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 8 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA

9 YVETTE FELARCA, LORI NIXON,
 10 LARRY STEFL,

CASE NO.:

11 Plaintiffs/Petitioners,

**VERIFIED COMPLAINT AND PETITION
 FOR WRIT OF MANDATE**

12 vs.

13 BERKELEY UNIFIED SCHOOL
 DISTRICT, DONALD EVANS, JANET
 14 LEVENSON,

- **California Public Records Act (Cal. Gov't Code §§ 6250 *et seq.*)**
- **First Amendment to U.S. Constitution (Freedom of Speech, Freedom of Association)**
- **Fourth Amendment to U.S. Constitution (Privacy)**
- **California Constitution Article 1, §§ 1-2**
- **California Code of Civil Procedure §§ 382, 1085, 1086**
- **Educational Employment Relations Act (EERA) (Cal. Gov't Code §§ 3540 *et seq.*)**
- **California Labor Code §§ 1101, 1102**

15 Defendants/Respondents.

16 _____
 JUDICIAL WATCH,

17 Real Party in Interest.
 18 _____

CLASS ACTION

INTRODUCTION

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2 1. This Verified Complaint and Petition is brought by teacher Yvette Felarca, staff
3 member Lori Nixon, and teacher Larry Stefl who work at Martin Luther King Middle
4 School (“MLKMS”) in Berkeley Unified School District (“BUSD”), to enjoin
5 Defendants BUSD, BUSD Superintendent Donald Evans, and MLKMS Principal Janet
6 Levenson from (1) directing MLKMS staff and faculty to surrender all communications,
7 including electronic (e-mail) communications, that state the words “Felarca,” “Antifa,”
8 “By All Means Necessary,” and/or “BAMN,” to BUSD, (2) mining email accounts of
9 MLKMS staff and faculty for such documents and/or provide such documents to Real
10 Party in Interest Judicial Watch, and (3) giving Felarca’s confidential personnel file to
11 Judicial Watch.

12 2. Plaintiffs Felarca, Nixon and Stefl seek class-representative status to represent all
13 teachers and staff at MLKMS.

14 3. Immediate action is necessary because Defendants have ordered Plaintiffs to produce
15 these e-mails by November 2, 2017 to give them to Judicial Watch. For Plaintiffs who do not
16 respond, Defendants will mine their emails for communications that meet the stated criteria and
17 release them to Judicial Watch (EXHIBIT 1 - Levenson email).

18 4. Judicial Watch and BUSD seek to put on public display the emails of teachers and
19 staff at MLKMS, a school community that has been defending Felarca and the city of
20 Berkeley from right-wing attack. Defendant seeks to conduct a political witch-hunt,
21 violating Plaintiffs’ privacy and chill their freedom of speech, freedom of association,
22 and right to engage in protected activities and disrupts their public function as educators.

23 5. Berkeley has found itself at ground zero in the fight against Donald Trump’s
24 policies of anti-immigrant scapegoating and tendency toward creating an authoritarian

1 regime. The people of Berkeley, including Plaintiffs, have been at the center of opposing
2 the alt-right and neo-Nazi thugs who have repeatedly targeted Berkeley precisely because
3 of its principles of anti-racism, tolerance and freedom of speech. This case will have
4 tremendous impact on the future course of this struggle.

5 6. Berkeley’s leading role in the anti-Trump movement has also meant that Felarca,
6 a national organizer with the Coalition to Defend Affirmative Action, Integration and
7 Immigrant Rights and Fight for Equality By Any Means Necessary (BAMN) who has
8 organized protests and done countless media interviews, has quickly gained a broad
9 audience and recognition.

10 7. BUSD has been conducting a political witch-hunt against Felarca, including
11 attempting to remove her from her job in Fall 2016 on baseless, politically-motivated
12 charges.

13 8. BUSD’s action violates the central constitutional protections that are held most
14 dear by this community and which have taken on new, deeper, and more intimate
15 meaning given the history we are living through. Injunctive relief for Plaintiffs would
16 make clear that the protections of Privacy, Freedom of Speech, Association, and Political
17 Freedom—the underpinnings of democracy—are not mere phrases but living ideals to
18 which this Court, California, and the United States subscribes.

19 9. BUSD’s action has caused alarm and fear among Plaintiffs and other teachers and
20 staff at MLKMS: they are fearful of speaking out or expressing opinions on political or
21 social issues, in or out of school, for fear of being “next.” (See attached Declarations of
22 Plaintiffs Felarca, Nixon, and Stefl and Declarations 5, 6, and 7.) The atmosphere of fear
23 and the awareness that communications can be handed over to hostile political
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1 organizations disrupts the school's educational mission by sowing fear and division
2 among teachers and staff, some of whom are fearful of communicating with Felarca in
3 the course of their duties due to BUSD's actions, and fearful of speaking and associating
4 in ways that will be met with political witch-hunt and attack. No amount of redacting
5 names, email addresses, etc. would protect individual Plaintiffs from the right-wing trolls
6 who have been determined to identify MLKMS teachers and staff for harassment and
7 bullying as well as the entire school.

8 10. BUSD's action sets a dangerous precedent. Employers are barred from asking
9 employees about and/or make public their political affiliations, such as whether they are
10 Democrats or Republicans, where they stand on ballot propositions, or whether they are
11 members of the ACLU, BAMN, Operation Rescue, or any other political organization.
12 Allowing public employers to ask employees to provide and then publicize that kind of
13 information chills and deters employees' freedom of speech and association for fear of
14 employer surveillance or public exposure, allows public employers to pick and choose
15 which employees to retain or drive out based on their political beliefs, and exposes
16 employees to political witch-hunt and harassment for their beliefs.

17 11. BUSD's pursuit of Judicial Watch's illegal CPRA request would transform the
18 CPRA into something unrecognizable and far-removed from its original intent of making
19 the acts of government officials public. Instead, it would become a tool for employers and
20 political organizations to spy on and police public employees for their political beliefs
21 and affiliations, including concerted activities for their mutual benefit.

22 12. To defend their fundamental rights of freedom of speech, freedom of association,
23 privacy, and union right to organize, Plaintiffs seek relief.

THE PARTIES

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13. Plaintiff/Petitioner Yvette Felarca is an individual who is employed in Berkeley, California. Felarca is a teacher and employee at Martin Luther King Middle School (“MLKMS”) in Berkeley Unified School District (BUSD). She is a nationally-prominent leader in the Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality By Any Means Necessary (BAMN). She has served as MLKMS’ elected site representative and is a member of the Berkeley Federation of Teachers’ (BFT’s) executive board.

14. Plaintiff/Petitioner Lori Nixon is an individual who is employed in Berkeley, California. Nixon is an employee at MLKMS in BUSD.

15. Plaintiff/Petitioner Larry Stefl is an individual who is employed in Berkeley, California. Nixon is a staff member and employee at MLKMS in BUSD.

16. Defendant/Respondent Berkeley Unified School District (“BUSD”) is in Berkeley, California. It is a public entity and an educational service agency established and maintained by the laws and constitution of the State of California.

17. Defendant/Respondent Donald Evans is the superintendent of BUSD. His place of employment is in Berkeley, California. He is sued in his official capacity.

18. Defendant/Respondent Janet Levenson is the principal of MLKMS. Her place of employment is in Berkeley, California. She is sued in her official capacity.

19. Real Party in Interest Judicial Watch is a conservative organization located in Washington, DC. Judicial Watch invoked the California Public Records Act (“CPRA”) when requesting that BUSD produce all BUSD administration and MLKMS faculty and staff communications that mention “Felarca,” “Antifa,” “By All Means Necessary,” and “BAMN,” and when requesting Felarca’s confidential personnel file.

JURISDICTION AND VENUE

1 20. Just as the federal courts have recognized the implied right of individuals whose
2 rights would be violated by a federal government agency's release of records pursuant to
3 a Freedom of Information Act (FOIA) request to initiate a "reverse-FOIA request"
4 against the agency to request injunctive relief to protect their rights, the California courts
5 have recognized the right of individuals whose rights would be violated by a California
6 government agency's release of records pursuant to CPRA request to initiate a "reverse-
7 CPRA lawsuit" to request injunctive relief to protect their rights. *Marken v. Santa*
8 *Monica-Malibu Unified School Dist.*, 202 Cal.App.4th 1250, 1265 (Ct. App. 2012).

