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KEVIN STOCK
COUNTY CLERK
NO: 14-2-12979-9

SUPERIOR COURT OF WASHINGTON
FOR PIERCE COUNTY

TACOMA SCHOOL DISTRICT NO. 10,
d/b/a TACOMA PUBLIC SCHOOLS,

Plaintiff,

v.

III BRANCHES, PLLC; KATHY
MCGATLIN; SHEILA GAVIGAN, and
TRUBY PETE,

Defendants.

No.

COMPLAINT FOR REPLEVIN,
DECLARATORY RELIEF, and
INJUNCTION

COMES NOW, Plaintiff Tacoma School District No. 10, d/b/a Tacoma Public Schools,
by and through its undersigned counsel, and alleges:

I. JURISDICTION AND VENUE

1.1 This action seeks to recover possession of personal property located in Pierce
County, Washington, as allowed under RCW 7.64.010, and also seeks relief pursuant to RCW
7.24.010 to declare certain rights with regard to Defendants' possession and dissemination of
protected student educational records without proper consent, in violation of 20 U.S.C. §1232g.
Plaintiff also seeks an injunction to prevent Defendants from engaging in further violations to
the Plaintiff's detriment, pursuant to RCW 7.40.020.

1.2 The transactions and occurrences out of which this cause of action arose took
place in Tacoma, Pierce County, Washington.

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II. PARTIES

2.1 Plaintiff Tacoma School District No. 10, d/b/a Tacoma Public Schools is a public entity providing educational services and has its principal place of business in Tacoma, Washington.

2.2 On information and belief, Defendant Kathy McGatlin is an individual residing at 1724 S.E. 7th Ct., Renton, Washington 98057.

2.3 On information and belief, Defendant Sheila Gavigan is an individual residing at 5918 S. Park Ave., Tacoma, Washington 98408.

2.4 On information and belief, Defendant Truby Pete is an individual residing at 3104 Glen Ayre Ln. N.W., Olympia, Washington 98502.

2.5 On information and belief, Defendant III Branches, PLLC, is a privately held company, doing business by and through Joan Mell, with its principal place of business at 1033 Regents Boulevard, Fircrest, WA 98466.

III. STATEMENT OF FACTS

3.1 Defendants Kathy McGatlin (“McGatlin”), Sheila Gavigan (“Gavigan”), and Truby Pete (“Pete”) are employees of Tacoma School District.

3.2 Defendants McGatlin, Gavigan, and Pete have access to private student educational records in the possession of the Tacoma School District solely in the course and scope of their employment and solely in furtherance of an immediate legitimate educational interest. This limitation on the release of student educational records is dictated by the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g(b)(1)(A) (“FERPA”). The failure to comply with FERPA’s strict dictates concerning to whom release may be made subjects an educational institution to potential loss of federal funding. *Id.*

3.3 In or about August of 2014, Defendants McGatlin, Gavigan, and Pete improperly removed from the Tacoma Public Schools, private, protected, and confidential student educational records with personally identifiable information - including records that

1 contained students' grade reports, transcripts, and class information - without consent. On
2 information and belief, the above-referenced student educational records were then disclosed to
3 III Branches, PLLC, by and through, attorney Joan Mell. Defendant III Branches, PLLC and
4 Joan Mell are not school officials and are not authorized by Tacoma Public Schools or the
5 affected students and/or their parents to possess or view any students' private and protected
6 records.

7 3.4 On information and belief, Defendants further disclosed the private, protected,
8 confidential student education records containing personally identifiable information to
9 additional unauthorized persons, to include news media. This disclosure was again made
10 without consent of the Plaintiff or the students and/or their parents and was therefore improper.

11 3.5 On or about September 9 and 11, 2014, Defendants were directed to
12 immediately return all protected student materials and information. The Tacoma Public
13 Schools made the request again on September 25, yet Defendants have refused to respond or
14 return the student educational records protected under FERPA.

15 3.6 Further, Defendants have not responded to the Tacoma Public Schools' direction
16 to cease disseminating the records; nor have they taken steps to assure Plaintiff that they will
17 not engage in such disseminations in the future.

18 3.7 FERPA, and regulations at 34 C.F.R. Part 99, prohibits the federal funding of
19 educational institutions that have a policy or practice of releasing educational records or student
20 data to unauthorized persons. Defendants' releases of protected student data without consent
21 puts Tacoma Public Schools in violation of FERPA and jeopardizes the Plaintiff's receipt of
22 funds from the federal government that it relies upon to operate its schools.

