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**FILED**  
Superior Court of California  
County of Los Angeles

AUG 12 2014

Sherril R. Carter, Executive Officer/Clerk  
By Dawn Alexander Deputy

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12 Charles Brautigam

**SUPERIOR COURT OF CALIFORNIA  
FOR LOS ANGELES COUNTY**

14 **CHARLES BRAUTIGAM, an Individual,**  
15  
16 Plaintiff,

17 v.

18 **EAST WHITTIER CITY SCHOOL**  
19 **DISTRICT, a governmental entity created**  
20 **and existing under the laws of the State of**  
21 **California;**  
22 **DAVID FELICIANO, an individual; and**  
23 **MARY BRANCA, an Individual,**  
24  
25 Defendants.

Case No. BC54-1803

**FIRST AMENDED COMPLAINT FOR:**

- **VIOLATION OF THE STORED COMMUNICATIONS ACT, 18 U.S.C. §2701;**
- **VIOLATION OF THE ELECTRONIC COMMUNICATIONS PRIVACY ACT, 18 U.S.C. §2511;**
- **INVASION OF PRIVACY;**
- **VIOLATION OF CALIFORNIA PENAL CODE §502;**
- **VIOLATION OF CALIFORNIA PENAL CODE §§631 and 637.2**

**BY FAX**

**[JURY TRIAL DEMANDED]**

**KRONENBERGER ROSENFELD**  
150 Post Street, Suite 520, San Francisco, CA 94108





1 Plaintiff Charles Brautigam, by and through his undersigned counsel, alleges as  
2 follows:

3 **INTRODUCTION**

4 1. Plaintiff Charles Brautigam (“Plaintiff”) is a teacher at Granada Middle  
5 School in Whittier, California.

6 2. In the course of Plaintiff’s employment as a teacher, Defendant the East  
7 Whittier City School District (“EWCS D”) provided Plaintiff with a laptop computer. While  
8 the laptop was to be used primarily for Plaintiff’s teaching responsibilities, EWCS D  
9 allowed Plaintiff to use the laptop for personal activities.

10 3. Consistent with this policy, Plaintiff occasionally used the laptop to access  
11 his personal Gmail and Facebook accounts, and to send and receive personal emails  
12 and messages to and from these accounts.

13 4. When Plaintiff first accessed his Gmail and Facebook accounts using the  
14 laptop, the laptop’s web browser automatically saved Plaintiff’s user name and password  
15 for these accounts. Thus, the next time Plaintiff accessed his Gmail and Facebook  
16 accounts using the laptop, he did not need to re-enter his user name and password.

17 5. On February 5, 2013, EWCS D placed Plaintiff on administrative leave and  
18 demanded that Plaintiff immediately return the laptop computer to EWCS D.

19 6. Thereafter, without Plaintiff’s knowledge or consent, Defendants used the  
20 laptop to access Plaintiff’s personal Gmail and Facebook accounts, where they reviewed  
21 and printed out Plaintiff’s personal communications. These communications included  
22 confidential communications between Plaintiff and his attorney and between Plaintiff and  
23 his union representative regarding the administrative leave with EWCS D. Defendants  
24 continued this unauthorized monitoring of Plaintiff’s personal communications for over six  
25 months.

26 7. By engaging in this unauthorized access of Plaintiff’s personal  
27 communications, Defendants violated the federal Stored Communications Act, 27 U.S.C.  
28 §2701; the federal Electronic Communications Privacy Act, 27 U.S.C. §2511; California



1 Penal Code section 502; and invaded Plaintiff's privacy in violation of California common  
2 law.

3 8. Plaintiff has suffered damages as a result of Defendants' misconduct.

#### 4 **JURISDICTION AND VENUE**

5 9. This Court has jurisdiction over this matter under the California Constitution,  
6 Article VI, section 10.

7 10. This Court has personal jurisdiction over Defendants because Defendants  
8 reside in California, because a substantial part of Defendants' misconduct that gave rise  
9 to this action occurred in California, and because the primary injury suffered by Plaintiff  
10 as a result of Defendants' misconduct was felt in California.