9 21. This action is brought pursuant to: 42 U.S.C. §1983; the First and Fourth
10 Amendments to the United States Constitution; the California Constitution; the California
11 Public Records Act (Cal. Gov't Code §§6250 *et seq.*); and the California Educational
12 Employment Relations Act (EERA, Cal. Gov't Code §§3540 *et seq.*

13 22. Plaintiffs are employed in Berkeley, California. All the Defendants are employed
14 and/or are in Berkeley, California. The events, acts, and/or omissions complained of
15 herein occurred in Berkeley, California, and this action is properly assigned to the U.S.
16 District Court of California, Northern District.

17 23. This Court has subject matter jurisdiction under 28 USC §1331 and 28 USC
18 §1343(3). This Court has supplemental jurisdiction of related state claims from the same
19 case or controversy under 28 USC §1367(a).

20 24. This action is timely filed within all applicable statutes of limitation.

21 **INTRADISTRICT ASSIGNMENT**

22 25. A substantial part of the events which give rise to this claim occurred in Alameda
23 County, making assignment to the Oakland Division appropriate under Civil L.R. 3-2(d).

GENERAL FACTUAL ALLEGATIONS

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2 26. To qualify as a public record that must be disclosed under the California Public
3 Record Act (“CPRA”), a writing must “contain [] information relating to the conduct of
4 the public’s business.” Cal. Gov’t Code §6252(e). The California Supreme Court expands
5 on this definition: “[T]o qualify as a public record under CPRA, at a minimum, a writing
6 must relate in some substantive way to the conduct of the public's business. This
7 standard, though broad, is not so elastic as to include every piece of information the
8 public may find interesting. Communications that are primarily personal, containing no
9 more than incidental mentions of agency business, generally will not constitute public
10 records.” *City of San Jose v. Superior Court*, 2 Cal.5th 608, 618 (Cal. 2017).

11 27. Further, the CPRA does not authorize the disclosure of records, “the disclosure of
12 which is exempted or prohibited pursuant to federal or state law.” Cal. Gov’t Code
13 §6254(k). Disclosure may not violate constitutional and statutory rights to privacy,
14 freedom of speech, freedom of association, and to engage in protected activities.

15 28. The CPRA exempts “[p]ersonnel, medical, or similar files, the disclosure of
16 which would constitute an unwarranted invasion of personal privacy” from disclosure.
17 §6254(c).

18 29. Felarca is not a public official. She and the other Plaintiffs are teachers and staff
19 who have no decision-making power in the District. Ms. Felarca, who is targeted in the
20 request, has no power to set policy for the Berkeley Unified School District (BUSD).

21 30. Felarca is a teacher of English Language Learners (ELL) at MLKMS, which is the
22 only middle school in Berkeley with a Newcomers program for recent immigrant
23 students. Felarca is a member of the civil rights and immigrant rights organization, the
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1 Coalition to Defend Affirmative Action, Integration, and Immigrant Rights and Fight for
2 Equality By Any Means Necessary (BAMN) and is affiliated with the National Teachers
3 Caucus EON/BAMN (Equal Opportunity Now/By Any Means Necessary), in which
4 members are aware and expectant of the outcome of this request (See Declaration of
5 Mark Airgood). As a national organizer with BAMN, Felarca has organized and led
6 protests opposing Trump's policies scapegoating immigrants, Muslims, and against
7 Trump's alt-right and neo-Nazi supporters.

8 31. Since Donald Trump was elected, the City of Berkeley, the UC-Berkeley campus,
9 and the city's public school system have lived up to their progressive reputation and
10 consistently warded off threats and attacks by alt-right and immigrant-bashing
11 demagogues. Berkeley's leading role in the anti-Trump movement has also meant that
12 Felarca has quickly gained a broad audience and recognition. Her numerous speeches and
13 interviews on local, national, and international media outlets as an organizer and leader of
14 BAMN have garnered international attention from Trump opponents and supporters. Her
15 political views are most closely aligned with the immigrant rights and Black Lives Matter
16 movements.

17 32. In her role as a BAMN leader and leading civil rights activist in California and the
18 nation, Felarca has become a favorite target for the alt-right and Trump supporters. Her
19 organizing against neo-fascist and alt right marches in Berkeley, as well as her stand
20 against the Trump policies of increased ICE raids and arrests, have made her a target of
21 far-right Internet trolls. Her well-publicized fight to keep her job in Berkeley Unified
22 Schools and to recoup pay that District Administration withdrew from her bank account
23 was supported by the Berkeley Federation of Teachers (BFT) through the Grievance
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1 process. The case was resolved in Felarca's favor after investigation by District
2 Administration.

3 33. Felarca has been a union representative for MLK and has run for the Berkeley
4 Federation of Teachers (BFT) Presidency on several occasions. She has repeatedly been
5 elected as a BFT delegate to the American Federation of Teachers (AFT) National
6 Convention and has been elected to represent BFT at the California Federation of
7 Teachers (CFT) State Conference. She has represented numerous teachers in grievance
8 procedures, and has been a vocal advocate of public education at and against the
9 expansion of charter schools in Berkeley at the BUSD Board of Education meetings.

10 34. For over a year, teachers and staff at the school have heroically united against the
11 abuse that Ms. Felarca and the rest of the staff have suffered at the hands of alt-right, neo-
12 fascist, and violent Trump supporters.

13 35. In the summer of 2016, Ms. Felarca spoke to CNN and other media about
14 protesting and being stabbed by neo-Nazis in Sacramento. Within hours, a troll campaign
15 attempted to use cyber terrorism to terrorize Ms. Felarca, teachers, staff, and students at
16 the school. Despite this, teachers and staff stood strong and united together, refusing to be
17 cowed.

18 36. A few weeks later in September 2016, the District resurrected the witch-hunt by
19 taking action against Felarca, removing her from her classroom for weeks. Again, the
20 King teachers, staff, and community became even more active, speaking out at rallies,
21 school board and community meetings to successfully restore Ms. Felarca to her
22 classroom. (See attached Declarations)

1 37. In February 2017, after Felarca appeared on Fox News to debate host Tucker
2 Carlson on the alt-right and fascism, insane trolls again bombarded Felarca and the
3 school with death threats via email and phone calls.

4 38. As Plaintiff Stefl writes in his Declaration: “Last spring [2017], myself, other staff
5 members, and our staff as a whole were terrorized with death threats, stalked at work in
6 the community by those who politically targeted our school and staff. Our staff received
7 counseling and individuals were forced to take time off from work as a result of the
8 immediate trauma these vile threats and harassment created.” (Declaration of Larry Stefl)

9 39. The right-wing trolls’ goal was to enlist support from other staff and
10 administration to turn on Ms. Felarca and force her abandon her students and the school
11 community. Again, King teachers and staff showed integrity and unity, overcoming that
12 divisive period, and healing on the side of each other, free speech, and anti-racist
13 activism.

14 40. Through repeated witch-hunts by crazy right-wing trolls and by the District
15 administration, the teachers, staff, and school community have ultimately stuck together,
16 supporting not only one of their most politically active and outspoken teachers, but their
17 own right to speak out against Trump’s racist scapegoating and on behalf of immigrants,
18 Muslim, black, and other students facing hardship. (Declaration of Larry Stefl)

19 41. On September 1, 2017, the Washington, D.C.-based conservative organization
20 and Real Party in Interest, Judicial Watch, sent a request to Defendant BUSD requesting
21 that it produce for public inspection “1) Any and all records of communications between
22 the BUSD Superintendent and any other BUSD officials and/or staff of Martin Luther
23 Kind, Jr. [sic] Middle School mentioning ‘Felarca’, ‘Antifa’, ‘By All Means Necessary’,
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1 and/or 'BAMN.' 2) Any and all records of communications between and among
2 faculty/staff members of Martin Luther King, Jr. Middle School mentioning "Felarca
3 among faculty/staff members of Martin Luther King, Jr. Middle School mentioning
4 'Felarca,' 'Antifa,' 'By All Means Necessary,' and/or 'BAMN.' 3) The personnel file of
5 Martin Luther King, Jr. Middle School teacher Yvette Felarca." The request claimed
6 authority for this request under the California Public Records Act ("CPRA").

7 42. Judicial Watch is a right-wing, an anti-immigrant organization with a history of
8 attacking Sanctuary city policies, and are now targeting the school and teachers who
9 teach and publicly defend immigrant students inside and outside the school. Judicial
10 Watch has held weekly meetings in its Washington, D.C. offices over the past year with
11 Breitbart News and other conservative, Pro-Trump, and Alt-Right politicians and
12 reporters to coordinate messaging and plan a campaign (named "Groundswell") to
13 promote and publicize these political views.

