UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

MONICA MITCHELL, MELISSA BURKETT, and TAMMY CAVANAUGH v. PARISH OF JEFFERSON, EAST BANK CONSOLIDATED SPECIAL SERVICE FIRE PROTECTION BUREAU OF JEFFERSON PARISH, DAVID TIBBETS, IN HIS OFFICIAL AND INDIVIDUAL CAPACITY, ROBERT FUNK, IN HIS OFFICIAL AND INDIVIDUAL CAPACITY, 123 INSURANCE COMPANY, and XYZ INSURANCE COMPANY	CIVIL ACTION NO. 19-13298-MLCF-MBN SECTION "F" JUDGE: MARTIN L. C. FELDMAN DIVISION "5" MAGISTRATE JUDGE: MICHAEL B. NORTH JURY DEMANDED

MEMORANDUM IN OPPOSITION TO DEFENDANTS' 12(B)(6) MOTION TO DISMISS

Plaintiffs, Monica Mitchell, Melissa Burkett, and Tammy Cavanaugh submit the following Memorandum in Opposition to Defendants Parish of Jefferson, East Bank Consolidated Special Service Fire Protection Bureau of Jefferson Parish, Louisiana ("the Fire Bureau"),[1] David Tibbetts (improperly named as David Tibbets in Plaintiff's Complaint), in his official and individual capacity, and Robert Funk, in his official and individual capacity's (hereinafter, collectively, "Defendants") Federal Rule of Civil Procedure 12(b)(6) Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted.

[1] Defendants' Memorandum mistakenly states that the proper name for this entity is the East Bank Consolidated Special Service District. Jefferson Parish Code of Ordinances Section 13-36(c)(1) provides, in pertinent part, "...in accordance with R.S. 40:1563, a fire prevention bureau is hereby established in East Bank Consolidated Special Service Fire Protection District of Jefferson Parish, Louisiana, which shall be known and is hereby designated as East Bank Consolidated Special Service Fire Prevention Bureau of Jefferson Parish, Louisiana." *See* Jefferson Parish Code of Ordinances Section 13-36 *et seq.*

For the reasons set out in this Memorandum, Plaintiffs submit that Defendants' Motion should be denied with respect to the First Amendment claims against all Defendants, and should be granted with respect to the Title VII and Louisiana Employment Discrimination Law claims against Defendants Tibbetts and Funk, and their claims for punitive damages.

I. Introduction and Relevant Facts

Plaintiffs are veteran dispatchers of the Fire Bureau's Fire Alarm Division, which receives emergency calls and dispatches fire personnel to respond to those calls. As alleged in their Complaint, for several years and continuing through the present day, Plaintiffs have been discriminated against based on their gender via the denial of training and equipment necessary to perform their duties and prepare for advancement to the next position, as required by Fire Bureau policy and public safety. Conversely, Plaintiffs' male counterparts have been provided this necessary training and equipment, as well as overtime opportunities that have not been afforded to Plaintiffs.

In addition to denying Plaintiffs equal access to necessary training and resources, Communications Supervisor Robert Funk has retaliated against Plaintiffs for their reasonable and professional requests that he discontinue his pursuit of inappropriate relationships with co-workers during work hours. The sexual harassment and hostile work environment became so pervasive that the Plaintiffs, seeking refuge, reported Funk's actions to Chief Tibbetts and Human Resources. In response, Human Resources conducted a toothless investigation, subjected Plaintiff Burkett to unfair, unfounded disciplinary proceedings, and Chief Tibbetts threatened to remove Plaintiffs' civil service protections. Supervisor Funk was not disciplined in any way.

After failing to resolve this dispute through the Equal Employment Opportunity Commission, Plaintiffs filed suit in this Court seeking declaratory judgment, equitable relief, and

monetary damages to enforce the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C.A. §§2000e *et seq*., as amended by the Civil Rights Act of 1991, its state law corollaries, and the First Amendment to the United States Constitution.

