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Attorneys for Defendant School Employees

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ELIZABETH MIRABELLI, an
 individual, and LORI ANN WEST, an
 individual,

Plaintiffs,

v.

MARK OLSON, in his official capacity
 as President of the EUSD Board of
 Education, et al.

Defendants.

Case No.: 23CV0768 BEN VET

**AMENDED DEFENDANT SCHOOL
 EMPLOYEES' OPPOSITION TO
 MOTION FOR CONTEMPT AND
 RESPONSE TO REQUEST FOR
 CLARIFICATION**

Judge: Hon. Roger T. Benitez

Courtroom: 5A

Hearing Date: January 10, 2024

Hearing Time: 10:00 a.m.

Defendants oppose the motion for contempt, but concur with the request for clarification of the Court's Order.

A. Clarification of the Court's Order Would Be Helpful.

The Court ordered the Defendants not to enforce against the Plaintiffs the policy of protecting students gender identity from their parents at the student's request and not to retaliate against either of them.

The Escondido Union School District Defendants, the State Defendants, and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them, and those who gain knowledge of

1 this injunction order, or know of the existence of this
 2 injunction order, are enjoined from enforcing against
 3 Plaintiffs Mirabelli or West, EUSD AR 5145.3 or the
 4 associated official policy described in the California
 5 Department of Education's FAQs page on gender identity-
 6 related disclosures by teachers to parents, and are to restrain
 7 any governmental employee or entity from taking any adverse
 8 employment actions thereupon against Plaintiffs Mirabelli or
 9 West, until further Order of this Court.

10 Order Granting Motion for Preliminary Injunction, ECF No. 42 at p.36.

11 After the Court entered that order — in what seems to be direct opposition to the
 12 Court's order — the California Attorney General threatened to sue the District if it does
 13 not protect the privacy of students who wish to keep their gender identity secret from
 14 their parents. Dec. of Rankins-Ibarra, p. 2:7-12. The Order did not address the
 15 application of the policy with other teachers, whether religious or secular, or how the
 16 District should respond to a student request to keep their gender identity confidential if
 17 that student is in one of the Plaintiff's classes.

18 The District is unsure how to comply with State law, but absolutely sure how to
 19 comply with the Court's Order. The District does not require the two Plaintiffs to
 20 comply with the State's required policy. Dec. of Rankins-Ibarra, pp. 2:26 – 3:7. This
 21 confusion, the potential inconsistent policy position, the very strong emotional political
 22 positions taken on both sides in this controversy, and the State's threats, have created
 23 substantial disruption in the operation of the District. The District is unsure how to treat
 24 other teachers who assert religious beliefs in opposition to the policy, unsure how to
 25 keep student gender-identity confidential as required by the State, and unsure how to
 26 enforce the states policy of protecting student gender identity. Clarification of the
 27 Court's Order would very helpful.

28 ///

A. Contempt Requires Clear and Convincing Evidence Not Present Here.

To establish civil contempt, the moving party must demonstrate by clear and convincing evidence that the alleged contemnor violated a specific and definite court order by failing to take “take all reasonable steps within the party’s power to comply.” *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th Cir. 1993). Plaintiffs have not met that burden. There is no evidence that would even approach the “clear and convincing” standard. Actually, there is not any evidence any Defendant violated the order or any part of the order.

Contempt is not appropriate for many reasons. Neither the District nor any of the Defendants have retaliated against the Plaintiff in violation of the Court’s Order. Dec. of Rankins-Ibarra, p. 1:24-27. More importantly, Plaintiffs have not identified a Defendant who they contend violated the Order. The Plaintiffs’ employer — the District -- is not a party. The alleged delayed investigation was not delayed by the District, or any individual Defendant, but by the nature of the investigation.

B. Plaintiff Mirabelli’s Declaration Does Provide Evidence of Contempt

Plaintiff Mirabelli’s declaration does not provide evidence of any named defendant retaliating against her. It does prove she requested to be placed on paid leave of absence before the Court issued the Order, and that the District accommodated that request. It shows that teachers and students said things, some inappropriate and some protected political opinions. It shows she was hurt by the comments and wanted to go on leave. It proves she is not ready to return to work. Dec. of Mirabelli, p. 5:16-18. After the Order was issued, there is evidence that people marched on the streets, picketed and protested. She does not provide any legal method the District could use to stop a peaceful protest off campus.

