Restraining Order
And OSC Why A Preliminary Injunction
Should Not Issue Is Forthcoming***

1 **I. Introduction And Statement Of Facts**

2 1. The Defendants in this case are public entities and public employees that have used their
3 official positions to endorse religious, cultural and speech activities related to Christian traditions while
4 excluding other traditions, including—as relevant here—Judaism. More generally, the Defendants have
5 enforced preferences for Christian cultural and speech activities over other cultural and speech activities
6 associated with other religions.

7 2. Some of the best evidence of Defendants’ preference for and endorsement of secular and
8 religious activities that are associated with Christianity is that Defendants have required the Plaintiffs to
9 file this complaint and seek a temporary restraining order just to be able to bring an inflatable menorah
10 to a large after-school event on December 10, 2021, where a Christmas tree will be lighted and
11 decorated and Christmas-themed holiday songs will be sung.

12 3. For the better part of three years, Plaintiff Michele Lyons has been attempting to display
13 a symbol of her family’s Jewish faith and culture simultaneously with the presentation of various
14 Christmas-themed events at Carmel River School (“CRS”), a public school in Carmel that is part of the
15 Carmel Unified School District (“CUSD”). Plaintiff R.L. attends CRS.

16 4. Repeatedly, Defendants have invented one excuse after another for why their planned
17 Christmas-themed events cannot also include a comparable secular Jewish symbol.

18 5. Exhibit 1 to this complaint is the most recent communication from Defendants’ legal
19 counsel. There, Defendants informed Plaintiffs’ counsel that Ms. Lyons is not permitted to bring an
20 inflatable menorah to a school-sponsored event this Friday afternoon (December 10, 2021).

21 6. After years of back and forth with Ms. Lyons, Defendants have now cited, for the first
22 time, a district policy on facilities rentals as the basis of their denial for her request to display a menorah.
23 Essentially, they claim that a district policy that no one has previously referred to or discussed prohibits
24 having two events occur simultaneously. Therefore, Plaintiff cannot bring a menorah to school at the
25 same time as another event that is open to the public. Defendants took this position even though they
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1 were aware that Plaintiffs intended to file this complaint and seek a temporary restraining order (“TRO”)
2 that prohibits enforcement of this policy or any other that would deny Plaintiffs the ability to display a
3 menorah.

4 7. Importantly, Plaintiff is just asking to make a passive display of a menorah at an event
5 that is open to the public. Defendants have created a limited open forum on public property. They are
6 unlawfully discriminating based on viewpoint by allowing celebrations associated with the Christmas
7 holiday but not others. Specifically, they are prohibiting the display of Plaintiffs’ menorah (picture
8 attached with Exhibit 1) at the same time as and in the same general proximity of a tree that is going to
9 be lighted and decorated as part of the holiday celebration. This holiday celebration on December 10,
10 2021 is a large school event and Plaintiffs simply wish to have their traditions be included.

11 8. As a California public school district, Defendants are mandated to comply with the First
12 and Fourteenth Amendments to the U.S. Constitution. Defendants open CRS to the public during most
13 non-school hours.

14 9. Ms. Lyons has asked to display a menorah during a CRS Christmas Tree Lighting on
15 December 10, 2021 when Defendants will open CRS to the public for the observance and celebration of
16 a Christian holiday. Defendants advertised that during this time they would allow a large Christmas tree
17 display of approximately 30 feet. Defendants separately advertised and invited CRS students to bring in
18 a wide array of political, religious, public-issue, public-service, and commercial displays for the
19 Christmas tree, including Christmas tree ornaments expressing religious views and promoting religious
20 ideas.

21 10. This event is going forward starting at 4:30 p.m. on December 10, 2021, however,
22 Defendants have communicated to Plaintiff that she will not be permitted to display a menorah while it
23 occurs.

24 11. Plaintiffs contend that Defendants’ conduct, including their application of the policy
25 reference in Exhibit 1 as well as the course of conduct recounted below, violates the United States
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1 Constitution in the following respects.

2 12. First, Defendants have violated the Establishment Clause of the First Amendment by
3 banning the menorah during a large holiday event and thereby showing a preference for Christianity.
4 Defendants have communicated to Plaintiff that she can apply to hold her own event at a later date,
5 where she could display a menorah. But, this is not sufficient because the Christmas tree lighting has
6 been widely promoted by Defendants and will be heavily attended by the CRS school community. This
7 tree lighting is the main winter holiday event at CRS and there are relatively few Jewish students and
8 families at CRS. Any subsequent event arranged by Plaintiff will necessarily be lightly attended and
9 promoted relative to the event in question.

10 13. Second, Defendants have violated the rights to free speech that are guaranteed to
11 Plaintiffs by the First Amendment. That is, Defendants have not permitted Plaintiffs to display a
12 menorah during non-school hours, when Defendants open CRS to the public. When Ms. Lyons asked
13 Defendants for permission to display the menorah display at issue here, the CRS lower playground was
14 a public forum for Plaintiffs' speech. Consequently, Defendants were required to allow Ms. Lyons to
15 display a menorah pursuant to the First Amendment right for free speech and free exercise.