11 11. Venue is proper pursuant to Code of Civil Procedure section 395 because  
12 Defendants or some of them reside in Los Angeles County and because a substantial  
13 portion of the injury described in this complaint occurred in this County.

#### 14 **PARTIES**

15 12. Plaintiff Charles Brautigam is an individual residing in Whittier, California.

16 13. On information and belief, Defendant the East Whittier City School District  
17 is a governmental entity created and existing under the laws of the State of California.  
18 EWCSO operates a public system of K-8 schools within the City of Whittier, California.

19 14. On information and belief, Defendant David Feliciano is an individual  
20 employed by EWCSO as EWCSO's Chief Business Officer.

21 15. On information and belief, Defendant Mary Branca is an individual  
22 employed by EWCSO as EWCSO's Secretary and Co-Superintendent.

#### 23 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

24 16. On June 18, 2014, Brautigam submitted a timely and compliant claim under  
25 the California Government Tort Claims Act, Government Code sections 900 *et seq.*, to  
26 both the California Victim Compensation and Government Claims Board and the East  
27 Whittier City School District (despite the fact that the latter is not in compliance with  
28 Government Code section 53051).



1 access or monitor Plaintiff's personal communications stored on or made from other  
2 computers or devices.

3 26. Plaintiff primarily used the Laptop to fulfill his obligations as a teacher with  
4 EWCSO.

5 27. Plaintiff also occasionally used the Laptop for personal reasons, such as to  
6 send and receive emails from his personal Gmail account and to send and receive  
7 messages through his personal Facebook account.

8 28. The Gmail and Facebook applications used by Plaintiff were not stored on  
9 the Laptop or on any other computer owned by EWCSO. Rather, Gmail and Facebook  
10 are web services, which Plaintiff accessed remotely using the Laptop's web browser.  
11 Similarly, Plaintiff's emails sent and received through Gmail and Facebook were not  
12 stored on the Laptop; rather, they were stored on Facebook and Gmail's servers.

13 29. When Plaintiff first accessed his Gmail and Facebook accounts using the  
14 Laptop, the Laptop's Firefox web browser automatically recorded Plaintiff's user names  
15 and passwords for these accounts. Such recordation is a common feature of modern  
16 web browsers. As a result, the next time that Plaintiff used the Laptop to access his  
17 Gmail and Facebook accounts, he did not need to re-enter his user names or passwords.

18 30. Plaintiff did not use his Gmail or Facebook accounts for professional  
19 communications. Rather, Plaintiff used his Gmail and Facebook accounts only for  
20 personal communications.

21 31. Plaintiff never saved his Gmail emails or Facebook messages on the  
22 Laptop.

23 32. While Plaintiff occasionally accessed his Gmail and Facebook accounts  
24 using the Laptop, Plaintiff primarily accessed these accounts from his personal computer  
25 in his home and from his mobile phone.

26 33. Plaintiff never provided his user names and passwords for his Gmail or  
27 Facebook accounts to EWCSO or to any other Defendant.

28 //

1 34. Plaintiff never authorized EWCSO or any other Defendant to access his  
2 Gmail or Facebook accounts.

3 35. Plaintiff never used the Laptop for any prohibited activity.

4 **B. Defendants' Unlawful Access to Plaintiff's Personal Communications**

5 36. On February 5, 2013, EWCSO placed Plaintiff on administrative leave while  
6 it conducted an investigation.

7 37. At that time, EWCSO required Plaintiff to return his Laptop computer  
8 immediately to EWCSO, which Plaintiff did.

9 38. Defendant Branca received the Laptop from Plaintiff and then provided it to  
10 Defendant Feliciano to perform an investigative review.

11 39. Specifically, Branca asked Feliciano to search the Laptop for inappropriate  
12 content and/or a history of visits to inappropriate websites.

13 40. Feliciano performed this review but found no inappropriate content or  
14 inappropriate web history on the Laptop.

15 41. In his review, Feliciano noticed that Plaintiff had used the Laptop to access  
16 his personal Gmail and Facebook accounts. Feliciano made this observation by  
17 reviewing the web browser's browsing history, and thereby seeing that Plaintiff had  
18 visited the websites located at <gmail.com> and <facebook.com> along with a few  
19 political websites.