Defendants have filed a 12(b)(6) Motion to Dismiss for Failure to State a Claim with respect to Plaintiffs' Title VII and state law discrimination and retaliation claims against Tibbetts and Funk only, and with respect to Plaintiff Burkett's First Amendment retaliation claim against all Defendants. After thorough review of the law and in candor to the Court, Plaintiffs do not oppose dismissal of their Title VII and state law discrimination and retaliation claims against Tibbetts and Funk, officially and individually. However, Plaintiff Burkett's First Amendment claim against all defendants has been properly plead and should not be dismissed.

II. Standard on Rule 12(b)(6) Motion to Dismiss

Under the Federal Rules of Civil Procedure, a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief."[2] "[T]he pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation."[3]

To survive a Rule 12(b)(6) motion to dismiss, the plaintiffs must plead enough facts to "state a claim to relief that is plausible on its face."[4] A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged."[5] In reviewing the Complaint, the court must accept all well-pleaded facts as true and must draw all reasonable inferences in favor of the Plaintiff.[6]

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[2] Fed. R. Civ. P. 8(a)(2).
[3] *Id.* at 678; *citing* Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007).
[4] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*quoting Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 547 (2007)).
[5] *Id.* at 678.
[6] *Lormand v. U.S. Unwired, Inc.,* 565 F.3d 228, 239, 244 (5th Cir. 2009).

Such a motion is to be charily granted because it is viewed with disfavor.[7] Finally, "[w]hen reviewing a motion to dismiss, a district court 'must consider the complaint in its entirety, as well as other sources ordinarily examined when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice."[8]

III. Law & Argument in Opposition

1. Plaintiffs Do Not Oppose the Dismissal of their Title VII and LEDL Claims against Chief Tibbetts and Robert Funk, Officially and Individually, and Their Claims for Punitive Damages.

Plaintiffs' complaint names the Parish of Jefferson, and the East Bank Consolidated Special Service Fire Protection Bureau, as well as Fire Chief David Tibbetts and Communications Supervisor Robert Funk. At all times mentioned in the Complaint, Tibbetts and Funk acted as agents of the Parish of Jefferson, their employer. In their Motion, the Defendants correctly point out that the law in this circuit provides that Title VII imposes liability on the employer *only*, and does not impose individual liability for a Title VII claim.[9] Similarly, Title VII's state law corollary, the Louisiana Employment Discrimination Law ("LEDL") does not authorize individual liability on employees.[10]

In their Memorandum, Defendants also correctly pointed out that Title VII punitive damages are not available to employees of government, government agency or political

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[7] *See Lowrey v. Tex. A & M Univ. Sys.,* 117 F.3d 242, 247 (5th Cir. 1997) (*quoting Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc*., 677 F.2d 1045, 1050 (5th Cir. 1982)).
[8] *Funk v. Stryker Corp.*, 631 F.3d 777, 783 (5th Cir. 2011) (*quoting Tellabs, Inc. v. Makor Issues & Rights, Ltd.,*551 U.S. 308, 322 (2007)).
[9] *See Arnolie v. Orleans Sch. Bd*., 48 F. App'x 917 (5th Cir. 2002) (*citing Indest v. Freeman Decorating, Inc*., 164 F.3d 258, 262 (5th Cir.1999)). *See also Smith v. Amedisys, Inc.*, 298 F.3d 434, 448 (5th Cir.2002); *Baldwin v. Layton*, 300 F. App'x 321, 323 (5th Cir. 2008).
[10] *Pierce v. State, Office of Legislative Auditor*, 2007-0230 (La. App. 1 Cir. 2/8/08), 984 So. 2d 61, 68, *writ denied sub nom. Pierce v. State ex rel. Legislative Auditor*, 2008-0542 (La. 4/25/08), 978 So. 2d 369. *See also Imbornone v. Tchefuncta Urgent Care, Inc.,* No. CIV.A. 11-3195, 2012 WL 3440136, at *4 (E.D. La. Aug. 15, 2012).

subdivision.[11] Accordingly, and in the interest of judicial efficiency and candor to the Court, Plaintiffs do not oppose dismissal of these claims.