16 14. Third, Defendants have violated the free exercise of Plaintiffs' religion by prohibiting
17 them from displaying a menorah at the same time as another CUSD-sponsored holiday event that
18 celebrates the Christmas holiday. This suppresses Plaintiffs' exercise of their religious beliefs.
19 Defendants were motivated to exclude the menorah based on the content and viewpoint of its message
20 and, therefore, Defendants' actions are not viewpoint neutral. Indeed, changes to a forum motivated by
21 actual viewpoint discrimination, as in this case, are impermissible under the First Amendment.

22 15. Fourth, Defendants have violated the Equal Protection Clause of the Fourteenth
23 Amendment and 42 U.S.C. § 1983. By denying Plaintiffs the forum of the large public event that is set
24 for December 10, 2021, Defendants have prevented Plaintiffs from expressing a message based on its
25 content and viewpoint. While Defendants have cited to a facially neutral policy as the basis for their
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1 denial, this is a pretext given the history recounted herein and in the forthcoming motion for a temporary
2 restraining order.

3 16. Last, Defendants have engaged in retaliation against Ms. Lyons based on her engagement
4 in free speech. Ms. Lyons' protected activities included: (i) requesting the inclusion of a menorah at
5 school events; (ii) sending emails to other CUSD parents to reach out to the Anti-Defamation League
6 regarding the discrimination by CUSD; and (iii) letting other CUSD parents know about the subsequent
7 inclusion of a menorah.

8 17. The retaliation against Ms. Lyons includes: (i) Defendants' decision to exclude the
9 menorah as reflected on Exhibit 1; (ii) sending her anonymous emails that inaccurately reflected being
10 the product of Board of the Parent Teacher Association ("PTA") or "The PTA Board" when, in fact,
11 CUSD staff sent them; (iii) threatening Ms. Lyons with discipline for violating law and district policy
12 that did not apply; and (iv) embarrassing Ms. Lyons with schoolwide emails that made false and
13 inaccurate allegations about her. Defendants have deprived Ms. Lyons of her right to fully enjoy her
14 constitutional rights in violation of the First Amendment as applied to the states and their political
15 subdivisions under the Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983.

16 18. Accordingly, Plaintiffs seek a declaratory judgment that the Defendants' policies and
17 practices are unconstitutional as applied because they are religiously coercive, endorse and promote
18 religion, and have the purpose and effect of advancing religion, of restricting Plaintiffs' freedom of
19 speech, of restricting Plaintiffs' free exercise of religion, and of unlawful retaliation against Plaintiffs for
20 their lawful exercise of their First Amendment rights.

21 19. Plaintiffs further seek preliminary and permanent injunctive relief enjoining Defendants
22 from continuing their unlawful practices, permitting Plaintiffs to display the menorah at the event on
23 December 10, 2021, reasonable attorney's fees and costs, and other relief as set forth below.

24 **II. Parties**

25 20. Plaintiffs Michele Lyons and her minor children, C.L., M.L., S.L., and R.L., live in
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1 Carmel Unified School District, and attend public schools, including Carmel River School. Plaintiffs
2 are all residents of Monterey County, California. Ms. Lyons believes that students of all faiths should
3 feel safe and welcome in our public schools, in the freedoms of speech and free exercise, and that she
4 should be free from retaliatory action by Defendants for the lawful enjoyment of her First Amendment
5 rights.

6 21. Defendant CUSD is a public unified school district located in Carmel-by-the-Sea, Carmel
7 Valley, and Big Sur, California (all in Monterey County, California).

8 22. Defendant Ted Knight is the CUSD Superintendent of Schools. As the Superintendent,
9 Defendant Ted Knight is responsible for enforcing the acts, policies, practices, and/or customs of CUSD,
10 including the unlawful endorsement of religion and the restriction on Plaintiffs' speech, exercise of
11 religion, and other First Amendment rights set forth in this Complaint. Defendant Ted Knight is sued in
12 his official capacity.

13 23. Defendant Jay Marden is the CRS Principal. As CRS Principal, Defendant Jay Marden is
14 responsible for enforcing the acts, policies, practices, and/or customs of CRS, including the unlawful
15 endorsement of religion and the restriction on Plaintiffs' speech, exercise of religion, and other First
16 Amendment Rights set forth in this Complaint. Defendant Jay Marden is sued in his official capacity.

17 **III. Jurisdiction And Venue**

18 24. Plaintiffs bring this matter under 42 U.S.C. §1983, for violations of civil rights under the
19 First and Fourteenth Amendments to the U.S. Constitution. This Court has jurisdiction over this action
20 pursuant to 28 U.S.C. § 1331 (federal question); Section 1343 (civil rights). Plaintiffs' claims for
21 declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202 (Declaratory Judgment
22 Act), by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable
23 powers of this Court.

24 25. Venue is proper in this district under 28 U.S.C. § 1391(b) because a substantial part of
25 the events or omissions giving rise to Plaintiffs' claims occurred in this district. Plaintiffs and
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1 Defendants reside in this district and division, and the unlawful practices that give rise to the claims
2 herein occurred within this district and division.