20 42. Feliciano then visited the Gmail and Facebook websites using the Laptop  
21 computer.

22 43. Feliciano then accessed Plaintiff's personal Gmail and Facebook accounts  
23 using the Laptop computer.

24 44. Feliciano accessed Plaintiff's Gmail and Facebook accounts by using the  
25 usernames and passwords that had been previously recorded by the Laptop's web  
26 browser.

27 45. Once Feliciano accessed Plaintiff's Gmail and Facebook accounts, he  
28 reviewed Plaintiff's personal communications.



1           46. Feliciano printed several of Plaintiff's personal emails from Plaintiff's Gmail  
2 account.

3           47. Feliciano first accessed Plaintiff's Gmail and Facebook accounts in or  
4 around February 2013, shortly after Plaintiff returned the Laptop.

5           48. Feliciano continuously accessed Plaintiff's Gmail and Facebook accounts  
6 over the course of several months, during which time Feliciano continued to review and  
7 print out Plaintiff's personal communications.

8           49. All of Feliciano's access occurred without Plaintiff's knowledge or consent.

9           50. Thus, while Feliciano was accessing his Gmail and Facebook accounts,  
10 Plaintiff continued to use his personal computer at home to send and receive emails  
11 using these accounts. As Plaintiff continued to send and receive personal emails,  
12 Feliciano continued to monitor and intercept Plaintiff's personal communications.

13           51. During this time, Plaintiff exchanged privileged emails with his attorneys  
14 using his personal Gmail account.

15           52. During this time, Plaintiff exchanged confidential emails with his union  
16 representative using his personal Gmail account.

17           53. During this time, Plaintiff exchanged personal emails with his friends and  
18 family using his personal Gmail account and Facebook account.

19           54. In or around February or March of 2013, Feliciano discussed his access to  
20 Plaintiff's personal Gmail and Facebook accounts with Branca. Feliciano explained to  
21 Branca how he had accessed Plaintiff's communications. Feliciano also provided Branca  
22 with printouts of emails from Plaintiff's Gmail account, including emails between Plaintiff  
23 and his attorneys and between Plaintiff and his union representative.

24           55. Branca reviewed Plaintiff's personal communications. On information and  
25 belief, Branca instructed Feliciano to continue accessing Plaintiff's personal Gmail and  
26 Facebook accounts and to continue collecting Plaintiff's personal communications. On  
27 information and belief, Branca disclosed Plaintiff's communications to others, including  
28 EWCSA's attorneys.





1 **SECOND CLAIM FOR RELIEF**

2 **(Violation of the Electronic Communications Privacy Act, 18 U.S.C. §§2511, 2520**  
3 **Against All Defendants)**

4 66. Plaintiff incorporates by reference the allegations contained in Paragraphs  
5 1 through 59.

6 67. Without Plaintiff's knowledge or consent, Feliciano accessed Plaintiff's  
7 personal Gmail and Facebook accounts and monitored and reviewed Plaintiff's personal  
8 communications for over six months.

9 68. Without Plaintiff's knowledge or consent, Feliciano provided Plaintiff's  
10 personal communications to Branca and explained to Branca how he had obtained them.  
11 In turn, Branca reviewed Plaintiff's communications and disclosed them to EWCSA's  
12 attorneys. On information and belief, Branca instructed Feliciano to continue monitoring  
13 Plaintiff's personal communications.

14 69. Plaintiff's intercepted emails constitute "electronic communications," as that  
15 term is defined in 18 U.S.C. §2510(12).

16 70. By engaging in this conduct, Feliciano intentionally intercepted and  
17 endeavored to intercept Plaintiff's electronic communications.

18 71. By engaging in this conduct, Branca procured Feliciano to intercept or to  
19 endeavor to intercept Plaintiff's electronic communications.

20 72. By engaging in this conduct, Feliciano intentionally used and endeavored to  
21 use an electronic or mechanical device to intercept Plaintiff's electronic communications.

22 73. By engaging in this conduct, Feliciano and Branca intentionally disclosed to  
23 another person the contents of Plaintiff's electronic communications, knowing or having  
24 reason to know that the information was obtained by way of unlawful interception.

