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COUNTY COURT OF LANCASTER COUNTY, NEBRASKA:

JEWISH LEGAL NEWS, INC., a non-profit Corporation,

Plaintiff,

v.

BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA, LINCOLN, and JACLYN KLINTOE, in her official capacity as Custodian of Records,

Defendants.

Case No.: _____

VERIFIED PETITION FOR WRIT OF MANDAMUS

Comes now, Plaintiff JEWISH LEGAL NEWS, INC., (“Plaintiff” or “JLN”) brings this Verified Petition for Writ of Mandamus against the BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA, LINCOLN, and JACLYN CLINTOE, in her official capacity as CUSTODIAN OF RECORDS (together, “Defendants,” or “University of Nebraska,” or, “UNL”) and make the following allegations based on personal knowledge:

INTRODUCTION

1. Jewish Legal News, Inc. brings this Petition for a Writ of Mandamus to compel UNL to describe and disclose records requested pursuant to the state Public Records Act (“PRA” or “Act”), Neb. Rev. Stat. § 84.712 et seq.

2. The Jewish Legal News, Inc. (“JLN”) is a non-profit online news magazine located at www.jewishlegalnews.com. JLN covers news and debates important to the Jewish community, including

1 the controversial topic of how to teach about the Holocaust. JLN conducts independent research, among
2 other ways, by sending public records requests.

3 3. Holocaust education is among the most critical tasks our society faces, requiring deep
4 respect, unfailing intellectual rigor, and a steadfast commitment to truth and impartiality. Our respect for
5 the task shows we are serious about ensuring such atrocities are never repeated.

6 4. Whether Holocaust education is effective in reducing antisemitism is widely debated in the
7 Jewish community. *See e.g.,* Horn, Dara. “*Is Holocaust Education Making Anti-Semitism Worse?*” *The*
8 *Atlantic*, May 2023 (last accessed July 23, 2023).¹

9 5. JLN’s requests to the University of Nebraska at Lincoln were to audit the Sommerhauser
10 Holocaust Symposium (“the Symposium”). The most recent Symposium was held on March 27, 2023.

11 6. However, UNL’s responses to JLN’s requests about the 2023 Symposium raised significant
12 concerns about the care with which UNL is fulfilling its commitment to academic inquiry on this important
13 topic. When JLN audited the event, UNL responded with a lack of transparency and the optics of
14 partisanship.

15 7. What little information UNL produced in response to the public records requests indicated
16 that the Holocaust Symposium was used, not as a tool to educate the public, but instead to target the
17 political opponents of the UNL professors planning the conference. Professors Ari Kohen and Gerald J.
18 Steinacher, who are in charge of the Symposium, apparently see today’s evil emanating from modern day
19 Christians, and even those in Nebraska.

20 8. Unfortunately, in their zeal to tarnish the viewpoints of the opposition, the professors
21 brought their assumed and preconceived conclusions about Christians, and in doing so, failed to adhere to
22 academic standards in planning the Holocaust Symposium. Professors Kohen and Steinacher did not
23 employ any formal process, investigation into current academic research, or any scrutiny of the
24 presentations in their planning of the conference.

25
26 ¹ [https://www.theatlantic.com/magazine/archive/2023/05/holocaust-student-education-jewish-anti-](https://www.theatlantic.com/magazine/archive/2023/05/holocaust-student-education-jewish-anti-semitism/673488/)
27 [semitism/673488/](https://www.theatlantic.com/magazine/archive/2023/05/holocaust-student-education-jewish-anti-semitism/673488/)

1 9. Instead, the professors selected “scholars” for the Symposium because they were “Twitter
2 Followers” of Professor Kohen’s Twitter account, @kohenari. *See* Exhibit “A,” Email from Professor
3 Steinacher to Professor Kohen (“I looked at your list of your contacts (Twitter) and there are some very,
4 very interesting people among them, Federico Finchelstein (History of Fascist Lies), Casey Kelly (Trump
5 Racism), Daniel Ziblatt (How Democracy dies), Sarah Kendzior (Trump, USA), ALTEMEYER
6 (Extremists scale), Zack Beauchamp (Right wind populism, West). They all look great for our project.”