3 **IV. Intra-District Assignment**

4 26. Since this action arose in Monterey County, assignment to the San Jose Division of the
5 Northern District of California is appropriate under Civil L.R. 3-2(e). This is not one of the kinds of
6 cases to which the district-wide assignment provisions of Civil L.R. 3-2(c) and General Order 44 apply.

7 **V. Additional Background On The Action**

8 27. Over the years, many events have occurred that lead Plaintiffs to believe that CRS
9 promotes Christianity over other religions.

10 28. For instance, when Plaintiff R.L., a Jewish student of Ashkenazi descent, enrolled in
11 kindergarten in 2018, he was taught by his teachers that Santa Claus would visit him and bring him
12 presents, and told that Hanukkah was an Israeli holiday, implying that Christmas was the only American
13 holiday in December. When the only Hanukkah song was sung at the CRS Kindergarten Holiday Music
14 Show, it was introduced it as an “Israeli song” whereas the preceding Christmas songs did not receive
15 any introduction, implying that they were American songs.

16 29. Plaintiffs M.L. and S.L. had similar experiences when they were enrolled in CRS from
17 2018 through 2020. Various events showed that CRS preferred Christian holidays and traditions and
18 engaged in discrimination against non-Christian holidays and traditions.

19 30. In 2019 and 2020, Ms. Lyons and her husband took their concerns to CUSD’s former
20 superintendent of schools, who took no corrective action, and instead threatened to “call the rabbi” on
21 the Lyons parents. She subsequently did call their rabbi in December 2019, which was an effort to
22 intimidate them and retaliate against them for lawful exercise of their protected rights as guaranteed by
23 the First Amendment of the U.S. Constitution.

24 31. In July and August 2021, Ms. Lyons raised her concerns to Defendant Ted Knight, the
25 new CUSD Superintendent of Schools, but he took no corrective action.
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1 32. On the contrary, Mr. Knight told Ms. Lyons that he would not intervene to overrule a
2 recent decision by Defendant Jay Marden to exclude a menorah from the annual Christmas parade at
3 CRS. Mr. Knight told Ms. Lyons that she would simply have to accept that the secular symbols of her
4 children’s holiday and the other non-Christian holidays would be excluded from the annual CRS
5 Christmas parade that occurred during school hours and included a Santa Claus, sleigh, elves, reindeer,
6 candy canes, and promises to bring good children presents on Christmas.

7 33. On November 29, 2021, Mr. Marden sent a schoolwide email including an announcement
8 of a new CRS Christmas Tree Lighting, and new CRS “holiday store” that would not open until after
9 Hanukkah ended. This holiday store was added to the already existing CRS Christmas celebrations.
10 But, no non-Christian holidays were included on a schoolwide basis.

11 34. On November 29, 2021, Mr. Marden also used the intercom during morning
12 announcements to announce a “Tree Lighting on December 10” and that “families are invited to
13 decorate the tree with an ornament or item that reflects their family, heritage, and/or faith.”

14 35. There were no other participation options provided for families who did not celebrate
15 Christmas and did not feel comfortable participating in the Christmas tree decorating and lighting
16 activity. Moreover, Mr. Marden stated in this announcement that religious symbols would be allowed if
17 the religious symbols were limited to Christmas tree ornaments. In doing so, Mr. Marden limited the
18 religious symbols to religious Christian symbols since families of other religions were unlikely to feel
19 comfortable participating in the CRS Tree Lighting Ceremony.

20 36. Thereafter, Ms. Lyons requested a menorah, a secular symbol of Hanukkah, be separately
21 included at the CRS Christmas Tree Lighting event. Mr. Marden did not grant this request but he did,
22 confusingly, assert that he was supportive of Ms. Lyons’ request.

23 37. On December 3, 2021, Mr. Marden circulated a schoolwide email stating that there would
24 be a CRS Christmas Tree Lighting on Friday, December 10, 2021 to “light up an existing, full grown
25 River tree on the lower playground in honor of the holiday season.” The only way listed to join in the
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1 celebration was to “bring an item to decorate the tree that reflects each family’s values, heritage, and/or
2 faith.” However, the item had to be “small enough to fit in a lunch, paper bag.”

3 38. Plaintiffs do not own a menorah that can fit inside a lunch-size paper bag. Moreover, Ms.
4 Lyons believed that she and her children were invited to share their culture through bringing a menorah,
5 which is not a Christmas tree ornament.

6 39. In reliance on Mr. Marden’s statement of support that a menorah, which is separate and
7 different from a Christmas tree ornament, could be included in the CRS Christmas Tree Lighting, Ms.
8 Lyons sent an email to other River families on a private Google group and through direct emails to her
9 son R.L.’s classmates to let them know that a menorah lighting, including any multi-pronged candelabra,
10 such as a Kwanzaa Kinara or a Hanukkah Hanukkiah, would also be welcome at the CRS Christmas
11 Tree Lighting. Without editing the CRS Christmas Tree Lighting Flyer, Ms. Lyons used a similar flyer
12 to show that Mr. Marden had expressed approval for its inclusion. The menorah flyer indicated that a
13 menorah lighting, including a Hanukkiah, a Kinara, or any multi-pronged candelabra was also taking
14 place at the CRS Christmas Tree Lighting.