2. Plaintiffs' Complaint States a Cause of Action for First Amendment Retaliation under Section 1983

A. Standard for First Amendment Retaliation Claim

To prove a First Amendment retaliation claim, the plaintiff must prove by a preponderance of evidence that (1) she suffered an adverse employment decision; (2) her speech involved a matter of public concern; (3) her "interest in commenting on matters of public concern ... outweigh[s] the defendant's interest in promoting efficiency"; and (4) her speech motivated the adverse employment decision.[12] If the plaintiff shows that she engaged in protected conduct and that it was a motivating factor in her adverse employment action, then "the burden shifts to the defendant[ ] to show by a preponderance of the evidence that they would have come to the same conclusion in the absence of the protected conduct."[13]

B. Plaintiffs' Complaint Plainly Alleges Plaintiff Burkett Suffered an Adverse Employment Action

"Adverse employment actions are discharges, demotions, refusals to hire, refusals to promote, and reprimands."[14] The U.S. Fifth Circuit Court of Appeal has held that the following are not adverse employment actions: mere accusations or criticism,[15] investigations,[16]

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[11] *See* 42 U.S.C.A. § 1981a(b)(1).
[12] *Perio v. Terrebonne Par. Sheriff's Office*, No. CIV.A. 10-336, 2011 WL 1654262, at *8 (E.D. La. Apr. 29, 2011) (Feldman, J.), *aff'd*, 463 F. App'x 458 (5th Cir. 2012) (*citing Beattie v. Madison County Sch. Dist.,* 254 F.3d 595, 601 (5th Cir.2001) (citations omitted)).
[13] *Id.*
[14] *Benningfield*, 157 F.3d at 376 (*citing Pierce v. Texas Department of Crim. Justice, Inst. Div.,* 37 F.3d 1146, 1149 (5th Cir.1994) (citations omitted)).
[15] *See Harrington*, 118 F.3d at 366. *See also*, *Breaux v. City of Garland,* 205 F.3d 150, 158 (5th Cir. 2000).
[16] *See Pierce*, 37 F.3d at 1150.

psychological testing,[17] false accusations,[18] or polygraph examinations that do not have adverse results for the plaintiff.[19]

Plaintiffs' Complaint, with all allegations taken as true, plainly allege the following acts of First Amendment retaliation against Plaintiff Burkett:

- "subjecting [Plaintiffs] to hostile, intimidating language, and misogynistic and racial slurs, continuing to deny them necessary training and resources, and selectively enforcing Bureau policies on mandatory overtime and emergency/sick leave in a punitive manner;[20]

- "Since the Complainants filed with the EEOC, Defendants Funk and Tibbets subjected Complainant Burkett to numerous, malicious and baseless disciplinary proceedings before the Civil Service Board."[21]

- "Funk has continuously ignored Complainants' requests for training and equipment that has been provided to their male counterparts and that is necessary to fulfill their job duties."[22]

- "Shortly after [Burkett informed Chief Tibbetts that the discriminatory and retaliatory conduct continued], Funk continued to refuse Burkett's reasonable work-related requests for information and access which is provided to all personnel. Funk advised Burkett that his refusal was per the Chief's instructions."[23]

- "On December 17, 2018, Chief Tibbets called a meeting with all supervisors where he threatened the Complainants that he could remove Fire Alarm employee's civil service protections if they continued to exercise their rights under Title VII of the U. S. Code as well as under the Civil Service Rules."[24]

The aforementioned actions by Funk and Tibbetts are distinguishable from the less offensive acts of "investigation" or "criticism," or "examination" that the Fifth Circuit has previously held do not rise to the level of adverse employment actions for purposes of First

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[17] *See Benningfield*, 157 F.3d at 376. *See also Breaux*, 205 F.3d at 158 (5th Cir. 2000).
[18] *See Colson v. Grohman,* 174 F.3d 498, 511 (5th Cir. 1999).
[19] *See Pierce*, 37 F.3d at 1150.
[20] R. Doc. 1 at p. 7, ¶ 39.
[21] R. Doc. 1 at p. 8, ¶ 48.
[22] R. Doc. 1, at p. 9, ¶ 51.
[23] R. Doc. 1 at p. 8, ¶ 46.
[24] R. Doc. 1 at p. 8, ¶ 50.

Amendment retaliation. First, subjecting employees to "hostile, intimidating language, and misogynistic and racial slurs" are more properly categorized as reprimands, which the Fifth Circuit has expressly stated *do* constitute an adverse employment action.[25] Notably, Defendants' argument does not address whether these specific allegations constitute adverse employment actions.