23 3.8 The Department of Education counsels and directs school districts to "take steps
24 immediately to retrieve data and prevent any further disclosures" when there is an unauthorized
25 release or disclosure of student records. Federal Register Vol. 73, No. 237 at p. 74844
(December 9, 2008). In accordance with this guidance and because Defendants have not

1 returned the protected student records at issue, despite repeated express requests, the District
2 brings the below listed causes of action.

3 **IV. FIRST CAUSE OF ACTION: REPLEVIN, RCW 7.64.010**

4 4.1 Plaintiff adopts and re-alleges all prior paragraphs as if fully set forth herein.

5 4.2 Plaintiff seeks to recover possession of certain property, described in detail
6 above.

7 4.3 Plaintiff is the owner of the aforementioned property and is entitled to
8 possession.

9 4.4 This property has been wrongfully detained and disseminated by Defendants.

10 4.5 This property has not been taken for a tax, assessment, or fine pursuant to a
11 statute and has not been seized under an execution or attachment against the property of
12 plaintiff.

13 **V. SECOND CAUSE OF ACTION:**

14 **DECLARATORY JUDGMENT, RCW 7.24.010**

15 5.1 Plaintiff adopts and re-alleges all prior paragraphs as if fully set forth herein.

16 5.2 A school or its employees may not release the educational records of a student
17 without the written consent of the student's parent or guardian to non-school officials except as
18 authorized by RCW 28A.600.475 and the Family Educational and Privacy Rights Act of 1974,
19 20 U.S.C. § 1232g. *See* RCW 28A.605.030.

20 5.3 Student records are also exempt from disclosure to non-school officials
21 pursuant to the "student file exception" of RCW 42.56.230(1), and as delineated by *Lindeman*
22 *v. Kelso School District*, 162 Wn.2d 196, 172 P.3d 329 (2007). The student file exemption
23 contemplates the protection of material in a public school student's permanent file, such as a
24 student's grades, standardized test results, assessments, psychological or physical evaluations,
25 class schedule, address, telephone number, social security number, and other similar records.

1 *See Weems v. N. Franklin Sch. Dist.*, 109 Wash.App. 767, 37 P.3d 354 (2002) (referring passim
2 to “student files” and “a student's file”).

3 5.4 Tacoma Public Schools Policy 3231 and Regulation 3231R also prohibit the
4 disclosure of information contained in a student’s cumulative folder or supplementary records
5 without written consent of an adult student or the parent of a minor student (with limited
6 exceptions that are not applicable here).

7 5.5. Defendants McGatlin, Gavigan, and Pete’s removal and dissemination and
8 Defendant III Branches, PLLC’s possession of student educational records without written
9 parental or student consent is in violation of the above referenced statutes and Tacoma Public
10 Schools policy and regulations.

11 **VI. THIRD CAUSE OF ACTION: INJUNCTION, RCW 7.40.010**

12 6.1 Plaintiff adopts and re-alleges all prior paragraphs as if fully set forth herein.

13 6.2 To date, Defendants have refused to respond to the requests to return the records
14 or to acknowledge that possession by and dissemination to unauthorized persons is improper.

15 6.3 Plaintiff therefore has no reason to believe that Defendants will not engage in
16 such conduct in the immediate future.

17 6.4 On each disclosure or release of the student educational records in violation of
18 FERPA, Plaintiff is exposed to loss of necessary federal funding that would jeopardize the
19 provision of educational services to its student population.

20 **VII. PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff Tacoma Public Schools prays for entry of judgment against the
22 Defendants providing for the following relief:

- 23 1. Return of the student educational records wrongfully possessed by Defendants;
24 2. Declaratory judgment that Defendants are in violation of RCW 28A.605.030;
25 the Family Educational and Privacy Rights Act of 1974, 20 U.S.C. § 1232g; and Tacoma
School District Policy 3231 and Regulation 3231R, by removing, obtaining, and disclosing

1 confidential, protected student educational records to unauthorized persons without prior
2 written student or parental consent;

3 3. Injunction prohibiting Defendants from further removing, obtaining, or
4 disclosing confidential, protected student data and records to unauthorized persons without
5 prior written student or parental consent;

6 4. For costs, expenses, and reasonable attorney's fees incurred in prosecuting this
7 action, as set forth by contract, statute, common law, or in equity; and

8 5. For such other and further relief as this Court deems just and proper.

9 DATED this 1st day of October, 2014.

10 PATTERSON BUCHANAN
11 FOBES LEITCH, INC., P.S.

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13 By: 
14 Michael A. Patterson, WSBA 7976
15 Attorney for Plaintiff Tacoma Public Schools
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