15 40. Ms. Lyons then requested that Mr. Marden announce a menorah lighting and that families
16 are invited to bring a menorah, including a Hanukkiah or a Kinara or any other multi-pronged
17 candelabra, that reflects their family, heritage, and/or faith. Not only did Mr. Marden decline to honor
18 Ms. Lyons’ request, he used his position as CRS Principal with exclusive access to the intercom to
19 repeat the announcement of the same CRS Christmas Tree Lighting and Christmas ornament invitation
20 again on Monday morning, December 6, 2021.

21 41. Ms. Lyons traded many emails with Mr. Marden and Mr. Knight. On December 5, 2021,
22 Defendant Ted Knight emailed Ms. Lyons with a veiled threat, saying in regard to her attendance at the
23 event on December 10, 2021: “It is, however, my expectation that you follow the parameters that the
24 River PTA has set forth as not following a school/principals direction could be a violation of district
25 policy and law.”
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1 42. Mr. Knight clarified that one of those parameters “includes not allowing the large blowup
2 menorah that you are requesting to be included.” He then instructed Ms. Lyons to “consider this email as
3 my final decision on this matter and a formal directive to follow all applicable requests from the
4 principal at River Elementary.”

5 43. Because the email was sent from the Superintendent of the Schools, a very powerful
6 person within CUSD and the local community, it threatened Ms. Lyons with legal and District discipline
7 and acted as further retaliation for her legal exercise of rights protected under the First Amendment of
8 the U.S. Constitution.

9 44. In response to Mr. Knight’s email, Mr. Marden wrote an email stating that “there will be
10 no Menorah lighting and any item that will decorate the tree must be small/fit in a lunch paper bag.” Mr.
11 Marden also falsely accused Ms. Lyons of changing the CRS Christmas Tree Lighting Flyer “without
12 permission.” The false accusation by Mr. Marden that Ms. Lyons had changed a flyer “without
13 permission” slandered Ms. Lyons and further retaliated against Ms. Lyons for the lawful exercise of the
14 rights guaranteed to her by the First Amendment of the U.S. Constitution.

15 45. Mr. Marden then sent a schoolwide email that effectively cancelled the inclusion of a
16 menorah at the CRS Christmas Tree Lighting and made the same false accusations against Ms. Lyons,
17 stating, “PTA will not be hosting a menorah lighting. . . It is our understanding that our original
18 invitation sent out this past Friday has been altered, without approval, to change the nature of this event.
19 Unfortunately, this altered invitation has been sent to dozens of river school parents with this falsified
20 information.”

21 46. Because the email from Mr. Marden was sent by the CRS Principal, was schoolwide, and
22 was clearly meant to shame Ms. Lyons by implying that she did not have approval to bring a menorah, it
23 publicly embarrassed Ms. Lyons and acted as further retaliation for her legal exercise of rights protected
24 under the First Amendment of the U.S. Constitution.

25 47. Ultimately, counsel for Ms. Lyons sent the emails shown on Exhibit 1 where he requested
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1 that Defendants confirm they would not interfere with her desire to display a menorah near the CRS
2 Christmas tree during the CRS Christmas tree lighting on December 10, 2021. Through counsel,
3 Defendants effectively informed Ms. Lyons that she was not permitted to display the menorah during the
4 event as she requested.

5 48. Defendants have also indicated, by their refusal to respond to multiple requests, that the
6 CRS Christmas Tree, including symbols on the CRS Christmas Tree, will continue to be displayed for
7 subsequent week, even during school hours, on the lower playground where Plaintiff R.L. attends school
8 recess, school lunch, and required physical education classes, following the CRS tree lighting.

9 49. Ms. Lyons has requested that CUSD accept her donation of an inflatable image of a
10 Hanukkah menorah that is secular without real candles or ability to change lighting and without any
11 religious images, to display next to the CRS Christmas Tree during the school hours that the CRS
12 Christmas Tree is displayed, which do not overlap the holiday of Hanukkah, which has already passed.

13 50. More generally, Ms. Lyons believes that her children should be able to attend public
14 school without unwelcome exposure to government-sponsored religious practices and messages and
15 without harassment for their religious beliefs. Indeed, the Establishment Clause of the First Amendment
16 to the U.S. Constitution guarantees that public-school students have an unequivocal right to attend
17 school free from official imposition or promotion of religion. Defendants' custom, policy and practice of
18 promoting and inculcating Christian religious beliefs, while denigrating students of non-Christian faiths,
19 plainly violates this right. Matters of faith are deeply personal and the decision regarding which religious
20 beliefs, if any, to follow belongs to students and their families, not school officials.