Secondly, Plaintiff Burkett's allegation that she was subjected to "numerous, malicious and baseless disciplinary proceedings before the Civil Service Board," is an objectively more egregious allegation that being merely being subjected to an investigation. In *Pierce v Texas Dep't of Criminal Justice*, the Court concluded that Pierce, a former corrections officer, had not suffered an adverse employment action when she had been investigated by her employer for legitimate reasons, and the investigations resulted in no action being taken against Pierce.[26] In the present case, Plaintiff Burkett has alleged that she has been subjected to malicious and baseless investigations, which, drawing all inferences in favor of the Plaintiff, is reasonable to conclude rise to the level of an adverse employment action as the investigation was illegitimate.

Again, the cases cited by Defendants do not address these allegations in the Complaint. Instead, Defendants insert false factual allegations regarding the outcome of the "numerous, malicious and baseless disciplinary proceedings," that Plaintiff Burkett has been subjected to by Defendants.[27] If Defendants wish to include facts outside the Complaint, they should participate in discovery and file a Motion for Summary Judgment, at which time the Plaintiffs will be given the opportunity to provide even additional evidence, including numerous witnesses and

[25] *See Benningfield*, 157 F.3d at 376. *See also*, *Breaux*, 205 F.3d at 158 (5th Cir. 2000).
[26] *Pierce v. Texas Dep't of Criminal Justice, Institutional Div.,* 37 F.3d 1146, 1150 (5th Cir. 1994).
[27] See R. Doc. 5.3 at p. 11, ¶ 1 parenthetical.

documentary evidence, which would establish the fact that the Plaintiff Burkett was subjected to unfair and unwarranted discipline as a result of the proceedings mentioned in the Complaint.[28]

Thirdly, Defendants argue that Plaintiff Burkett's complaints related to training, equipment, and scheduling, which "all concern administrative matters and application of departmental policies which have been specifically interpreted by the Fifth Circuit as matters that are not considered adverse employment actions."[29] But, again, the cases cited by the Defendants to support this proposition, *Benningfield, Breaux,* and *Dumas,* are all distinguishable from the present case because none of them involve employees being denied necessary training and equipment. In *Benningfield*, the Plaintiffs, current and former employees of the Houston Police Department's ID Division who had made complaints about management, did not make any allegations that they had been retaliated against by being denied necessary training or equipment.[30] Their complaints were related to being demoted and being subjected to investigations.[31] In *Breaux*, police officers were subjected to Internal Affairs investigations, a psychological exam, and a polygraph test (which Plaintiff Breaux failed) after they reported the Police Chief was engaging in political investigations.[32] The Police Chief was asked to resign, and his successor "non-sustained" the Internal Affairs charges that were pending against Plaintiffs.[33] This "rescinding" of the reprimand was critical in the Court's conclusion that no adverse employment action had occurred: "[C]hief Barnett's non-sustaining the charges through internal procedures precluded an adverse employment result."[34]

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[28] If the Court considers materials outside of the pleadings, the motion to dismiss must be treated as a motion for summary judgment under Rule 56. *See Causey v. Sewell Cadillac-Chevrolet, Inc*., 394 F.3d 285, 288 (5th Cir. 2004); *see also* Fed. R. Civ. P. 12(d).
[29] R. Doc. 5.3 at p. 11, ¶ 1.
[30] *Benningfield v. City of Houston*, 157 F.3d 369, 376 (5th Cir. 1998).
[31] *Id*. at 373.
[32] *Breaux v. City of Garland,* 205 F.3d 150, 158 (5th Cir. 2000).
[33] *Id*. at 155.
[34] *Id.* at 158.