Plaintiff Mirabelli requested paid leave of absence before the Court issued the Order and the District accommodated her request. After the Court issued its order, she again requested leave as an accommodation, and again, the District agreed. The District has told her she can return to work whenever she wants. Dec. of McGuire, p. 2:4-5.

1 The Assistant Superintendent met with Plaintiff Mirabelli and her counsel to
 2 develop an agreement for her to return to work. *Id.* at 2:2-3. She was concerned about
 3 people protesting. *Id.* at 2:3. He explained the situation and the District offered a plan
 4 to provide her with security. She is able to return to work whenever she is ready. She
 5 has not requested to return to work after that meeting. *Id.* at 2:6-7. Moreover, she says
 6 she is not now medically ready to return to work. Dec. of Mirabelli, p. 5:16-18.

7 The evidence she provides of comments made to her by students and teachers all
 8 occurred before she went out on leave of absence and before the Court issued its order.
 9 She requested the District protect her from all comments before she would return to
 10 work. But most of the conduct of teachers and students that she found hurtful are
 11 outside the District's power to control, because those people have First Amendment
 12 rights to oppose the position the Plaintiffs have taken, as long as they do not create a
 13 disruption with their speech. "It can hardly be argued that either students or teachers
 14 shed their constitutional rights to freedom of speech or expression at the schoolhouse
 15 gate." *Tinker v. Des Moines Independent Community School Dist.*, 393 U.S. 503, 506
 16 (1969). She even went so far as to ask the District to issue a policy against discussing
 17 the case on campus. Dec. of Paul Jona, Ex 5. That would be a violation of the First
 18 Amendment and an illegal prior restraint.

19 She does not provide evidence of adverse conduct by any Defendant, or of
 20 conduct any Defendant could legally stop, that occurred after the Order was issued. The
 21 only thing she says about conduct after the order was issued is that, "The school
 22 community does not accept or even accommodate my sincere Christian beliefs. I believe
 23 this is due to a lack of impartiality and neutrality on behalf of EUSD leadership, and a
 24 failure to enforce Board Policy 1325 on the promotion of controversial issues." Dec.
 25 of Mirabelli, p. 5:4-7. Her belief is not evidence of conduct by any named defendant in
 26 violation of the Order. She also says the investigation into her complaints took a long
 27 time and the District had great difficulty determining how it could meet her demands to
 28 ensure no student or staff member expressed something she would object to. She does

1 not identify any physical threat. All of her concerns are around comments and posters
 2 before the Order was issued and her fear of more comments if she returns. But she has
 3 been informed that she may return to work at any time.

4 **C. Plaintiff West's Declaration Does Not Provide Evidence of Contempt**

5 Plaintiff West was placed on paid leave of absence pending an investigation into
 6 allegations she made racial remarks in class. Dec. of Rankins-Ibarra, p. 3:26-4:2. She
 7 questions the validity of the complaint made by a student because the comments were
 8 made several years ago. That complaint requires an investigation, even if the validity
 9 of the complaint is doubted.

10 But it is entirely possible that these events triggered a memory in the student that
 11 persuaded them to bring forward a valid complaint. Nevertheless, there is only
 12 speculation, rather than evidence, that any named Defendants did anything to encourage
 13 the student to complain.

14 There has been some difficulty completing the investigation because of issues
 15 with scheduling of witnesses. The complaining party has agreed to extend the time for
 16 the investigation. Dec. of Rankins-Ibarra, p. 4:5-6.

17 Plaintiff West is on paid administrative leave for reasons completely unrelated to
 18 the Court's Order. A student formally complained about racial remarks West made and
 19 the District put her on leave pending an investigation into allegations. *Id.* Plaintiffs'
 20 counsel argues that complaint is suspect, but whether or not that is true, the District
 21 cannot ignore a complaint of racial discrimination from a student. The standard
 22 procedure is to place the accused person on leave and investigate. More likely is the fact
 23 the controversy brought some memories to the forefront in the minds of some students
 24 and produced this complaint. Nevertheless, placing a teacher on paid administrative
 25 leave pending an investigation into allegations of racist remarks in class is routine.

26 Plaintiffs' citation to the Education Code for the proposition that the investigation
 27 should have been done in 90 working days is misleading. That statute, Education Code
 28 section 87623, only applies to college teachers, not elementary school teachers, and the

1 provisions for extensions in the statute were omitted. Nevertheless, there is no evidence
 2 that the length of the investigation was illegal, and no evidence that the length of the
 3 investigation was extended as a retaliation in violation of the Court's Order.