21 51. At CRS in Carmel, California, however, school officials have a longstanding custom,
22 policy, and practice of promoting and inculcating Christian beliefs by sponsoring religious activities, as
23 well as conveying religious messages to students, and providing preference for celebrations of Christian
24 holidays, including religious objects for Christian holidays, while prohibiting the inclusion of even
25 secular objects of non-Christian holidays. Defendants' refusal to cease this unlawful conduct has not
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1 only caused Plaintiffs to suffer substantial anguish, but also has caused the family to take on additional
 2 financial and administrative burdens as they must constantly be in contact with the Anti-Defamation
 3 League to report and discuss First Amendment and other constitutional violations by Defendants. R.L.,
 4 S.L., M.L. felt very uncomfortable and coerced, both directly and indirectly, by school officials’
 5 repeated efforts to impose their religious beliefs on students in the form of exclusion of others, biased
 6 displays of Christmas celebrations, calling their religion “Israeli” while implying that Christian was
 7 “American,” and other religious promotion. C.L., S.L. and M.L. are also upset and offended by school
 8 officials’ disparagement and exclusion of their brother, R.L., and his First Amendment rights. S.L. and
 9 M.L. felt like outsiders at CRS because of Defendants’ conduct.

10 **VI. Claims For Relief**

11 **FIRST CLAIM FOR RELIEF - AGAINST ALL DEFENDANTS**

12 **(Establishment Clause Speech—First Amendment)**

13 52. Plaintiffs hereby incorporate by reference all previously stated paragraphs. The conduct
 14 alleged above constitutes the official policy and practice of Defendants, or is so persistent, widespread,
 15 and pervasive as to constitute an official custom regarding which Defendants have actual or constructive
 16 knowledge. By Defendants’ conduct alleged above, they have violated, and continue to violate,
 17 Plaintiffs’ rights under the Establishment Clause of the First Amendment to the U.S. Constitution and
 18 the Fourteenth Amendment to the U.S. Constitution.

19 53. Defendants’ custom, policy, and practice of promoting and inculcating Christian beliefs
 20 by effectively banning participation in school-sponsored events for non-Christian activities and
 21 imposing other religious messages and iconography on them is the cause-in-fact of the constitutional
 22 violations. Defendants’ conduct coercively exposes Plaintiffs to unwanted religious exercises,
 23 promotion, and messages. Defendants’ conduct also improperly endorses religion. A reasonable,
 24 objective student, parent, or other observer aware of the conduct alleged above would conclude that the
 25 Defendants have endorsed, and continue to endorse, religion by sending the message that Christians are
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1 officially favored, and non-Christians disfavored, by school officials. Defendants' conduct, in addition,
2 has the primary purpose and effect of promoting and advancing religion and excessively entangles the
3 School Board with religion. Unless restrained by this Court, Defendants will continue to subject
4 Plaintiffs to this unlawful conduct, causing Plaintiffs irreparable harm by denying their fundamental
5 constitutional rights to be free from governmental promotion of religious beliefs and messages,
6 governmental coercion of religious practices, and governmental denigration of their faith. Plaintiffs have
7 no adequate remedy at law for the denial of their fundamental constitutional rights.

8 **SECOND CLAIM FOR RELIEF - AGAINST ALL DEFENDANTS**

9 **(Freedom of Speech—First Amendment)**

10 54. Plaintiffs hereby incorporate by reference all previously stated paragraphs. By reason of
11 the aforementioned speech restrictions, Defendants have deprived Plaintiffs of their right to engage in
12 protected speech, including the right to bring a menorah and let other parents know about the menorah,
13 in violation of the First Amendment as applied to the states and their political subdivisions under the
14 Fourteenth Amendment to the U.S. Constitution and 42 U.S.C. § 1983. Defendants' restriction on
15 Plaintiffs' speech is content- and viewpoint-based in violation of the First Amendment. As a direct and
16 proximate result of Defendants' violation of the First Amendment, Plaintiffs have suffered irreparable
17 harm, including the loss of their constitutional rights, entitling them to declaratory and injunctive relief
18 and nominal damages.

19 **THIRD CLAIM FOR RELIEF - AGAINST ALL DEFENDANTS**

20 **(Free Exercise—First Amendment)**

21 55. Plaintiffs hereby incorporate by reference all previously stated paragraphs. By reason of
22 the aforementioned restrictions, including the prohibition of a menorah, Defendants have deprived
23 Plaintiffs of their right to engage in free exercise of religion in violation of the First Amendment as
24 applied to the states and their political subdivisions under the Fourteenth Amendment to the U.S.
25 Constitution and 42 U.S.C. § 1983. Defendants' restriction on Plaintiffs' speech is content- and
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1 viewpoint-based in violation of the First Amendment, including in violation of Plaintiffs’ free exercise
2 of religion. As a direct and proximate result of Defendants’ violation of the First Amendment, Plaintiffs
3 have suffered irreparable harm, including the loss of their constitutional rights, entitling them to
4 declaratory and injunctive relief and nominal damages.