14 43. On October 25, 2017, Defendant MLKMS Principal Janet Levenson sent an e-
15 mail out to all MLKMS teachers and staff directing them to produce all emails that
16 mention "Felarca," "Antifa," "By All Means Necessary" , and/or "BAMN" to BUSD so
17 that they would be given to Judicial Watch. If teachers and staff did not do so by
18 November 2, 2017, BUSD personnel would mine their emails and obtain all emails fitting
19 this criterion and give them to Judicial Watch. (See EXHIBIT 1 – Levenson email)

20 44. At an October 25, 2017 staff meeting, Defendants Superintendent Evans and
21 Principal Levenson announced at a meeting of MLKMS teachers and staff of the
22 District's intention to disclose their emails. Teachers and staff were angry and distraught:
23 one teacher cried in the meeting and others cried after. (Felarca Declaration) The
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1 District's announcement already has fostered anger, fear, and demoralization at MLKMS.
2 (See Declarations)

3 45. One teacher expressed her anger toward Defendant Superintendent Evans via
4 letter, in her Declaration "Judicial Watch's right wing agenda and specific focus on
5 Yvette Felarca suggests that they are using the PRA to harass, silence, and bring down an
6 employee and school community whose political views profoundly differ from their
7 own... I have a lifetime of experience in Berkeley and never before have I felt that
8 expressing my views might place me in harm's way. I am sorely disappointed that you
9 have not even tried to protect me and my right to communicate freely and comfortably
10 with my fellow staff members. I am already feeling silenced!" (Declaration 6, ¶2)

11 46. The character of Defendants' directive has nothing in common with the "public's
12 business," but everything in common with a politically targeted witch-hunt. It is intended
13 to silence Felarca and prevent her from being one of the most tireless and prominent
14 leaders of the anti-Trump movement. The only purpose of gaining access to the emails of
15 all teachers and staff is to smear, stigmatize, terrorize, and make an example out of
16 Felarca to convince teachers and staff not to take similar public actions against Trump or
17 fascism for fear of being the next one targeted.

18 47. Judicial Watch's request and BUSD's determination to carry it out, in the absence
19 of court intervention, would chill the free speech and free association rights of teachers
20 and staff, especially, but not limited to, Felarca. (See Declarations.) BUSD's action
21 would threaten every teacher and staff member: they can and will be targeted and
22 released on specifically political terms. Other teachers and staff members who are
23 politically active or associated with organizations with progressive politics will be
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1 targeted, and there will be a further chilling effect on free speech, political freedoms,
2 union organizing and academic freedom.

3 48. As Plaintiff Stefl writes in his attached Declaration: “Handing over my
4 communications with my colleagues to hostile trolls would immediately and irreparably
5 damage my ability to communicate freely with my colleagues, an essential aspect of my
6 work and my fundamental right. The fear mongering of ‘who is next’ hanging over our
7 school harms our teachers and students, creating a hostile work environment of constant
8 fear and whispers. Successful teaching and learning requires an environment of safety
9 and trust, but that will be immediately and irreparably lost if the BUSD administration
10 serves up the entire staff’s private communications to an organization that is hostile to
11 our staff and to our entire mission as a school and as a community.” (Declaration of Stefl,
12 ¶2c)

13 49. Plaintiffs’ right to engage in concerted activity would be grievously harmed and
14 curtailed if the targeting of Felarca and her activities outside of work is allowed to go
15 forward. The willingness of coworkers and other union members to associate with
16 Felarca, support her campaigns in defense of workers’ grievances and public education,
17 or to campaign for her in an election campaign will be sharply curtailed if she is
18 successfully targeted and the implicit message goes out that one should ostracize her and
19 treat her as a pariah if one is to preserve one’s own safety from harassment and ultimately
20 safeguard one’s job at the school.

21 50. Defendants’ illegal action under the pretext of meeting a CPRA request would
22 achieve the opposite of “openness.” Felarca has been completely transparent about her
23 political views and has defended the right of parents and students to organize in defense
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1 of public education, Felarca herself, anti-racism, anti-sexism, and immigrant rights in
2 public, in the fora designated for such debate, such as BUSD school board meetings. The
3 accountability of the public schools and their leadership to the citizens of Berkeley has
4 been a recurring theme with Felarca. Many of the MLK teachers who are now being
5 asked to reveal personal information have joined her in speaking-out. It is just this
6 openness which Judicial Watch cynically seeks to destroy, by using CPRA as a method to
7 target individual teachers and progressive political views for harassment.

8 51. For BUSD to carry through this invalid request without a court test is tantamount
9 to acting in unison with Judicial Watch to abridge the fundamental rights of the plaintiffs,
10 all of whom are employees of BUSD.

11 52. Not only would working with Felarca – on this or any activity, including
12 protected union activity – be chilled, but any action that was in opposition to the policies
13 of the Trump regime would be effectively off-limits, because if there is no protection
14 against explicitly political speech, if there is no protection against the targeting of a
15 specific teacher, if there is no protection against targeting a civil rights leader – then there
16 is certainly no protection for any staff member, student, or family member in the District
17 should they attract the attention of the alt-right and/or Trump supporters.

18 53. Teachers and staff, especially in the Newcomers student program, are already
19 fearful out of concern for the safety of newcomers or immigrant students because of this
20 request. (Declaration of Felarca; Declarations 5 and 7)

21 54. For the MLK staff, release of this information compromises their ability to
22 communicate, work together, and to design to the best of their ability an appropriate
23 educational program for students.

1 55. The District's plan to publicize Plaintiffs' emails would have a grave effect on
2 teachers' ability to carry out the level of specific and honest communication that is
3 necessary for the maintenance of a high quality educational environment and functioning
4 school community. In December 2016, after a Muslim student wanted to quit school due
5 to racist bullying, Felarca and another teacher at the school planned and organized with
6 students a rally outside the school before the first bell – a wall of love and solidarity – in
7 support of Muslim students and against racism and deportations. This is the kind of
8 action that teachers would have to fear if the targeting of Felarca and explicitly political
9 and anti-racist action is carried out through this CPRA demand.

10 56. The pursuit of having a high quality educational environment and a functioning
11 school community has been a central project of the Martin Luther King Jr. teaching staff
12 for many years. Once the degree of and collegiality needed for this task is destroyed – as
13 it would be through the targeting of Felarca and unavoidably her ELL students and
14 through the invasion of privacy of all MLK staff members – it cannot be reinstated for an
15 extended period of time, if ever. The school climate and educational conditions for
16 teachers, and students would be irrevocably harmed.

17 57. For the MLK staff, release of this information compromises their ability to
18 communicate, work together, and to design to the best of their ability an appropriate
19 educational program for students. It compromises the ability of Felarca to do the best by
20 her students. (See Declarations) A teacher cried in the staff meeting the Administration
21 called to announce their intent for teachers to search their own emails.

22 58. One teacher at MLKMS writes: "At the meeting the district staff asked that we
23 turn over any email communications with the words, 'Felarca,' 'BAMN', 'Antifa,' and
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1 'By All Means Necessary.' Ms Felarca obviously distraught was forced to defend herself.
2 To see her this way both upset and unsettled me, making me afraid to speak freely and
3 openly at work and as I ponder it, even outside of work. Can my outside activities
4 become fodder for the district (or others such as Judicial Watch) to control or condemn
5 me? This is now having a chilling effect on my ability to speak freely." (Declaration 7)

6 59. Release of the information will foster anger, fear and demoralization within the
7 public institution, not for the sake of "rooting out corruption," but in the interest of
8 weakening basic constitutional protections and of invading privacy.

9 60. None of the sought communications are the "public's business." Teachers and
10 staff at MLKMS are not public officials, and they have a reasonable expectation of
11 privacy in their e-mail, including the privacy needed to conduct their duties and to
12 address conditions affecting the safety and well-being of the children they serve.

13 Converting these e-mails into public records serves no public interest and chills the
14 exercise of speech and association and deters the vital public and civic functions served
15 by these communications.

16 61. The only conceivable justification for Judicial Watch's request—to harass and to
17 assist individuals who seek to threaten and intimidate MLKMS teachers and staff due to
18 their political beliefs and associations and/or perceived political beliefs and associations
19 —is illegitimate and insufficient to justify violating the fundamental rights at stake.

20 62. Further, Judicial Watch asks BUSD to produce "[t]he personnel file of Martin
21 Luther King, Jr. Middle School teacher Yvette Felarca."

22 63. The CPRA exempts the disclosure of "[p]ersonnel, medical, or similar files, the
23 disclosure of which would constitute an unwarranted invasion of personal privacy." Cal.