25 74. By engaging in this conduct, Feliciano and Branca intentionally used the  
26 contents of Plaintiff's electronic communications, knowing or having reason to know that  
27 the information was obtained by way of unlawful interception.

28 75. Feliciano and Branca were acting as employees and officers of EWCSA  
when they accessed, reviewed, and disclosed Plaintiff's personal communications.





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76. In engaging in this conduct, Feliciano and Branca, on behalf of EWCSO, violated the Federal Electronic Communications Privacy Act, 18 U.S.C. §2511.

77. As a result of Defendants' misconduct, Plaintiff has been damaged.

**THIRD CLAIM FOR RELIEF**  
**(Invasion of Privacy, Conspiracy to Invade Privacy, and Aiding and Abetting Invasion of Privacy Against All Defendants)**

78. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 59.

79. Plaintiff had a reasonable expectation of privacy in his personal communications stored in his Gmail and Facebook accounts.

80. Without Plaintiff's knowledge or consent, Feliciano accessed Plaintiff's personal Gmail and Facebook accounts and obtained and reviewed Plaintiff's personal communications.

81. By accessing Plaintiff's Gmail and Facebook accounts, Feliciano intruded into a private place, conversation, or matter of Plaintiff in a manner that would be highly offensive to a reasonable person.

82. On information and belief, Branca knew about this conduct and actively and substantially participated in the ongoing unauthorized access to Plaintiff's personal Gmail and Facebook accounts.

83. In engaging in this misconduct, Feliciano and EWCSO invaded Plaintiff's privacy in violation of California common law.

84. In engaging in this misconduct, Branca conspired to invade Plaintiff's privacy and aided and abetted the invasion of Plaintiff's privacy.

85. Feliciano and Branca were acting as employees and officers of EWCSO when they accessed, reviewed, and disclosed Plaintiff's personal communications.

86. As a result of Defendants' misconduct, Plaintiff has been damaged.

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1 **FOURTH CLAIM FOR RELIEF**

2 **(Violation of California Penal Code §502, Conspiracy to Violate §502, and Aiding**  
3 **and Abetting Violation of §502 Against All Defendants)**

4 87. Plaintiff incorporates by reference the allegations contained in Paragraphs  
5 1 through 59.

6 88. Without Plaintiff's knowledge or consent, Feliciano accessed Plaintiff's  
7 personal Gmail and Facebook accounts and obtained Plaintiff's personal  
8 communications.

9 89. On information and belief, Branca knew about Feliciano's conduct and  
10 actively and substantially participated in the ongoing unauthorized access to Plaintiff's  
11 personal Gmail and Facebook accounts.

12 90. Plaintiff's Gmail and Facebook communications constitute "data," as that  
13 term is used in Penal Code section 502(b)(6). Plaintiff is the owner of the data  
14 comprising his personal communications, which was accessed and taken by Defendants.

15 91. Gmail and Facebook operate "computer systems" and "computer networks"  
16 as those terms are used in Penal Code section 502(b)(2) and (b)(5). Gmail and  
17 Facebook provide "computer services" as that term is used in Penal Code section  
18 502(b)(4).

19 92. In engaging in the above-described conduct, Feliciano on behalf of EWCS  
20 knowingly accessed and without permission used Plaintiff's data and Gmail's and  
21 Facebook's computer systems and computer networks in order to obtain Plaintiff's data.

22 93. In engaging in the above-described conduct, Feliciano on behalf of EWCS  
23 knowingly accessed and without permission took, copied and made use of Plaintiff's data  
24 from a computer, computer system, or computer network.

25 94. In engaging in the above-described conduct, Feliciano on behalf of EWCS  
26 knowingly and without permission used Gmail's and Facebook's computer services to  
27 access and obtain Plaintiff's personal communications.

28 95. In engaging in the above-described conduct, Feliciano on behalf of EWCS  
knowingly and without permission accessed Gmail's and Facebook's computers,





1 computer systems, and computer networks to access and obtain Plaintiff's personal  
2 communications.

3 96. In engaging in this misconduct, Feliciano and EWCSO violated California  
4 Penal Code section 502.