Finally, in *Dumas*, a St. Tammany firefighter's only allegation of retaliation against his former supervisor was a single act of that supervisor issuing notice to the Plaintiff firefighter that he was being placed under investigation.[35] This case stands for the settled proposition that evidence of the existence of an investigation of an employee, without any other details related to the basis for or the results of the investigation, does not amount to an adverse employment action. It does not support Defendants' argument that being denied necessary training and equipment only "concern administrative matters and application of departmental policies," that do not constitute adverse employment actions.[36]

As alleged in the Complaint and discussed *supra*, Chief Tibbetts' actions similarly constituted adverse employment actions when he ordered Funk to continue to refuse Plaintiff necessary training and equipment, and when he threatened to take away Plaintiffs' civil service protections.[37]

Defendants wish to characterize Plaintiffs' complaints as involving petty slights or minor annoyances that often take place at work and that all employees experience, but the Plaintiffs' allegations describe actions that constitute reprimands, which fall within the purview of adverse employment actions. The purported reason for not expanding the list of adverse employment actions is to ensure that § 1983 does not enmesh federal courts in "relatively trivial matters."[38] But the matters which Plaintiffs seek the Court to adjudicate in this case are anything but trivial. These matters involve the Plaintiffs' right to work – to provide for themselves and their children, and to contribute to society - free from the otherwise inexorable burden of harassment and discrimination.

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[35] *Dumas v. St. Tammany Par. Fire Dist. No. 3*, No. CV 17-1025, 2017 WL 1969641, at *5 (E.D. La. May 12, 2017).
[36] R. Doc. 5.3 at p. 11, ¶ 1.
[37] R. Doc. 1 at p. 8, ¶ 46, ¶ 50.
[38] *Breaux v. City of Garland*, 205 F.3d 150, 157 (5th Cir. 2000), *cert. denied*, 531 U.S. 816, 121 S. Ct. 52, 148 L.Ed.2d 21 (2000) (*citing Dorsett v. Board of Trustees*, 940 F.2d 121, 123 (5th Cir.1991)).

C. Plaintiff Burkett Spoke as a Citizen on a Matter of Public Concern

Defendants argue that the content of the speech at issue in this case is not primarily a matter of public concern, that Burkett's speech amounted "solely to internal disputes and unhappiness with working conditions."[39] Defendants further argue that because Burkett cannot specifically name the training or equipment she has been denied, she cannot sustain her claims.[40] This logic perfectly demonstrates why Plaintiffs have been forced to resort to legal action, because their legitimate grievances of discrimination they have faced - and the resulting dysfunction it has caused within this crucial public safety organization - have been written off as "personal conflicts."[41] The failure of the defendants to train its female employees or address the hostile work environment that Communications Supervisor Funk has created leaves the public and first responders less safe and less protected in the event of emergencies.

"Whether an employee's speech addresses a matter of public concern must be determined by the content, form, and context of a given statement, as revealed by the whole record."[42] Public concern is something that is subject of legitimate news interest.[43] It is well-established "that speech relating to official misconduct or racial discrimination almost always involves a matter of public concern."[44] Moreover, "speech 'that potentially affects public safety relates to the public concern."[45] As alleged in the Complaint, Plaintiff Burkett spoke on a matter of public concern when she reported Funk's pursuit of inappropriate relationships during work hours to her

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[39] R. Doc. 5.3 at p. 13, ¶ 1.
[40] *Id.* at ¶ 2.
[41] *Id.*
[42] *Salge v. Edna Indep. Sch. Dist.*, 411 F.3d 178, 186 (5th Cir. 2005) (*quoting Connick v. Myers*, 461 U.S. 138, 147-48 (1983)).
[43] *Marceaux v. Lafayette City-Par. Consol. Gov.*, 921 F. Supp. 2d 605, 634 (W.D. La. 2013) (*citing Oscar Renda Contracting, Inc. v. City of Lubbock, Tex*., 463 F.3d 378, 382 (5th Cir. 2006)).
[44] *Charles v. Grief*, 522 F.3d 508, 514 (5th Cir. 2008).
[45] *Davis v. Allen Par. Serv. Dist.,* 210 Fed. Appx. 404, 410 (5th Cir. 2006) (*quoting Kennedy v. Tangipahoa Par. Library Bd. of Control*, 224 F.3d 359, 373 (5th Cir. 2000)).

superiors.[46] She spoke on a matter of public concern when she filed grievances and spoke to Chief Tibbetts directly explaining how Funk's unequal, retaliatory actions related to access to training and equipment, and the unequal application of overtime and leave rules, were resulting in Fire Alarm being frequently understaffed and putting the public at risk.[47]