1 Gov't Code §6254(c). Therefore, they cannot be produced without any overriding
2 compelling justification; Judicial Watch and BUSD have not provided any.

3 **CLASS ACTION ALLEGATIONS**

4 64. This action may be properly maintained as a class action pursuant to California
5 Code of Civil Procedure §382.

6 65. Plaintiffs bring this action as a class action on behalf of themselves and the
7 following class (“the Class”): all faculty and staff at Martin Luther King Middle School
8 (“MLKMS”) in BUSD.

9 66. Excluded from the Class are the Defendants, and all officers, directors, or agents
10 of the Defendants.

11 67. The likelihood of all individual members of the Class prosecuting separate claims
12 is remote.

13 68. The members of the Class are so numerous that joinder of all members would be
14 impracticable.

15 69. Plaintiffs reserve the right to modify the Class and the class period based on the
16 results of discovery.

17 70. There are common questions of law or fact, including:

- 18 a. Judicial Watch’s request for all communications that mention “Felarca,”
19 “Antifa,” “By All Means Necessary,” and/or “BAMN to all members of
20 the Class;
21 b. Whether Defendant’s conduct would violate the California Public Records
22 Act; and
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1 c. Whether Defendant's conduct would violate state and federal laws
2 protecting freedom of speech, freedom of association, and privacy and the
3 Educational Employment Relations Act.

4 71. Plaintiffs' claims are typical of the members of the Class because Plaintiffs and
5 all members of the Class would potentially be injured by the same wrongful practices as
6 described in this Complaint. Plaintiff's claims arise from the same practices and course of
7 conduct that gives rise to the claims of the Class's members, and are based on the same
8 legal theories.

9 72. Plaintiffs will fairly and adequately represent the interests of the members of the
10 Class. Plaintiffs' interests are the same as, and not in conflict with, those of the other
11 members of the Classes.

12 73. Questions of law or fact common to the members of the Class predominate, and a
13 class action is superior to other available methods for the fair and efficient adjudication of
14 this lawsuit, because individual litigation of the claims of all members of the Class is
15 economically unfeasible and procedurally impracticable. The likelihood of individual
16 members of the Class prosecuting separate claims is remote and, even if every Class
17 member could afford individual litigation, the court system would be unduly burdened by
18 individual litigation of such cases. Individualized litigation would also present the
19 potential for varying, inconsistent, or contradictory judgments and would magnify the
20 delay and expense to all parties and to the court system resulting from multiple trials of
21 the same factual issues. Plaintiffs know of no difficulty to be encountered in the
22 management of this action that would preclude its maintenance as a class action, and
23 certification of the Class is proper.

1 74. Relief concerning Plaintiffs’ rights under the laws herein alleged and with respect
2 to the Classes would be proper on the additional ground that Defendants have acted or
3 refused to act on grounds generally applicable to the Classes, thereby making appropriate
4 final injunctive relief or corresponding declaratory relief with regard to members of each
5 Class as a whole.

6
7 **COUNT ONE: Violation of the California Public Records Act**
8 **(Cal. Gov’t Code §§6250, *et seq.*)**

9 75. Plaintiffs reallege each and every preceding paragraph in this Complaint as if
10 fully set forth here.

11 76. To qualify as a public record that must be disclosed under the California Public
12 Records Act (“CPRA”), a writing must “contain [] information relating to the conduct of
13 the public’s business.” Cal. Gov’t Code §6252(e).

14 77. Requestor Judicial Watch’s requests to BUSD for all communications from
15 MLKMS faculty and staff work e-mails that mention “Felarca,” “Antifa,” “By All Means
16 Necessary,” and/or “BAMN” and for Felarca’s personnel file are expansive, broad, and
17 not related to the public’s business.

18 78. The CPRA also exempts from disclosure “[r]ecords, the disclosure of which is
19 exempted or prohibited pursuant to federal or state law.” Cal. Gov’t Code §6254(k).

20 79. Defendant BUSD’s directive to make public all communications among MLKMS
21 faculty and staff that mention “Felarca,” “Antifa,” “By All Means Necessary,” and/or
22 “BAMN” is prohibited by the Federal and State Constitutions, which protect freedom of
23 speech and association and the right to privacy. They also violate the Educational
24

1 Employment Relations Act (“EERA”), which protects education employees’ right to
2 engage in concerted activity for their mutual protection.

3 80. The CPRA exempts from disclosure “[p]ersonnel, medical, or similar files, the
4 disclosure of which would constitute an unwarranted invasion of personal privacy.” Cal.
5 Gov’t Code §6254(c).

6 81. The right to privacy in one’s personnel files has been given “forceful recognition
7 in both federal and state legislation,” *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 319, fn.
8 16 (1979). An individual’s personnel file contains “vast amounts of personal data,”
9 including “where he was born, the names of his parents, where he has lived from time to
10 time, his high school or other school records, results of examinations, evaluations of his
11 work performance.” *Department of the Air Force v. Rose*, 425 U.S. 352, 269 (1976).
12 Access to personnel files is “drastically limited... only to supervisory personnel directly
13 involved with the individual.” *Id.*

14 82. Judicial Watch has provided no justification for converting Felarca’s personnel
15 file into a public record that would override the CPRA’s prohibition of disclosures that
16 violate federal and state law or CPRA’s strong presumption of nondisclosure of personnel
17 files.

18 **COUNT TWO: Violation of Freedom of Speech and Freedom of Association**
19 **(First Amendment to U.S. Constitution; Article I, Section 2 of California**
20 **Constitution, 42 U.S.C. §1983)**

21 83. Plaintiffs reallege each and every preceding paragraph in this Complaint as if
22 fully set forth here.
23
24

1 84. The First and Fourteenth Amendments to the United States Constitution and
2 Article I, Section 2 of the California Constitution protect the rights of freedom of speech
3 and freedom of association.

4 85. Freedom of association is fundamental component of freedom of speech:
5 “Effective advocacy of both public and private points of view, particularly controversial
6 ones, is undeniably enhanced by group association, as this Court has more than once
7 recognized by remarking upon the close nexus between the freedoms of speech and
8 assembly.” *National Ass’n for Advancement of Colored People v. State of Alabama*, 357
9 U.S. 449, 460 (1958).

10 86. Government action that interferes with and discourages speech and association
11 must survive “exacting scrutiny.” The courts have declared: “[T]he government must
12 justify its actions not only when it imposes direct limitations on associational rights, but
13 also when governmental action ‘would have the practical effect ‘of discouraging’ the
14 exercise of constitutionally protected political rights’ ... Such actions have a chilling effect
15 on, and therefore infringe, the exercise of fundamental rights. Accordingly, they ‘must
16 survive exacting scrutiny.’” *Perry v. Schwarzenegger*, 591 F.3d 1147, 1159-60 (9th Cir.
17 2010)

18 87. The right not to disclose one’s political opinions and associations is fundamental
19 to preserve freedom of association: “Inviolability of privacy in group association may in
20 many circumstances be indispensable to preservation of freedom of association,
21 particularly where a group espouses dissident beliefs.” *Id.* at 462.

22 88. This “inviolability of privacy” is especially strong, where an associated group
23 “has made an uncontroverted showing that on past occasions revelation of the identity of
24

1 its rank-and-file members has exposed these members to economic reprisal, loss of
2 employment, threat of physical coercion, and other manifestations of public hostility.” *Id.*

3 89. Further, “[t]he First Amendment privilege [against disclosure]... has never been
4 limited to the disclosure of identities of rank-and-file members.” *Perry*, 591 F.3d at 1162.
5 The disclosure of “views expressed and ideas advocated” at political party meetings, or
6 statements of a “highly sensitive and political character” at union membership meetings
7 could have a deterrent effect on those protected activities. *Id.*

8 90. In the face of such violation of the right to freedom of association, the
9 government must “demonstrate[] an interest in obtaining the disclosures it seeks from
10 Plaintiff which is sufficient to justify the deterrent effect which we have concluded these
11 disclosures may well have...” *NAACP*, 357 U.S. at 463. This interest must be
12 “compelling.” *Id.* Further, the request “must also be carefully tailored to avoid
13 unnecessary interference with protected activities.” *Perry*, 591 F.3d at 1161.

14 91. Felarca has faced political witch-hunt from BUSD for her political activities with
15 the organization BAMN. The Plaintiffs have faced a flood of harassment and threats to
16 themselves at MLKMS during the past year from right-wing trolls who seek to target
17 Felarca, anti-fascist organizations, and any employee at MLKMS who would support the
18 same.