7 10. The very topic of the Symposium, “Fascism: Then and Now,” appeared to be selected to
8 maximize political impact against the professors’ opponents. Comparing “Fascism” – then and now –
9 allowed the professors to muster up the memory of historical Nazi fascism and portray their modern day
10 political opponents as the today’s embodiment of that evil historical movement. The professors decided
11 that the Symposium should connect “the historical study of the Holocaust” to their opinions of modern
12 “antisemitism, racism, political extremism, and ethno-nationalism.”²

13 11. As the Holocaust is a unique historical event, Jewish critics have questioned the wisdom
14 of using Holocaust education to launch attacks against modern day political opponents, and have termed
15 this dogma “Holocaust Universalism.” *See e.g., Wisse, Ruth R. “The Dark Side of Holocaust Education.”*
16 *National Affairs*, No. 56. Summer 2023. (last accessed July 25, 2023).³

17 12. Transparently, Professors Kohen and Steinacher hoped to harness the memory of the
18 Holocaust to assign blame for today’s prejudices squarely on their political opponents. The professors
19 could more easily labeled their opponents today’s “Nazis.” This was consistent with the viewpoints
20 espoused on Professor Kohen’s Twitter account, where Professor Kohen commonly called his opponents
21 “extremists” and “Nazis,” even while describing modern day politicians and fellow Nebraskans.

22 13. The professors invited only presenters from the narrowest slice of their left-wing political
23 spectrum who already agreed with their predetermined strategy. Just by looking at the titles of the
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25
26 ² <https://sites.google.com/view/geraldsteinacher/news>

27 ³ <https://www.nationalaffairs.com/publications/detail/the-dark-side-of-holocaust-education>

1 presentations, the presenters tried to associate “Christian Churches,” “Christian Nationalism,” “White
2 Nationalism,” “the far right,” “Right-wing populism,” and “antifeminists” with historical Nazism. *See*
3 Exhibit B, Symposium Program.

4 14. Because the “scholars” were identified and selected from Professor Kohen’s Twitter
5 “followers,” (Twitter users who had chosen to “follow” Professor Kohen’s account) it was no surprise that
6 they shared his exact viewpoints that he espoused, that today’s ills can be blamed on “Christian
7 Nationalism.”

8 15. For instance, on July 7, 2023, Professor Kohen tweeted: “The extremely nasty replies to
9 this tweet provide a really good example of the way in which **homophobic Christian nationalists** have
10 completely co-opted the serious issue of human trafficking such that it means whatever things they don’t
11 personally approve of at the moment.” (emphasis added).



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18 16. Two of the “scholars” did not even claim to be academic.

19 17. One was a “senior correspondent” for Vox, an online magazine viewed to be biased from
20 the left. *See e.g.*, “AllSides.” “Vox Rated Left in Apr. 2022 Independent Review.” (last accessed July 23,
21 2023).⁴

22 18. Another was from ADL, formerly a Jewish-civil-rights organization that changed its
23 mission to advocate for progressive causes. *See e.g.*, Leibovitz, Liel. “No More ADL: When It Comes to
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27 ⁴ <https://www.allsides.com/news-source/vox-news-media-bias#april2022>

1 *Jews, the Organization Now Does More Harm than Good.*” Tablet Magazine, Nov. 7, 2022, (last accessed
2 July 23, 2023).⁵

3 19. ADL is yet another participant who was also chosen for holding the professors’
4 predetermined opinion that “Christian Nationalists” are the cause of today’s problems. *See e.g.*, “Center
5 on Extremism.” “Fuentes Delivers Antisemitic, ‘Christian Nationalist’ Rant to Fellow White
6 Supremacists.” Anti-Defamation League, Mar. 7, 2023, (last accessed July 23, 2023).⁶

7 20. Not only do the professors blame antisemitism on “Christian Nationalists,” Professor
8 Kohen’s Twitter account takes the attack even further by explicitly and inexcusably linking historical
9 Nazism to modern day Nebraskans.