4 Finally, on technical grounds, a contempt order would be improper for lack of
 5 certainty. Plaintiffs speculated, but do not identify any Defendant who took any action
 6 against either Plaintiff, nor do they offer any evidence that any Defendant took any
 7 action to retaliate against either Plaintiff. Plaintiffs argue they are afraid for their safety,
 8 but there is no evidence of any physical threat, or any indication of the likelihood of any
 9 physical harm to either plaintiff.

10 The conduct Plaintiffs describe by students and other teachers is largely protected
 11 speech. Although a complicated area of law, speech by a teacher acting as a citizen on
 12 an issue of public concern is protected speech. *Kennedy v. Bremerton School District*,
 13 142 S.Ct. 2407, 2424 (2022). Speech by students is also protected unless it is disruptive
 14 or violates the rights of others. “[T]he conduct of students in the school setting,
 15 including their speech, may be restricted if either [1] it might reasonably [lead] school
 16 authorities to forecast substantial disruption of or material interference with school
 17 activities” or [2] it collides with the rights of other students to be secure and to be let
 18 alone.” *Chen Through Chen v. Albany Unified School District*, 56 F.4th 708, 716–717,
 19 (9th Cir. 2022) cert. denied sub nom. *Epple v. Albany Unified School District* (2023)
 20 143 S.Ct. 2641. (Internal quotations omitted.)

21 Plaintiffs may find the comments to be hurtful, but they are largely protected
 22 speech. They were not sufficiently severe or pervasive to constitute harassment. *Harris*
 23 *v. Forklift Systems, Inc.*, 510 U.S. 17, 21 (1993). Plaintiffs argue they are entitled to
 24 know about discipline of teachers or students, but, to the extent that the District has
 25 issued discipline to a student or teacher for their conduct against the Plaintiffs, that
 26 discipline is protected by privacy rights so that Plaintiffs are not entitled to be informed
 27 about that discipline. “Our precedents demand that we ‘engage in the delicate task of
 28 weighing competing interests’ to determine whether the government may properly

disclose private information.” *In re Crawford*, 194 F.3d 954, 959 (9th Cir. 1999).

Plaintiffs are clearly unhappy with the intense controversy surrounding this issue, which is not only local, but is arising in school districts across the Country. The Defendants are unhappy with the controversy too.

B. Qualified Immunity Bars Attorney Fees

Plaintiffs are seeking attorney fees. But attorney fees are not appropriate in this case. These individual Defendants are entitled to qualified immunity.

C. The Legal Issue Is a Novel Issue of First Impression

The issue of students’ rights to privacy for gender-identity issues is a novel issue. It has only recently arisen and there was no case law when the decisions were made to enforce the policy. These individual Defendants believed they were complying with state law in all their actions when they applied the advice from the Department of Education. Moreover, another federal court has ruled the other way on this issue. *Regino v. Staley* (E.D. Cal., Mar. 9, 2023, No. 223CV00032JAMDMC) 2023 WL 2432920, at *1. It was certainly not clear to the individual Defendants they might be accused of contempt because of issues outside their control, such as the legal protests. There is certainly no settled law on the issue.

D. Qualified Immunity Applies Where the Law Is Not Clear

Qualified immunity applies to cases like this. Qualified immunity seeks to guarantee that public officials who are subjected to suit are on notice that their actions were unlawful. *Hope v. Pelzer*, 536 U.S. 730 (2002). In order to make a determination regarding qualified immunity, a court may first determine that, given the facts alleged and, in the light most favorable to the plaintiff, the official's conduct violated the plaintiff's constitutional right. *Saucier v. Katz*, 533 U.S. 194, 195 (2001). If a constitutional right was violated, then it must be determined that the right was clearly established. This determination rests upon the specific context of the case, and not a broad general proposition. *Id.* Moreover, the court must inquire whether it would be clear to a reasonable official that his or her conduct was unlawful in the given situation. *Id.* In

1 *Pearson v. Callahan*, 555 U.S. 223 (2009), the Court held that a court may determine
2 which prong of the analysis should be addressed first in light of the circumstances.

3 Here, it is indisputable that the issue is anything but clear, particularly when
4 another court has issued the opposite ruling. These individual Defendants are entitled
5 to qualified immunity.

6 **E. Attorney Fees are Damages Barred by Qualified Immunity**

7 Qualified immunity bars damages, including attorney fees and costs. *C.F. v.*
8 *Capistrano Unified School Dist.* (C.D. Cal. 2009) 656 F.Supp.2d 1190, 1199, aff'd sub
9 nom. *C.F. ex rel. Farnan v. Capistrano Unified School Dist.* (9th Cir. 2011) 654 F.3d
10 975. In that case, the court analyzed a similar issue and held that “the qualified
11 immunity defense also bars claims for costs and attorneys' fees.” Ibid.