19 92. BUSD’s request for Plaintiffs to release all communications that mention
20 “Felarca,” “Antifa,” “By All Means Necessary,” or “BAMN” has a chilling effect on
21 Plaintiffs’ speech, association, and participation in concerted activities for their mutual
22 benefit.

1 93. BUSD and Judicial Watch have provided no interest for their request, let alone a
2 “compelling” one.

3
4 **COUNT THREE: Violation of Right to Privacy**
5 **(Fourth Amendment to U.S. Constitution; Article I, Section 1 of California**
6 **Constitution, 42 U.S.C. §1983)**

7 94. Plaintiffs reallege each and every preceding paragraph in this Complaint as if
8 fully set forth here.

9 95. The Fourth Amendment to the United States Constitution and Article I, Section 1
10 of the California Constitution protect the right to privacy.

11 96. Teachers and staff at MLKMS have a reasonable expectation of privacy in their e-
12 mails not being released as public records, particularly those e-mails in which they
13 discuss confidential matters related to their students, their students’ families, ensure a
14 high quality educational environment and functioning school community in the face of
15 right-wing intimidation and bullying. Teachers and staff at MLKMS are not public
16 officials and do not possess any decision-making authority that lessens their reasonable
17 expectation of privacy. See *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

18 97. No amount of redacting names, email addresses, etc. would protect individual
19 Plaintiffs from the right-wing trolls who have been determined to identify MLKMS
20 teachers and staff for harassment and bullying as well as the entire school.

21 98. Employees have a privacy interest in their personnel files. The right to privacy in
22 one’s personnel files has been given “forceful recognition in both federal and state
23 legislation,” *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 319, fn. 16 (1979). An
24 individual’s personnel file contains “vast amounts of personal data,” including “where he
was born, the names of his parents, where he has lived from time to time, his high school

1 or other school records, results of examinations, evaluations of his work performance.”

2 *Department of the Air Force v. Rose*, 425 U.S. 352, 269 (1976). Access to personnel files
3 is “drastically limited... only to supervisory personnel directly involved with the
4 individual.” *Id.*

5 99. The CPRA exempts from disclosure “[p]ersonnel, medical, or similar files, the
6 disclosure of which would constitute an unwarranted invasion of personal privacy.” Cal.
7 Gov’t Code §6254(c).

8 100. Judicial Watch has provided no justification for converting Felarca’s personnel
9 file into a public record that would override the CPRA’s strong presumption of
10 nondisclosure or CPRA’s prohibition of disclosures that violate federal and state law.

11 **COUNT FOUR: Violation of Educational Employment Relations Act (EERA)**
12 **(California Government Code §§ 3540 *et seq.*)**
13 **DEFENDANT B.U.S.D.**

14 101. Plaintiffs reallege each and every paragraph in this Complaint as if fully set forth
15 here.

16 102. The Educational Employment Relations Act (EERA) governs collective
17 bargaining between school districts and their employees. Government Code Section
18 3543(a) states: “Public school employees shall have the right to form, join, and
19 participate in the activities of employee organizations of their own choosing for the
20 purpose of representation on all matters of employer-employee relations” Cal. Govt.
21 Code § 3543(a).

22 103. Employees have the right to use employer computer and email systems for union
23 organizing and furthering the interests of employees. *Purple Communications Inc.*, 361
24 NLRB No. 126 (2014). (While NLRB decisions are not binding on public employers,

1 California's Public Employment Relations Board (PERB), which has jurisdiction over the
2 state public sector, often adopts NLRB rulings, especially where PERB attempts to
3 conform legal principles to the realities of evolving technology.)

4 104. Plaintiff Felarca, in addition to being an advocate for civil rights and immigrant
5 rights, advocates for the rights of her union's (BFT's) members and is an elected delegate
6 to state and national BFT conventions and a member of the BFT's union executive board.
7 She was a candidate for BFT president in May 2017.

8 105. Defendants' extraordinary and unusual compliance with Judicial Watch's
9 unprecedented request action toward Felarca retaliates against her for her protected
10 activities and sends a message to other BUSD staff and faculty that engaging in protected
11 activities will expose them to retaliation.

12 106. Further, under labor law "management officials may observe public union activity
13 without violating the Act so long as those officials do not 'do something out of the
14 ordinary' ... such as increasing its monitoring during an organizational campaign or
15 focusing its monitoring efforts on protected conduct or union activists." *Id.* at 15.

16 107. BUSD's directive to Plaintiffs to produce all communications that mention
17 "Felarca," "Antifa," "By All Means Necessary," and/or "BAMN" and to publish them as
18 "public records" for right-wing organizations to see is out of the ordinary, overly broad,
19 spies on and deters the ability of employees' to express their political opinions and
20 engage in concerted activities, and therefore interferes with Plaintiffs' right to engage in
21 concerted activity.

22 **COUNT FIVE: Illegal Employer Act to Direct and Control of Employees' Political**
23 **Activity**
(California Labor Code §§ 1101,1102)

1 108. California Labor Code §1101 states: “No employer shall make, adopt or enforce
2 any rule, regulation, policy... [c]ontrolling or directing, or tending to control or direct the
3 political activities or affiliations of employees.

4 109. California Labor Code §1101 states: “No employer shall coerce or influence or
5 attempt to coerce or influence his employees through or by means of threat of discharge
6 or loss of employment to adopt or follow or refrain from adopting or following any
7 particular course or line of political action or political activity.”

8 110. Defendants’ actions would chill Plaintiffs’ freedom of speech and freedom of
9 association. It not only sends the hostile message that those teachers and staff who
10 engage in political activities like Felarca will also be targeted, terrorized, and witch-
11 hunted; it sends the message that teachers and staff who engage in political activity or
12 share political views of any sort that BUSD and/or a section of the public is hostile to can
13 and will be targeted and victimized.

14 111. Defendants’ actions constitute control and directing of Plaintiffs’ political
15 activities in violation of California labor law.

16 **PRAYER**

17 WHEREFORE, Plaintiff respectfully requests the following relief:

- 18 1. Injunctive relief, including but not limited to the following:
- 19 a. an order enjoining Defendants from releasing as public records
20 MLKMS teachers’ and staff’s communications because they
21 mention “Felarca,” “Antifa,” “By All Means Necessary,” and/or
22 “BAMN”;
- 23 b. an order enjoining Defendants from demanding and/or requesting
24 that teachers and staff at MLKMS provide BUSD communications
to be released as public records because they mention “Felarca,”
“Antifa,” “By All Means Necessary,” and/or “BAMN”; and

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- c. an order enjoining Defendants from releasing Felarca’s personnel file as a public record.
- 2. Such other and further relief as supported by the evidence in this case and as this Court and/or the jury may deem appropriate.

By Plaintiff’s Attorneys,
UNITED FOR EQUALITY AND AFFIRMATIVE
ACTION LEGAL DEFENSE FUND (UEAALDF)

BY: /s/ Ronald Cruz
Ronald Cruz (State Bar No. 267038)
Shanta Driver (Michigan Bar No. P65007)*
1985 Linden Street
Oakland, California 94607
(510) 875-4463 (Ronald Cruz)
*Pro hac vice application pending

Dated: October 30, 2017

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VERIFICATION

I, YVETTE FELARCA, declare as follows:

1. I am a party in the above-entitled action.
2. I have read the foregoing Complaint and Petition for Writ of Mandate and know its contents. The matters stated therein are true based on my own knowledge.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed in Berkeley, California on October 30, 2017.



YVETTE FELARCA

EXHIBIT 1

Dear King Staff,

We require your cooperation in conducting an email search.

BUSD has received a Public Records Act (PRA) request for work-related* emails exchanged among King Middle School employees from Jan. 1, 2016 to Sept. 1, 2017 that mention any of these four terms:

- "Felarca"
- "Antifa"
- "By All Means Necessary"
- "BAMN"

The PRA is a [California state law](#) that says that public records must be disclosed upon request. This includes work-related* writing by a public employee, including emails. (See below for a definition of "work-related.")

We know you are very busy, so we appreciate your prompt attention to this important matter. We would like to offer King staff a choice for complying with this PRA request:

- 1) You could conduct the search of your BUSD emails yourself, or
- 2) The District can conduct the search of BUSD emails from the central server.

In order to comply with the PRA, we need to have the search completed by Thursday, **November 2nd**, in order to have time compile the emails and sift through them to determine which are "responsive," that is, which are required for disclosure and which are exempt under the law.

IMPORTANT: The law forbids a public employee from deleting any responsive emails once a PRA request has been received.