10 21. For instance, on October 12, 2020, Professor Kohen Tweeted: “The more I learn, the more
11 I’m actually very scared to live here [Nebraska]. This place very much seems to be run by Nazis and
12 they’re a hub for police, military, and para-military right-wingers. And everyone seems to be OK with
13 pretending something different is going on.”⁷



24 ⁵ www.tabletmag.com/sections/news/articles/no-more-adl-liel-liebovitz-kyrie-irving

25 ⁶ www.adl.org/resources/blog/fuentes-delivers-antisemitic-christian-nationalist-rant-fellow-white-supremacists.

26 ⁷ <https://twitter.com/kohenari/status/1315615226230964224>

1 22. On December 28, 2020, Professor Kohen Tweeted: “You don’t believe that people in
2 Nebraska are Nazis and Nazi sympathizers? Literally the only thing I knew about Lincoln, Nebraska
3 before I moved here was that pretty much ALL the Nazi literature in the world was printed here.”⁸ See
4 Exhibit D.



7 You don’t believe that people in Nebraska are Nazis and Nazi
8 sympathizers? Literally the only thing I knew about Lincoln, Nebraska
9 before I moved here was that pretty much ALL the Nazi literature in the
10 world was printed here.

11 5:46 PM · Dec 28, 2020

12 23. On March 22, 2019, Professor Kohen alleged on Facebook that two UNL students who
13 worked for a conservative congressman were “flashing the same White Power symbol as the New Zealand
14 mass murderer.”⁹

15 24. This lack of commitment to academic values and transparent ad hominem political attacks
16 by a UNL professor on fellow Nebraskans betray the principles of Nebraska and its citizens. As a public
17 event held at a public institution, Nebraskans expect the Symposium to be a beacon of unbiased education
18 and transparency, and not as a forum to level cheap partisan attacks. Good academic practice necessitates
19 that the process of inquiry and the production of knowledge are open to scrutiny. This allows for the
20 ongoing refinement of ideas and maintains the integrity of academic discourse. However, by failing to
21 maintain or disclose adequate records of the symposium's organization, the University hampered the
22 ability of scholars, students, and the wider community to review and evaluate the basis on which speakers
23 were chosen, the content that was shared, and the academic value of the event itself.

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25 ⁸ <https://twitter.com/kohenari/status/1343735154204880898>

26 ⁹ https://www.dailynebraskan.com/news/unl-associate-professor-believes-ok-hand-gesture-can-signify-white-supremacy/article_53d85f00-5679-11e9-afee-0fef7bd21db7.html

1 25. This lack of transparency and accountability also fuels suspicion about potential bias in the
2 event’s organization, as without a visible and comprehensible paper trail, there is no way to ensure that
3 the selection process for speakers, the formulation of the program, or the content presented was unbiased
4 and intellectually rigorous.

5 26. When JLN requested copies of the presentations delivered publicly at the 2023
6 Symposium, UNL outright denied the requests. The University cited Neb. Rev. Stat. § 84-712.05(3),
7 arguing that the presentations constituted “unpublished academic research.”

8 27. But this response was opaque, as the response belied the public nature of the requested
9 presentations being published in a public forum at the Symposium in March.

10 28. JLN followed up by requesting that the University redact any confidential portions and
11 disclose the rest, but, inexplicably, UNL again refused.

12 29. This refusal to disclose even redacted versions of the presentations appeared to contradict
13 the public spirit of a Nebraska Symposium. The public is entitled to view these presentations that are
14 intended for us all to learn and benefit.