5 97. In engaging in this misconduct, Branca conspired to violate California Penal  
6 Code section 502 and aided and abetted Feliciano's and EWCSO's violations of  
7 California Penal Code section 502.

8 98. Feliciano and Branca were acting as employees and officers of EWCSO  
9 when they accessed, reviewed, and disclosed Plaintiff's personal communications.

10 99. As a result of Defendants' misconduct, Plaintiff has been damaged.

11 **FIFTH CLAIM FOR RELIEF**  
12 **(Violation of California Penal Code §§631 and 637.2 Against All Defendants)**

13 100. Plaintiff incorporates by reference the allegations contained in Paragraphs  
14 1 through 59.

15 101. Without Plaintiff's knowledge or consent, Feliciano accessed Plaintiff's  
16 personal Gmail and Facebook accounts and obtained Plaintiff's personal  
17 communications.

18 102. On information and belief, Branca knew about Feliciano's conduct and  
19 actively and substantially participated in the ongoing unauthorized access to Plaintiff's  
20 personal Gmail and Facebook accounts. Moreover, Defendants used Plaintiff's personal  
21 Gmail and Facebook communications knowing how they had been acquired.

22 103. By engaging in this conduct, Defendants: a) made an unauthorized  
23 connection to a telephone wire, line cable, or instrument; b) read or attempted to read the  
24 contents of a communication while it was in transit or while it was being sent from or  
25 received in California; c) used information obtained from Plaintiff's communications; and  
26 d) agreed with and conspired with others to permit the unauthorized access to Plaintiff's  
27 communications.

28 104. Defendants engaged in this conduct intentionally, willfully, and repeatedly.



1 105. Defendants' conduct described above violates California Penal Code  
2 section 631.

3 106. As a result of Defendants' conduct described above, Plaintiff was harmed.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE**, Plaintiff respectfully requests judgment as follows:

6 1. That the Court enter a permanent injunction requiring Defendants to  
7 destroy all communications they obtained from Plaintiff's Gmail and Facebook accounts.

8 2. That the Court award damages and monetary relief as follows:

9 a. Damages in an amount to be determined at trial in the form of the  
10 Plaintiff's actual economic and non-economic damages under 18  
11 U.S.C. §§2520 & 2707, Cal. Civ. Code §3281, and Cal. Penal Code  
12 §502(e).

13 b. Punitive and exemplary damages in an amount to be determined at  
14 trial, to serve as punishment and deterrent in light of Defendants'  
15 wrongful acts committed with oppression, fraud, and malice under 18  
16 U.S.C. §§2520 & 2707, Cal. Civ. Code §3294, and Cal. Penal Code  
17 §502(e).

18 c. Damages of the greater of \$5,000 or three times the amount of  
19 Plaintiff's actual damages, pursuant to Cal. Penal Code §637.2.

20 d. Plaintiff's attorneys' fees pursuant to 18 U.S.C. §§2520 & 2707 and  
21 California Penal Code section 502(e).

22 e. Plaintiff's costs.

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3. Such other relief that the Court determines is just and proper.

Respectfully Submitted,

DATED: August 12, 2014

KRONENBERGER ROSENFELD, LLP

By: 

Jeffrey M. Rosenfeld

Attorneys for Plaintiff Charles Brautigam

**CERTIFICATE OF SERVICE**

I am a resident of the state of California, over the age of eighteen years and not a party to this action. My business address is 150 Post Street, Suite 520, San Francisco, California, 94108.

On August 12, 2014 I served the following documents:

**1. FIRST AMENDED COMPLAINT**

on the parties listed below as follows:

*Counsel for Defendants East Whittier City School District, Mary Branca, and David Feliciano:*

Dana John McCune  
Adam J. Beshara  
McCune & Harber, LLP  
515 South Figueroa Street  
Suite 1150  
Los Angeles, CA 90071  
Facsimile: (213) 689-2501

BY FIRST CLASS MAIL, by placing a true copy thereof in a sealed envelope, with postage thereon fully prepaid, for collection and mailing, in San Francisco, California, following ordinary business practices, which is deposited with the US Postal Service the same day as it is placed for processing.

BY FACSIMILE, to the fax number(s) listed above.

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

DATED: August 12, 2014

  
Leah Vulić