If you prefer to conduct the search yourself, please send an email to pra@berkeley.net to state this preference **no later than October 27**. You will have until November 2nd to complete the search yourself. You can find detailed instructions for doing an email search below.

If we do not hear from you before October 27, or if after stating your preference to do it yourself, we do not receive search results by November 2nd, the search will then be conducted from the central district server.

Thank you for your help.

Instructions for Searching Emails:

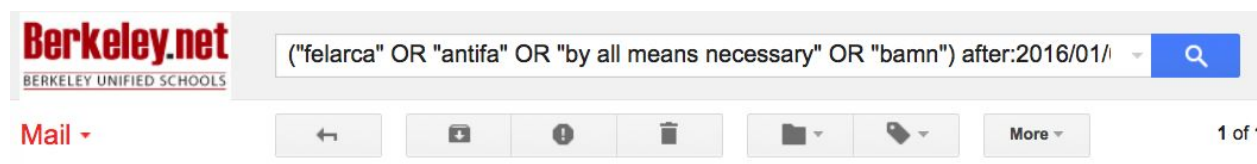
Step #1.

Go to your Gmail Inbox. In the search box, which is located to the right of the Berkeley.net logo, cut and paste these search terms:

("felarca" OR "antifa" OR "by all means necessary" OR "bamn") after:2016/01/01
before:2017/9/1 [-yvettefelarca@berkeley.net](mailto:yvettefelarca@berkeley.net)

This will give you a list of all of the emails with the requested search terms during the specified dates, but will exclude emails that were just to/from Yvette Felarca without the other search terms.

When you have put the search terms in the search box, it will look like this:



Step #2

If your search yielded any emails, they will be now be listed with the most recent emails first. Forward the emails on to the pra@berkeley.net email address. (You can forward them one at a time, or you can copy and paste them into one document to send to that address.) You do NOT need to forward emails that are:

- Not work-related (see below for definition).
- Sent by or to someone who is not a King employee (the PRA request asks for emails “between and among King faculty/staff”)

If after searching you find you do not have any emails that match the search terms, please send a statement to pra@berkeley.net that you have searched your emails and found none that are responsive to this request.

We know that responding to these requests can be quite burdensome for all involved. Nevertheless, we must comply with the law, and we are under a deadline to do so, so we need your prompt response. Again, the deadline is November 2.

If you have any questions, you may contact BUSD Public Information Officer Charles Burress, 510-644-6320, charlesburress@berkeley.net.

We take our obligation to comply with the law very seriously. The district’s legal and financial well-being depend on full compliance with the California Public Records Act. Thank you for your understanding and cooperation.

Sincerely,
Donald Evans
Superintendent

***What is a Work-Related Message?**

If you’re not sure which emails are work-related, the California Supreme Court has defined a public record as a writing that “must relate in some substantive way to the conduct of the public’s business.”

For further guidance on determining which emails are work-related, please see the attached handout, [“Is This a Public Record?”](#), provided by a law firm that assists the District with Public Record Act requests.

If you remain unsure about whether a particular email is work-related, please send it to the pra@berkeley.net email address, and feel free to indicate that you are unsure whether it qualifies or not. In some cases, we may need to consult with District lawyers to determine whether an email needs to be disclosed.

Declaration of Yvette Felarca

I, Yvette Felarca, declare as follows:

1. I am a teacher at Martin Luther King Middle School in Berkeley and have been for 11 years. I submit this declaration in support of myself and other plaintiffs' motion for a restraining order/injunction and for other relief. Except where expressly stated on information and belief, I have personal knowledge of the matters set forth below, and if called as a witness I could and would testify competently as follows.
2. I am also a member and national organizer of the civil rights organization, the Coalition to Defend Affirmative Action, Integration, and Immigrant Rights and Fight for Equality By Any Means Necessary (BAMN). As a BAMN representative, I have organized countless civil rights protests for the DREAM Act, against ICE raids and deportations, for affirmative action, against Donald Trump's policies and advocating for his resignation or removal, and against the growth of fascism and violent fascist attacks. I have also given countless interviews to local, statewide, national, and international media outlets on behalf of BAMN.
3. I have been an elected union representative for teachers in my school as a member of the Berkeley Federation of Teachers (BFT) Executive Board, and have represented and defended teachers in grievance or discipline procedures. I have also represented members as a delegate to the California Federation of Teachers (CFT) and the American Federation of Teachers (AFT).
4. Last year, together with teachers, staff, families, broader community support, a lawsuit filed by BAMN and a grievance filed by the BFT, I successfully defeated repeated attempts by alt-right and neo-fascist trolls, in conjunction with a hostile BUSD administration, to remove me from my classroom or drive me out of my school. My outspoken interviews and speeches and rallies made me the target of a far right-wing campaign that issued hundreds of harassing and threatening emails to me, phone calls to the school, and threats and harassment of fellow school staff. That has led many in the school to become fearful of having their names or identities made public, in case they become targeted for harassment and threats by the same troll factory.
5. I understand that a request has been made to Berkeley Unified School District to turn over written records and emails which include words that include "Felarca," "BAMN," "By All Means Necessary," and/or "Antifa." I oppose any action taken by BUSD to comply due to the immediate and profoundly chilling impact on my free

speech, freedom of expression, and right to freely associate. I strenuously oppose this Public Records Act request and BUSD's intention to give into it for the following reasons.

- a. As a public school teacher in Berkeley, I do not have administrative or decision-making power over personnel, budget, curriculum adoption, buildings and grounds, maintenance, student admissions or expulsions, staff scheduling, technology, or any other authority over the business of the school.
- b. Yet the BUSD administration has declared their intention to comply with an illegal public records act request profiling me, strictly on the basis of my off duty political activism as a member of the civil rights group, the Coalition to Defend Affirmative Action, Integration, and Immigrant Rights and Fight for Equality By Any Means Necessary (BAMN). BUSD's announcement about this request has already made teachers and staff at my school, Martin Luther King Middle School, more fearful of speaking out or expressing their political views outside of work, and of having reflective and meaningful discussions and posing critical questions at our school. At the staff meeting on October 25, 2016 when this was announced, teachers were deeply distressed. More than one teacher was visibly and audibly distraught. One teacher told me this made her feel that she could no longer feel able to speak out or freely express her own opinions on political and social issues, in or outside of school. Another teacher told me that when he left the meeting, he went to his car and cried. He said that if the staff of our entire school can lose our right and ability to communicate with each other without fearing political targeting and profiling, and if the District administration does not protect or respect that right, then he believes he has no right to freely express himself or associate with other colleagues or social justice causes inside or outside of school.
- c. Two other teachers whom I have worked with and associated with inside and outside of work told me that now, they are afraid to openly associate with me, for fear that they will be retaliated against by becoming the next subject of a public records act request. Other teachers have told me that they are afraid to send me emails on any topic for fear that they will become the next subject of a District mandated email search and that their private communication will be served up to any crackpot group asking for it. They are afraid that their name or emails will get posted on a trolling website, leaving them subject to personal and political threats and harassment by insane trolls. Censorship, not free thought, inquiry, or debate, will immediately and irreparably injure the educational mission of our classrooms and our school.

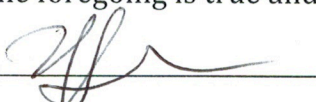
- d. The chilling effect of the Judicial Watch request has already manifested. Advice and collaboration between colleagues takes place all the time in our school, informally and at formally scheduled meetings. Upholding the standards for freedom of speech, expression, and association are especially vital for teachers. Any repression of that right damages our rights as educators to teach effectively and to be the best advocates for our students. Since the news of the District's intention to turn over our emails to Judicial Watch, colleagues whom I have worked with positively and constructively for over ten years have become afraid to speak with me. The impact of the Judicial Watch request has not only isolated me from other teachers, it has isolated other teachers from me and from each other. If the District gives into this baseless third party demand, trepidation and fear amongst teachers and school staff will deepen, creating a hostile work climate that immediately compromises my ability to do my job and teachers' ability to do our jobs. Our political rights to freedom of speech, expression, and association will be irreparably harmed.
- e. The Judicial Watch request and District's intention to comply with it is having a chilling impact on my and other colleagues' freedom of expression. I currently have stickers in support of immigrant rights, including a BAMN sticker against ICE deportations, on my laptop computer. After the staff meeting, last Wednesday Oct. 25, 2017, one of my colleagues pointed at the sticker, asking if it was "approved." Other teachers who have shared with me their appreciation and support for protests that I've organized or participated in for immigrant rights, against Trump, and against fascism, have now told me they are afraid to speak out against Trump or his policies, or speak critically of the District administration because they do not want to face the kind profiling and persecution that I am now subjected to by the administration or by groups like Judicial Watch. They do not want to be targeted next.
- f. The atmosphere of fear and intimidation harms our mission and ability to live up to our school's namesake, Dr. Martin Luther King. Last Winter, some of our Muslim students experienced escalated Islamophobic bullying in the school, and also outside the school, corresponding with Trump's anti-Muslim travel ban. I worked with other teachers to hold a morning rally before the first period on the sidewalk in front of the school called a "Wall of Love and Unity" against racist bullying, scapegoating, and racial profiling. Over 100 students and many teachers and staff participated, standing with our Muslim and immigrant students and their families. Muslim students who had been on the verge of quitting the school, instead decided to stay because they no longer felt the isolation and hostile climate that the racial and religious

targeting had created. If JW gains access to our emails, teachers and staff will become fearful and hesitant of holding a similar type of event, which had proven immensely successful. The fallout from forgoing such a collective and public show of support will mean we fail to address the suffering and isolation of some of our immigrant and Muslim students. The harm to teachers when this happens is also immediate and palpable, as educators suffer deeply from demoralization and isolation when we are unable to support our students in every way possible.