5 **FOURTH CLAIM FOR RELIEF - AGAINST ALL DEFENDANTS**

6 **(Equal Protection—Fourteenth Amendment)**

7 56. Plaintiffs hereby incorporate by reference all previously stated paragraphs. By reason of
8 the aforementioned speech restriction, Defendants have unconstitutionally deprived Plaintiffs of the
9 equal protection of the law guaranteed under the Fourteenth Amendment to the U.S. Constitution and 42
10 U.S.C. § 1983, in that Defendants are preventing Plaintiffs from expressing a message based on its
11 content and viewpoint, thereby denying the use of a forum to those whose views Defendants find
12 unacceptable. As a direct and proximate result of Defendants’ violation of the Equal Protection Clause
13 of the Fourteenth Amendment, Plaintiffs have suffered irreparable harm, including the loss of their
14 constitutional rights, entitling them to declaratory and injunctive relief and nominal damages.

15 **FIFTH CLAIM FOR RELIEF - AGAINST ALL DEFENDANTS**

16 **(Retaliation—First Amendment)**

17 57. Plaintiffs hereby incorporate by reference all previously stated paragraphs. Defendants
18 retaliated against Plaintiff Michele Lyons for engaging in constitutionally protected conduct, including
19 requesting the inclusion of a menorah, sending emails to other CUSD parents to reach out to the Anti-
20 Defamation League regarding the discrimination by CUSD, letting other CUSD parents know about the
21 subsequent inclusion of a menorah. By reason of the aforementioned retaliation against Plaintiff Michele
22 Lyons for exercising her First Amendment rights, including sending her anonymous emails that falsely
23 proclaimed to be unanimously from “The PTA Board” when it was from CUSD staff, threatening her
24 with discipline for violating law and district policy that did not apply, and embarrassing her with
25 schoolwide emails that made false accusations and slandered her, Defendants have deprived Plaintiff of
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1 her right to fully enjoy her constitutional rights in violation of the First Amendment as applied to the
2 states and their political subdivisions under the Fourteenth Amendment to the U.S. Constitution and 42
3 U.S.C. § 1983. Moreover, the aforementioned retaliatory action is sufficient to deter a person of ordinary
4 firmness from exercising his constitutional rights, as Plaintiff Michele Lyons was intimidated, unable to
5 sleep, sobbing, and frightened of the unknown disciplinary action that could have included arrest and a
6 threat to her livelihood. There existed at least a causal link between the constitutionally protected
7 conduct and the retaliatory action, as they occurred close in time, involved the same people, and
8 regarded the same subjects. As a direct and proximate result of Defendants' violation of the First
9 Amendment, Plaintiffs have suffered irreparable harm, including the loss of their constitutional rights,
10 entitling them to declaratory and injunctive relief.

11 **VII. Plaintiffs' Prayers For Relief**

12 WHEREFORE, Plaintiffs ask this Court:

13 (A) to declare that Defendants' customs, policies, and practices alleged above to be in violation
14 of the Establishment Clause of the First Amendment to the U.S. Constitution, the Free Speech Clause of
15 the First Amendment to the U.S. Constitution, the Free Exercise Clause of the First Amendment to the
16 U.S. Constitution, the Equal Protection Clause of the Fourteenth Amendment and 42 U.S.C. § 1983, and
17 to be illegal retaliation against Plaintiffs for the lawful exercise of their constitutional rights;

18 (B) to order preliminarily, and thereafter permanently that Defendants and their officers, agents,
19 affiliates, subsidiaries, servants, employees, successors, and all other persons or entities in active concert
20 or privity or participation with them, are enjoined from continuing their unlawful conduct at Carmel
21 River Elementary School, and all schools within the Carmel Unified School District, and specifically
22 prohibiting Defendants from:

23 (1) participating in, organizing, promoting, advancing, aiding, endorsing, or causing
24 religious worship, religious ceremonies, or promoting one religion over another during class and
25 school-sponsored events, including PTA events;

1 (2) Encouraging students to participate in religious events and activities, or otherwise
2 promoting religious events and activities, including PTA events;

3 (3) Displaying religious iconography or messages in a manner that (a) does not have a
4 non-religious, educational, curriculum-related purpose or (b) conveys official approval of its
5 religious message or content, including at PTA events;

6 (4) Conveying messages endorsing religion or promoting any individual faiths;

7 (5) Retaliating against Plaintiffs or their family members for objecting to Defendants'
8 unlawful practices and bringing this action; and,

9 (6) Otherwise unconstitutionally endorsing religion or religiously coercing students,
10 including at PTA events;

11 (C) An order directing Defendants to provide a copy of the written injunction to all School Board
12 officials, employees, and agents;

13 (D) An award, from Defendants to Plaintiffs, of reasonable attorneys' fees and costs incurred in
14 connection with this action, pursuant to 42 U.S.C. § 1988 and other applicable laws;

15 (E) An order permitting this Court to retain jurisdiction over this matter to enforce the terms of
16 the Court's orders; and

17 (F) Such further and different relief as is just and proper or that is necessary to make Plaintiffs
18 whole.

RESPECTFULLY SUBMITTED,

Dated: December 7, 2021

SEBASTIAN MILLER LAW, P.C.