D. Tibbetts and Funk are Not Entitled to Qualified Immunity

Qualified immunity in the First Amendment retaliation context is a two-step process. The first asks whether the defendant violated the plaintiff's constitutional rights.[48] The second step adds the protection for the defendant that liability attaches only if the right was clearly established.[49]

As discussed *supra*, a First Amendment retaliation claim must include facts showing (1) the plaintiff suffered an adverse employment decision; (2) her speech involved a matter of public concern; (3) her "interest in commenting on matters of public concern ... outweigh[s] the defendant's interest in promoting efficiency"; and (4) her speech motivated the adverse employment decision.[50] If the plaintiff shows that she engaged in protected conduct and that it was a motivating factor in her adverse employment action, then "the burden shifts to the defendant[ ] to show by a preponderance of the evidence that they would have come to the same conclusion in the absence of the protected conduct."[51]

We have addressed the first and second elements of this inquiry in Sections 1 and 2 of this Memorandum, *supra*. With respect to whether Burkett's speech was a motivating factor in the

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[46] R. Doc. 1 at p. 6, ¶ 38; at p. 7, ¶ 40, ¶ 41.
[47] R. Doc. 1 at p. 7, ¶ 41; at p. 8, ¶ 45, at p. 9, ¶ 54.
[48] *Sims v. City of Madisonville*, 894 F.3d 632, 638 (5th Cir. 2018).
[49] *Id.*
[50] *Perio v. Terrebonne Par. Sheriff's Office*, No. CIV.A. 10-336, 2011 WL 1654262, at *8 (E.D. La. Apr. 29, 2011) (Feldman, J.), *aff'd*, 463 F. App'x 458 (5th Cir. 2012) (*citing Beattie v. Madison County Sch. Dist.,* 254 F.3d 595, 601 (5th Cir.2001) (citations omitted)).
[51] *Id.*

adverse actions taken against her, the Fifth Circuit has recognized that summary disposition of this "causal inquiry" is often inappropriate.[52] In this case, the Complaint alleges Funk and Tibbetts retaliatory acts began after Burkett reported Funk's official misconduct and discriminatory actions and were directly related to her speech. Defendants have not admitted to the allegations, much less provided legitimate, reasonable explanations for their conduct. Thus, Plaintiffs have made a plausible claim of causation in this context.

The second step of the qualified immunity test, which inquires whether the right violated was clearly established, was also not addressed by Defendants. Plaintiff Burkett's right to free speech is a clearly established right that Defendants cannot reasonably argue was unknown to Tibbetts and Funk. A public employee has "a clearly established right to speak on matters of public concern, on matters of public safety, and on matters of official misconduct."[53] Burkett's speech regarding (1) Funk's official misconduct in pursuing inappropriate relationships with employees, and (2) Funk's discriminatory actions in denying female dispatchers necessary training and equipment and in leaving Fire Alarm understaffed, are undeniably matters of public concern and public safety. Defendants have not shown Tibbetts and Funk are entitled to qualified immunity from Plaintiff Burkett's claims of First Amendment retaliation against them.

IV. Conclusion

The Plaintiffs have sufficiently alleged that Plaintiff Burkett was wrongly retaliated against by the Defendants for her First Amendment-protected speech. Defendants Tibbetts and Funk are not immune from their actions, which were an undeniable violation of Burkett's clearly established First Amendment rights. Taking all reasonable inferences in favor of the Plaintiffs, the Defendants'

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[52] *Pierce*, 37 F.3d at 1150.
[53] *Meekins v. Thompson*, 252 F.3d 1356 (5th Cir. 2001) (*citing Kennedy v. Tangipahoa Parish Library Bd. of Control*, 224 F.3d 359, 376 (5th Cir.2000)).

Motion should be denied with respect to the First Amendment claims against all Defendants. The Plaintiffs, recognizing the law on this issue is clear, aver that the Defendants' motion should be granted with respect to the Title VII and Louisiana Employment Discrimination Law claims against Defendants Tibbetts and Funk, and that their claims for punitive damages should also be dismissed.

Respectfully submitted:

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