- g. I teach English Language Development (“ELD,” also known as English as a Second Language) as part of a team of teachers who make up our school’s Newcomer Program. In my current mixed grade middle school ELD class, students speak 14 different languages. Making connections and fostering meaningful and honest relationships with my students and co-workers is the most effective way that I know how to motivate and teach my students English, History, and to develop their own confidence as they navigate their lives. Communicating to them that in our class, they can ask their questions and express their opinions on topics pertinent to their lives, means that our classroom is a safe place for critical thinking and inquiry. Some of my students and their families fled war-torn countries, some fled political persecution and assassination attempts on their family, all came with hope to pursue the prospect of democracy and educational opportunities, and all face struggles with discrimination and the challenges of living in a new country. They have infinite questions, including who I am and my own experiences as an immigrant, countering racism, and fighting for respect and dignity. As their teacher, I have an obligation to answer those questions honestly and openly so that they know that they can free to form and act on their own political and social views as well.
- h. That openness and honesty will be slammed shut if the District gathers information on me and our staff based on comments and opinions of me, my political organization, and other political nomenclatures associated with fighting racism and fascism, and the knowledge that they have turned that information over to a third party with no relationship to me, my students, or the staff whom I work with. Questioning and debate will be replaced by a McCarthyist atmosphere of suspicion, unease, and fear. The chilling effect and suppression of critical thinking and questioning, suppression of academic freedom and free speech and expression, will be immediate and irreparable. I or other teachers are beginning to fear that if we don’t censor ourselves in our discussions with each other and with our students, we will become subjected to an Administrative review at the behest of third parties hostile to us, our staff, our students, and to the entire school community.

- i. Sharing information, opinions, and a diverse set of views and developments of local and national debates is particularly necessary for my job as an English as a Second Language (ELD), English, and History teacher. For example, last January, one of my students' family members was directly affected by the travel ban issued by President Trump. She came to school distraught and unable to focus due to fears that her aunt, who had been scheduled to travel to the US in order to receive acutely necessary medical treatment, would suffer and deteriorate as a result of the travel ban in January 2017. Having open information and sharing perspectives with each other about the ban, who it affected, how it was being implemented, and how people were responding to the ban was crucial for colleagues and students to learn about and discuss. I organized for and participated in local protests at San Francisco International Airport that succeeded in releasing Muslim travelers who were being detained. Many others did too, including other staff members and parents. Those political actions and their successful outcome were immensely important for teachers to be able to share with each other, as well as with our own students and their families. The effect of the Judicial Watch records act request will be to make me and other teachers afraid to participate in these types of political actions, or become afraid to discuss that openly with each other. Secrecy and shame will shroud political activism for fear that right-wing trolls will conduct another fishing expedition with the District's cooperation. Teachers, staff, and our own students and staff will suffer immediate and irreparable harm and loss, unless the court intervenes to stop this.
6. Any compliance with Judicial Watch's demand for a copy of my personnel file and for Martin Luther King staff members' written communication on the matters specified in their request are in no way related to the business and functioning of our school and violate my fundamental right to free speech, expression, and association. Turning them over would result in immediate and irreparable injury, loss, or damage to me and to the rights and well-being of our staff and functioning of our school.

I declare, under penalty of perjury under the laws of California and the United States, that the foregoing is true and correct.



Yvette Felarca

10-29-17

Date

Declaration of Lori Nixon

I, LORI NIXON, declare as follows:

1. I have been a staff member at Martin Luther King Middle School in Berkeley for 1 year. I submit this declaration in support of myself and other plaintiffs' motion for a restraining order/injunction and for other relief. Except where expressly stated on information and belief, I have personal knowledge of the matters set forth below, and if called as a witness I could and would testify competently as follows:

2. I have worked with Yvette Felarca for 1 year.

3. I understand that a request has been made to Berkeley Unified School District to turn over emails which include the words "Felarca," "BAMN," "By All Means Necessary", and/or "Antifa." I oppose any action taken by BUSD to comply with this or any similar request for several reasons:

a. My role as a King employee requires me to communicate by email with my colleagues, parents, and community members. Some of the emails include sensitive and confidential matters, including, but not limited to: behavior issues, Individualized Education Programs (IEPs), and health conditions. Asking King staff to make sensitive information about our students and families available to Judicial Watch or any other political organization is a gross violation of our privacy. The staff of King Middle School does not have the time nor the obligation to involve themselves in a political witch hunt against Ms. Felarca. We are busy serving the youth of this community, and researching our co-workers' outside activities is not our priority.

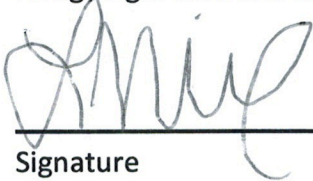
b. BUSD has an obligation to protect their students and their workers from harassment interfering with the function of the school. Earlier this year, right-wing groups used internet message boards to organize a bombardment of harassment against the staff of King Middle School. Threatening calls and emails poured into our school from across the country, and BUSD did nothing to speak out against the harassment. King staff members have been threatened, stalked, and harassed by white nationalists and right-wing bullies, yet BUSD has issued no statements condemning these actions. BUSD's previous inaction to protect its workers has fueled Judicial Watch's current demand for our emails. Instead of supporting its workers against these bullies, BUSD is facilitating the right-wing harassment campaign by entertaining this solicitation for personal info. Singling out Ms. Felarca is troubling, but even

more troubling is BUSD's willingness to potentially subject students and workers to further harassment for simply communicating with Ms. Felarca.

c. We, as school workers, have nothing to hide, but we also have a reasonable expectation to privacy. Our internal communications as a staff have no bearing on our abilities to successfully operate the school and should not be spoon-fed to right-wing antagonizers. Allowing organizations like Judicial Watch to direct the actions of BUSD severely jeopardizes our rights to political freedom and places our most vulnerable students in the cross-fire. Knowing their emails could be on-demand for racists and anti-immigrant groups, families and students could be deterred from reaching out to King staff for support, and staff will be deterred from sharing relevant community events and news with each other. Over the past year, Berkeley has been under siege from white supremacists and our school system is under attack from Trump's cabinet. We have a right to discuss these events in order to critically analyze how they impact our lives and the lives of our students. We have a right to organize support for our community without fear of retaliation from BUSD or outside groups. If BUSD complies with this request or similar requests, I am terrified I will be targeted for retaliation simply for communicating with my colleagues about relevant cultural topics. Allowing Judicial Watch to target us is a slippery slope, endangering all school workers regardless of our political stances. If BUSD complies with this outrageous demand for personal and political info from King staff, there is nothing stopping similar groups from conducting witch hunts of conservative staff as well. It is clear that this demand for staff emails is a blatant attempt to silence and intimidate King staff, meant to divide our community, and meant to discourage school workers from collaborating on how best to support our students in this tumultuous political climate.

4. It is my firm belief that any compliance with this request for our written communication on the matters specified in the request are in no way related to the business and functioning of our school, and that turning them over would do irreparable harm to the rights and well-being of our staff and functioning of our school.

I declare, under penalty of perjury under the laws of California and the United States, that the foregoing is true and correct.