12 In that matter, the Court granted part of the Defendants’ Motion for Summary
13 Judgment, ruling the Defendants were entitled to qualified immunity. Plaintiffs then
14 sought attorney fees after they were granted an injunction. The Court held that qualified
15 immunity protects defendants from liability for attorney fees as well as claims for costs.
16 The Ninth Circuit approved the analysis. “Although Farnan sought only nominal
17 damages, the attorney's fees and costs for which Corbett could be liable absent the
18 protection of qualified immunity undoubtedly would be considerable after more than
19 three years of litigation.” *C.F. ex rel. Farnan v. Capistrano Unified School Dist.* (9th
20 Cir. 2011) 654 F.3d 975, 984.

21 The trial court in *C.F. v. Capistrano Unified School Dist.* relied on a similar case,
22 out of the Eleventh Circuit, which also held that costs, expenses and attorneys’ fees are
23 barred by qualified immunity.

24 A question has been presented in this appeal about whether
25 the monetary damages which the defense of qualified
26 immunity bars include plaintiffs' claims for costs, expenses of
27 litigation, and attorneys' fees.⁷ The answer is “yes.” We hold
28 that, for qualified immunity purposes, the term “damages”

includes costs, expenses of litigation, and attorneys' fees claimed by a plaintiff against a defendant in the defendant's personal or individual capacity.

D'Aguanno v. Gallagher (11th Cir. 1995) 50 F.3d 877, 881. The court reached that conclusion based in part on an analysis of the purpose of qualified immunity.

The policy that supports qualified immunity—especially removing for most public officials the fear of personal monetary liability — would be undercut greatly if government officers could be held liable in their personal capacity for a plaintiff's costs, litigation expenses, and attorneys' fees in cases where the applicable law was so unsettled that defendants, in their personal capacity, were protected from liability for other civil damages.

D'Aguanno v. Gallagher, *supra*, at 881.

The *D'Aguanno* Court also relied on legislative history and policy to reach its conclusion:

Because section 1988, especially when read in the light of its legislative history, requires no award of costs, litigation expenses, or attorneys' fees from defendants in their personal capacity and because the policy underlying qualified immunity would in no way be advanced by the award of such costs and fees against defendants in their personal capacity, we hold that such awards, even in actions for injunctive and declaratory relief, are barred when the defendant's conduct meets the objective good faith standard encompassed by the qualified immunity doctrine.

Ibid.

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1 Because these individual Defendants could not have known that complying with
 2 the advice from the State on the issue of student gender-identify-privacy was against
 3 federal law, they are entitled to the defense of qualified immunity, it follows that, under
 4 the controlling case law, Plaintiffs' are not entitled to recover any damages, which
 5 includes costs, expenses of litigation, and attorneys' fees claimed by Plaintiffs. That
 6 bar applies equally to this motion for contempt where the individual have not done
 7 anything that is in violation of clearly settled law.

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 10
 11
 12
 13 Dated: December 27, 2023

ARTIANO SHINOFF



14
 15 Bv: _____

16 Daniel R. Shinoff
 17 Jack M. Sleeth Jr.
 Attorneys for Defendant School
 Employees

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Attorney for Defendant School Employees

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

ELIZABETH MIRABELLI, an individual, and
LORI ANN WEST, an individual ,

Plaintiffs,

v.

MARK OLSON, in his official capacity as
President of the EUSD Board of Education, et
al.

Defendants.

Case No.: 23CV0768 BEN VET

**DECLARATION OF
SUPERINTENDENT LUIS A. RANKINS-
IBARRA IN OPPOSITION TO MOTION
FOR CONTEMPT AND IN FAVOR OF
CLARIFICATION**

Judge: Hon. Roger T. Benitez

Courtroom: 5A

Hearing Date: January 10, 2024

Hearing Time: 10:00 a.m.

I, Dr. Luis A. Rankins-Ibarra, declare as follows:

1. I am now, and at all times relevant was, the Superintendent of the Escondido Union Elementary School District. I have personal knowledge of the matters stated in this declaration, except those stated on information and belief which I believe to be true. If called as a witness, I could and would testify competently to the matters stated in this declaration.