By: /s/ Sebastian L. Miller

Sebastian L. Miller

Attorneys for Plaintiffs

MICHELE LYONS, on her own behalf, and on
behalf of her minor children, C.L., M.L., S.L.,
and R.L

EXHIBIT 1



Sebastian Miller <sebastian@sebastianmillerlaw.com>

Re: Carmel River PTA Tree Lighting

1 message

William B. Tunick <wtunick@dwkesq.com>
 To: "sebastian@sebastianmillerlaw.com" <sebastian@sebastianmillerlaw.com>
 Cc: Ted Knight <tknight@carmelunified.org>

Tue, Dec 7, 2021 at 11:27 AM

Dear Mr. Miller,

I write on behalf of the Carmel Unified School District regarding your emails from earlier this morning. The emails suggest there are at least two misunderstandings as to the PTA's event on Friday evening at Carmel River School as well as what Ms. Lyons is now requesting.

First, to clarify any misunderstanding, the event on Friday evening is being held by the PTA, not the District. It will take place on School grounds pursuant to a request to utilize District facilities under the Civic Center Act pursuant to District policy (Board Policy 1330). Second, the District now understands that Ms. Lyons is seeking the opportunity to display an inflatable Menorah at the School on Friday from 4:05 pm to 6:45 within 25 feet of the PTA event.

Given this clarification, it appears Ms. Lyons' request is effectively a request for the use of District facilities under the Civic Center Act and may be processed as such. If she seeks the rental of District facilities, she may complete a request at: <https://www.carmelunified.org/domain/583>. Her request must comply with the requirements for use by a community member. Additionally, the District does not grant facilities requests for multiple uses of School facilities at the same time.

So to be clear, subject to the procedure set forth above, Ms. Lyons may request the use of School facilities during non-school hours, at a time/location separate from the already scheduled PTA event, may display her Menorah as part of that facilities use, and may invite others to join her as part of the use.

We trust that this will address Ms. Lyons' request for access to school facilities. Accordingly, it appears unnecessary to address the other assertions in your email with which the District disagrees.

Please contact me if you have any further questions.

Thanks,

William B. Tunick
 Attorney at Law
 DANNIS WOLIVER KELLEY
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 San Francisco, CA 94111
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Note: Our San Francisco office has moved! Please update your records.

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----- Forwarded message -----

From: **Sebastian Miller** <sebastian@sebastianmillerlaw.com>
 Date: Tue, Dec 7, 2021 at 10:31 AM
 Subject: Re: Carmel River PTA Tree Lighting
 To: Ted Knight <tknight@carmelunified.org>
 Cc: Anne-Marie Rosen <arosen@carmelunified.org>, Karl Pallastrini <kpallastrini@carmelunified.org>, Sara Hinds <shinds@carmelunified.org>, Seaberry Nachbar <snachbar@carmelunified.org>, Tess Arthur <tarthur@carmelunified.org>, <jmarden@carmelunified.org>

Mr. Knight:

I just want to know whether CUSD will allow Ms. Lyons to display the Menorah this Friday afternoon in the manner outlined in my email below. This question calls for a "yes" or "no" response, which is something that can obviously be formulated quite quickly.

I have drafts of the complaint and motion for a temporary restraining order. I will be finalizing those documents and filing them with the court later today unless I hear from you within the hour that CUSD won't prevent Ms. Lyons from displaying the Menorah as requested.

Letting Ms. Lyons display the Menorah is the right thing to do for so many reasons. At a minimum, it costs the district nothing, harms no one, and stops all of us from spending the next three days dealing with a lawsuit. I hope that someone on this chain can have the perspective and moral courage to embrace an easy and inclusive resolution.

Sebastian L. Miller
 (408) 348-1728

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On Tue, Dec 7, 2021 at 9:32 AM Ted Knight <tknight@carmelunified.org> wrote:

Mr. Sebastian, we are in receipt of your email and are formulating a response that we will send later this morning.
 Sincerely, Ted Knight

On Mon, Dec 6, 2021 at 11:47 PM Sebastian Miller <sebastian@sebastianmillerlaw.com> wrote:

Dear Superintendent Knight, Principal Marden, And CUSD Board Members:

Michele Lyons has engaged me as her attorney for the following limited purpose. Ms. Lyons intends to bring an inflatable Menorah (picture attached) to Carmel River School (CRS) this Friday, December 10, 2021. She intends to inflate the Menorah and display it at the CRS camps from roughly 4:05 p.m. until 6:45 p.m. The Menorah display will coincide with other holiday celebrations that are set to occur at CRS, including a tree lighting that will take place at 5:15 p.m. Ms. Lyons intends to display the Menorah within about twenty-five feet of the tree such that it is in a location where the Menorah can be viewed simultaneously with the tree lighting.

My only question to you is this. Can you confirm that no CUSD employee will prevent Ms. Lyons from displaying the Menorah in the manner that I have described above?