Signature

October 26, 2017

Date

Lori Nixon

Name

Declaration of Larry Stefl

I, Larry Stefl, declare as follows:

1. I am a teacher at Martin Luther King Middle School in Berkeley and have been for 11 years. I submit this declaration in support of myself and other plaintiffs motion for a restraining order/injunction and for other relief. Except where expressly stated on information and belief, I have personal knowledge of the matters set forth below, and if called as a witness I could and would testify competently as follows:

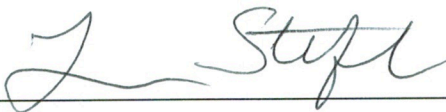
2. I understand that a request has been made to Berkeley Unified School District to turn over staff emails which include the words, "Felarca," "BAMN," "By All Means Necessary", and/or "Antifa." I oppose any action taken by BUSD to comply with this request or any similar request for several reasons:

- a. This is a gross invasion of my privacy and civil rights, and would spread fear and intimidation throughout staff at our school. Given the recent history of intimidation of Yvette Felarca by BUSD and also by Trump supporters, and also of the entire staff, if these emails would be turned over, our school would be revisiting a dark period of confusion and division fed by our administration. The energy and time lost is a waste of our professional expertise and energy as teachers working as advocates for students.
- b. Releasing our private communications to a fishing expedition of trolls who seek to terrorize our school and staff undermines the trust and compromises the integrity of our school and the work we do. The knowledge that my private communication will be in the hands of people who seek to terrorize me and my fellow teachers creates an immediate and irreparable injury to my rights and ability to freely communicate with colleagues and to freely associate with them, for fear that a simple email communication will be used against me to post up on an internet website, have my address publicized, and terrorize me at my home or workplace.
- c. Handing over my communications with my colleagues to hostile trolls would immediately and irreparably damage my ability to communicate freely with my colleagues, an essential aspect of my work and my fundamental right. The fear mongering of "who is next" hanging over our school harms our teachers and students, creating a hostile work environment of constant fear and whispers. Successful teaching and learning requires an environment of safety and trust, but that will be immediately and irreparably lost if the BUSD administration serves up the entire staff's private communications to an organization that is hostile to our staff and to our entire mission as a school and as a community.
- d. Last spring, myself, other staff members, and our staff as a whole were terrorized with death threats, stalked at work in the community by those who politically targeted our school and staff. Our staff received counseling and individuals were forced to take time off from work as a result of the immediate the trauma these vile threats and harassment

created. I and others experienced stress, sleeplessness, and panic attacks as a result. Teachers left the school from the fear caused by being targeted. We have begun to heal and came back together, but that healing is now immediately in endangered our renewed sense of trust and freedom in our ability to work and associate with each other as King colleagues will be irreparably lost if the Administration betrays us and submits our communications to this organization. Panic, fear, terror, isolation will re-emerge for me and the staff as a whole simply knowing that our names and communication have been shared by BUSD with this organization.

4. It is my firm belief that any compliance with this request for our written communication on the matters specified in the request are in no way related to the business and functioning of our school, and that turning them over would do immediate ad irreparable harm, injury, damage, and loss to the rights and well-being of our staff and functioning of our school.

I declare, under penalty of perjury under the laws of California and the United States, that the foregoing is true and correct.



Larry Stefl

10/26/2017

October 29th, 2018

Declaration of Mark Airgood:

I am a Special Education teacher at Edna Brewer Middle School in Oakland, and the Secretary of the Oakland Education Association (OEA). I have been an OEA site-Representative at Edna Brewer for the past 15 years. I am a civil rights organizer with the Coalition to Defend Affirmative Action, Integration, and Immigrant Rights and Fight for Equality for Any Means Necessary (BAMN) and successfully ran for OEA Treasurer on the Equal Opportunity Now/BAMN slate. I am also an alternate OEA delegate to the California Teachers Association, and an OEA delegate to the National Education Association Representative Assembly, where I have run on the EON/BAMN for NEA President and Executive Board on a number of occasions.

I believe that the request for information under the California Public Records Act the calls for emails that reference Yvette Felarca, BAMN, By All Means Necessary, and Antifah should not be granted as it would entail an intrusion into the protected right to union association and free speech. I know that even if emails were to be redacted, the intrusion by the District into personal emails will make it extremely hard for Yvette Felarca to continue her union activity and will have a chilling effect on union solidarity and unified action in general. Anything that curtails the free speech of teachers in one area invariably spills out into other areas.

If this request is granted, there will be many teachers who support Yvette, but don't believe they can actively express that support publicly without fear of becoming the target of Trump/alt-right harassment themselves. Release of this information by BUSD Administration singles Yvette out and sends a message that none of the rights that teachers believe they have to privacy, to free speech, to organize in a union, to take any action that could set them apart will be in fact defended or respected by District Administration and the courts. Her right to participate in union activity will be compromised. I do not believe that Yvette could run an effective campaign for union office, those who support her would be afraid to campaign for her if she is know as being the target of a District search of BUSD members email. Redaction of certain categories, including union references, does not appease that fear.

Release of the emails would have a chilling effect not only on Yvette, but on my own ability to run for office and organize in Oakland and nationally. The EON/BAMN caucus is a national teachers caucus that organizes to unite the fight of teachers with that of students and community members for public education, for special education, and for civil rights. Our ability to carry this through nationwide would be hindered by the climate of fear that release of information based on a targeted teacher and union/civil rights activist – Ms. Felarca– and a series of political search terms that all teachers are to search through their email and turn over. The infringement on the free speech on teachers would make impossible teacher union activists' rights to free speech, union organizing inside their union local, school district and or in their cities.

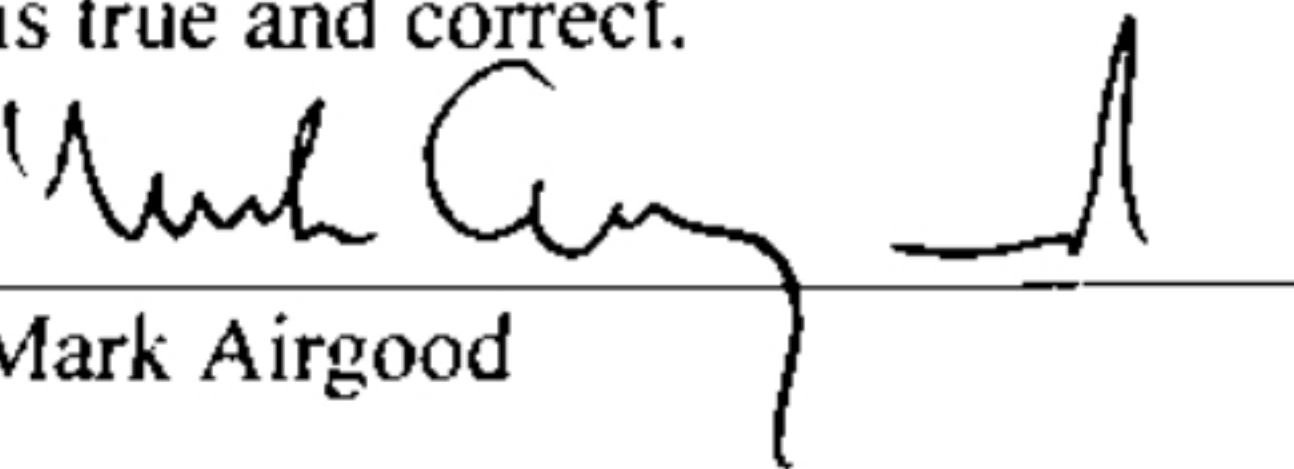
Oakland teachers are watching for the outcome of this case; it will clearly be a national test for the right of privacy, of association, and of academic freedom. If this information gets handed-over, many teachers will not participate in protected action to the same extent as the currently do, out of fear that it could lead to retaliation and any of the protections that we have historically thought we had are not to be counted on given the attacks on basic democratic rights being pushed by President Trump and his supporters. I know that Oakland teachers will be more reluctant to be a union rep if protected activity is

supporters. I know that Oakland teachers will be more reluctant to be a union rep if protected activity is only a phrase and not really protected. If the courts do not distinguish between a request for public information that is made on a decision maker or politician, from a search through the emails of a teacher, union leader, and civil rights activist, why would anyone believe that the courts will protect any of their constitutional or union rights?

I urge you to protect the teachers, students, and community of Berkeley in this case. The request for information by Judicial Watch is without justification and should not be honored.

It is my firm belief that any compliance with this request for our written communication on the matters specified in the request are in no way related to the business and functioning of our school, and that turning them over would result in immediate and irreparable injury, loss, or damage to me and to the rights and well-being of our staff and functioning of our school.

I declare, under penalty of perjury under the laws of California and the United States, that the foregoing is true and correct.


Mark Airgood