2. I received a copy of the Court's Order on the day it was issued. I immediately met with senior staff and informed them of the clear requirement not to take any action against either Plaintiff and not to require either Plaintiff to enforce Regulation AR 5145.3 or Policy BP 5145.3. We then met with our counsel to analyze the scope of the Order and to understand how to comply with the Court's Order and state law as we understood it. We faced three

1 different issues. We understood not to take action against the Plaintiffs. We were unsure how
 2 to react if another teacher was requested to keep the issue of gender identity from a parent, and
 3 we were unsure how to react if another teacher asserted similar religious beliefs and requested
 4 a similar accommodation. We met with the union leadership for both unions, and developed
 5 instruction for staff on compliance with the Order, and communicated that understanding to
 6 Principals and Counselors.

7 3. After the Court issued its Order in this case, I participated in a conference call
 8 with lawyers from the California Attorney General's Office. In that conversation, the lawyers
 9 for the Attorney General told me if the District did not protect the gender identity of students
 10 when the student requested it, even to the extent of not telling the parents their student was
 11 contemplating changing their gender identity, the Attorney General's Office would consider
 12 action against the District for discrimination on behalf of the student or students. They said
 13 they had determined the Order of this Court was very narrow and applied only to enforcing
 14 the Policy and Regulation against the two Plaintiffs in this case. They told me this issue had
 15 been decided differently in another court and that decision was now in appeal before the Ninth
 16 Circuit Court of Appeal.

17 4. The Governing Board has not taken any action on the employment of either of
 18 the Plaintiffs after the filing of this Complaint and certainly not after the issuance of the Order.
 19 The Board has also not taken any action to amend or act on the Policy or Regulation. The
 20 elected Board members are Defendants MARK OLSON, FRANK HUSTON, JOAN
 21 GARDNER, DOUG PAULSON, and ZESTY HARPER. Two employee Defendants – JOHN
 22 ALBERT and TRACY SCHMIDT -- resigned before the Court issued its Order, consequently,
 23 none of those Defendants can be liable for contempt. All decisions and actions taken after the
 24 issuance of the Court's Order relating to the employment status of the Plaintiffs were taken
 25 under my instructions.

26 5. We intend to make sure that all students are safe and feel protected. This issue
 27 has generated much emotion, with opinion on both sides of the issue. There have been protests
 28 against the Court's Order and against the Plaintiffs' position on the issue, but also substantial

1 support for the Order and the Plaintiffs.

2 6. We considered ways to limit the conflict, but we understand we are limited by the
3 First Amendment rights of teachers and students, so that we can only very carefully limit their
4 speech. We considered removing some students from Plaintiff's classrooms, but that would
5 raise another set of issues. We are concerned that removing a student from either Plaintiff's
6 class because that student has expressed concern around the issue of gender would be
7 discrimination against the student. That issue has not yet arisen.

8 7. Before the Court issued its Order, in early May, Plaintiff Mirabelli requested to be
9 placed on a paid leave of absence. I agreed, and she has been, and continues to be, on paid
10 leave. She may return at any time she wants.

11 8. Through her attorney she sought absolute assurance that no one would express
12 any political opinion against her before she would return to work. She is apparently concerned
13 that a protest, like the one earlier in the year, might occur if she returned to work. I do not
14 believe that any person has made a threat of any type of physical harm against either Plaintiff.
15 But I do believe that employees have expressed, and will express, their opinions. Expressions
16 of opinion by teachers, even while they are at work, are protected by the First Amendment. I
17 did not believe we could make a promise to stop all speech against her position on the issue.
18 The staff will ensure that no adverse employment action will be taken against either Plaintiff,
19 but I believe I cannot legally stop a teacher or a student from expressing an opinion against
20 either Plaintiff, unless such interchange becomes disruptive.

21 9. Both Plaintiffs have asked what discipline has been taken against employees
22 who have spoken out or posted signs in protest. Some of the protest occurred off campus and
23 outside of my control. I understand that discipline of students or staff is protected by privacy
24 rights against disclosure, and I have not responded to those questions and have not instructed
25 counsel to respond to those questions.

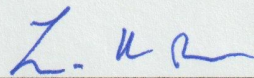
26 10. Plaintiff West was initially placed on paid administrative leave after a complaint
27 was made against her by a parent of a student involving harassment and discrimination,
28 subsequently another complaint was made asserting that she had made racially discriminatory

1 remarks in class. Administrative leave pending in investigation is standard procedure and had
 2 nothing to do with this lawsuit or the Court's Order. That investigation has been delayed
 3 because of difficulty scheduling witness interviews. I assigned the investigation to our legal
 4 counsel and instructed that the investigation proceed as quickly as possible. Plaintiff West
 5 will be returned to work, or disciplined, when the investigation is completed. The complaining
 6 party has agreed to an extension of time because of the difficulty of scheduling interviews.