If so, I sincerely thank you for your time and consideration and wish to express that I look forward to Friday's celebrations. Further, as the objective of my representation of Ms. Lyons will have been completed, then you should not feel the need to include me in any further communications with her about any subject.

If, however, CUSD responds that its employees intend to prevent Ms. Lyons from displaying the Menorah in the manner described above, then any additional communications about this Friday's planned events subject should be directed to me and not to Ms. Lyons.

Either way, I need to receive CUSD's answer (whether that comes from Superintendent Knight, Principal Marden, or someone else) by no later than **10:00 a.m. tomorrow, December 7, 2021**. Importantly, I need to receive the answer in writing.

Ms. Lyons has forwarded me communications that Messrs. Knight and Marden have previously sent to her on this topic. Many of those communications have been mealy-mouthed and vague and my sense is that all sides bear some responsibility for this situation not having been satisfactorily resolved months ago.

Thus, to avoid dragging this issue out any further, I expect that CUSD will directly respond to the question posed in the second paragraph of this email with either a "yes" or a "no" answer. If CUSD provides something qualified or generic or otherwise fails to provide a clear statement of its position, then I will assume that Ms. Lyons will not be permitted to display the Menorah.

My reading of Mr. Marden's most recent series of emails that CRS will not permit Ms. Lyons to display the Menorah contemporaneously with and adjacent to the tree that will be lit on Friday. If this is correct, then please understand that I will be filing legal action to secure my client's rights under the Constitution of the United States. That action will be a complaint filed in the United States District Court for the Northern District of California and a motion for temporary restraining order that prohibits CUSD from taking any steps to prevent Ms. Lyons from displaying the Menorah or otherwise intervening in or interfering with her planned display of the Menorah.

To summarize, prohibiting the display of a Menorah while endorsing the display of a Christmas tree would demonstrate a preference for one religious faith tradition over the other and thereby violate the First Amendment of the United States Constitution. To ensure that CUSD does not endorse one faith tradition over another, Ms. Lyons wants to ensure that CRS makes a combined display of both a Christmas tree and Menorah.

The Supreme Court of the United States endorsed this very thing in *County of Allegheny v. American Civil Liberties Union* (1989), citing its joint and inclusive nature. In addition, the federal government recently issued guidance that confirms including holiday symbols from one tradition but prohibiting a comparable display of symbols from another tradition unconstitutionally disparages that other tradition. See, Memorandum Opinion for the General Counsel General Services Administration, 45 Op. O.L.C. ___ (January 15, 2021).

I understand that CUSD has previously argued that Friday's celebration will be the lighting of a holiday tree, not a Christmas tree. Because this tree is just a holiday tree and not a Christmas tree, it has no religious significance. Therefore, the district is not violating the establishment clause by excluding a Menorah.

This slices the bologna way too thin. Over the years, I've attended Christmas masses at more than a dozen different Catholic churches and every one of them displayed a big green tree near Jesus's manger. I have traveled to many different Christmas tree farms and Christmas tree lots, but I can't recall anyone prominently advertising "holiday trees" for sale.

The point is that even if Christmas has taken on secular meaning, it still has the religious underpinning of Jesus's birth. A tree being lit up and covered in ornaments is a symbol of that religious holiday. Indeed, everyone on this email chain must recognize that there would be a tidal wave of parental opposition if the shoe were on the other foot and CRS was planning to display a Menorah while simultaneously refusing to allow for a tree lighting. Parents who are members of Christian faiths or were otherwise raised in Christian households would feel—correctly—that CRS was disparaging their traditions.

But, even if someone accepts the specious distinction between holiday trees and Christmas trees, the act of lighting a tree in December is still associated with certain ethnic groups and cultural viewpoints and messages. This is separate and apart from the tree's religious significance. Thus, lighting a tree while excluding a Menorah endorses traditions and messages associated with specific cultural and ethnic groups at the expense of other cultural and ethnic groups that don't include trees as part of their December celebrations. This violates the speech clause in the First Amendment and constitutes content/viewpoint restrictions that are not permitted under the equal protection clause of the Fourteenth Amendment.

The list could—and perhaps will—go on. But, the bottom line is that Ms. Lyons is requesting something harmless. It would be shame if CUSD chooses to spend more money and resources to prevent her from inflating a Menorah and placing it near a Christmas tree for a couple of hours.

If necessary, however, I will spend the time to persuade a federal judge in San Jose that this is the constitutionally-required outcome. For that effort, Ms. Lyons and her family will recover damages and I will recover my reasonable attorney's fees. That sum could be quite large given that just last week a retired California Superior Court judge approved a rate north of \$900/hour for time that I spent vindicating a client's civil rights in another matter.

I suggest we avoid all of that ugly stuff by just letting an inflatable Menorah billow and wave at CRS this Friday. I look forward to getting your response within about ten hours—by 10:00 a.m., tomorrow, December 7, 2021.

-Sebastian

Sebastian L. Miller
(408) 348-1728

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E. Ted Knight, EdD
he/him/his
Superintendent Carmel Unified School District
4380 Carmel Valley Road
Carmel, CA 93923
(831) 624-1546 ext. 2020

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