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

9 Dated: December 26, 2023

Bv:


 Dr. Luis A. Rankins-Ibarra,
 Superintendent, Escondido Union
 Elementary School District

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Attorney for Defendant School Employees

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ELIZABETH MIRABELLI, an individual, and
 LORI ANN WEST, an individual ,

Plaintiffs,

v.

MARK OLSON, in his official capacity as
 President of the EUSD Board of Education, et
 al.

Defendants.

Case No.: 23CV0768 BEN VET

**DECLARATION OF ASSISTANT
 SUPERINTENDENT ANDREW
 MCGUIRE IN OPPOSITION TO
 MOTION FOR CONTEMPT AND IN
 FAVOR OF CLARIFICATION**

Judge: Hon. Roger T. Benitez

Courtroom: 5A

Hearing Date: January 10, 2024

Hearing Time: 10:00 a.m.

I, Andrew McGuire, declare as follows:

1. I am now, and at all times relevant was, employed as the Assistant Superintendent of Business Services for the Escondido Union Elementary School District. I have personal knowledge of the matters stated in this declaration, except those stated on information and belief, which I believe to be true. If called as a witness, I could and would testify competently to the matters stated in this declaration.

2. I reviewed a copy of the Court's Order on the day it was issued. I met with the Superintendent and senior staff to discuss the implications of the Order on other staff, beyond the clear requirement that we must not take any action against either Plaintiff and must not to require either Plaintiff to enforce Regulation AR 5145.3 or Policy BP 5145.3. We then met with our counsel to help us analyze the scope of the Order and to understand how to comply with the Court's Order and state

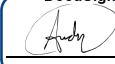
1 law as we understood it.

2 3. I met with Plaintiff Mirabelli and her counsel in an effort to develop an agreement for
3 her to return to work. She was concerned about people protesting. I explained the situation and we
4 offered a plan that I believed provided her with the security she wanted. She is able to return to work
5 whenever she is ready. I thought our discussion was positive, although I also thought she might have
6 some questions, but I never received any response. She has not requested to return to work after that
7 meeting.

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

10 Dated: December 22, 2023

By:

DocuSigned by:


Andrew McGuire, Assistant Superintendent
for Business Services, Escondido Union
Elementary School District

ARTIANO SHINOFF

Elizabeth Mirabelli v. Mark Olson, President of the EUSD Board of Education, et al.
USDC Court Case No.: 3:23-CV-00768-BEN-VET

PROOF OF SERVICE

(State and Federal Court)

I am and was at all times herein mentioned over the age of 18 years and not a party to the action in which this service is made. At all times herein mentioned I have been employed in the County of San Diego in the office of a member of the bar of this court at whose direction the service was made. My business address is 3636 Fourth Avenue, Suite 200, San Diego, California 92103.

On December 27, 2023, I served the following document(s):

1. AMENDED DEFENDANT SCHOOL EMPLOYEES' OPPOSITION TO MOTION FOR CONTEMPT AND RESPONSE TO REQUEST FOR CLAIRIFCATION

2. DECLARATION OF ASSISTANT SUPERINTENDENT ANDREW MCGUIRE IN OPPOSITION TO MOTION FOR CONTEMPT AND IN FAVOR OF CLARIFICATION

3. DECLARATION OF SUPERINTENDNET LUIS A. RANKINSIBARRA IN OPPOSITION TO MOTION FOR CONTEMPT AND IN FAVOR OF CLARIFICATION

☒ **BY ELECTRONIC SERVICE** via e-mail sent without electronic error on December 27, 2023, by Nopealey Lay at nlay@as7law.com.

☐ **BY ELECTRONIC SERVICE** On the date executed below, I served the document(s) listed above via OneLegal.com.

☒ **BY ELECTRONIC FILING/SERVICE** I caused such document(s) to be electronically filed and/or service using the ECF/CM System for filing and transmittal of the above documents to the above-referenced ECF/CM registrants.

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lgarfinkel@cde.ca.gov

4 **Attorneys for CDE Defendants**

5
6 I declare under penalty of perjury under the laws of the State of California that the above is
true and correct.

7 Executed on December 27, 2023, at San Diego, California.

8
9 Nopealey Lay
Nopealey Lay