15 30. JLN then requested presentations from the previous symposium, held in 2019, but the
16 University also failed to adequately search or produce those either, and instead referred JLN to purchase
17 a book authored by Professors Kohen and Steinacher for \$35.00.

18 31. Investigating further, JLN's concerns deepened. They found no official call for
19 presentations or methodical approach to determine the quality of the presenters. Instead, the presenters
20 appeared to be selected based on a single UNL professor’s Twitter followers, suggesting a departure from
21 academic rigor and integrity.

22 32. In denying JLN’s requests and seemingly allowing personal interests to shape a supposedly
23 public and academic event, UNL erected a barrier of opacity around an event of great public and historical
24 significance. This approach does not just breach the community’s trust, but it also risks the integrity of
25 Holocaust education at UNL.

1 33. In the face of these alarming findings, the community demands better. The study of the
2 Holocaust, a testament to one of humanity’s darkest periods, must never be influenced by personal or
3 partisan interests. It is our responsibility to ensure this education is treated with the respect, transparency,
4 and intellectual rigor it demands and deserves. For the memory of those who suffered, for the lessons we
5 must learn, and for the future we strive to shape, we owe it to ourselves and our children to do better.

6 34. UNL must implement a system of non-partisan supervision over professors responsible for
7 planning public events to prevent what happened here and ensure in the future that one narrow viewpoint
8 does not monopolize something as important as a public symposium on the Holocaust. Universities across
9 the globe have long established rigorous systems to ensure that diverse viewpoints are represented and
10 that presentations for academic conferences and symposiums meet a standard of quality. These protocols,
11 steeped in a tradition of intellectual rigor and diversity, ensure that academic presentations are more than
12 just informative – they should be analytical, balanced, and provoke thought and discussion. Plaintiffs hope
13 their suit will spur a series of reforms in next year’s Holocaust Symposium that should include at least the
14 following:

15 35. **Cessation of Ad Hominem Attacks:** The Symposium should focus on academic research
16 and not become a forum where any one group of people (especially Nebraskans) are scapegoated or
17 blamed using ad hominem attacks. The level of academic integrity in presentations must be rigorous.
18 Casting assumptions and blame about any one group of people runs contrary to the lessons learned in the
19 Holocaust. The Holocaust cannot be used to stir up anger against modern day political opponents.
20 Assumptions and accusations leveled at certain groups of people are not a valid substitute for the academic
21 research that was lacking at the Symposium.

22 36. **Commitment to Diversity of Viewpoints:** The Symposium should be committed to the
23 integrity of open academic inquiry. Professors cannot plan important public events in an “echo chamber.”
24 They must seek input from those who hold opposing opinions and different backgrounds from themselves.
25 Presenters must come from varied backgrounds and not adhere to only a single viewpoint.

1 **PARTIES**

2 45. Petitioner JEWISH LEGAL NEWS, INC. (“JLN”) is a non-profit news and opinion
3 website based in San Mateo, California.

4 46. Defendant University of Nebraska at Lincoln is a public university headquartered in
5 Lincoln, Nebraska.

6 47. Defendant Jaclyn Klintoe is Director of University Records for the University of Nebraska.
7 Defendant denied Plaintiff’s requests for records and is the custodian of UNL’s records for purposes of
8 the Public Records Act, Neb. Rev. Stat §§ 84-712, 712.03(1)(a). Ms. Klintoe is sued in her official
9 capacity.

10 **NATURE OF THE ACTION**

11 48. This is a public records case related to the Sommerhouser Holocaust Symposium at the
12 University of Nebraska in Lincoln.

13 49. This is a petition for a Writ of Mandamus pursuant to the Public Records Act, Neb. Rev.
14 Stat. § 84-712.03(1)(a), against UNL and Ms. Klintoe, the Custodian of Records, who in her official
15 capacity is responsible for the UNL’s failure to comply with the Act in response to Plaintiff’s request for
16 records.

17 50. Plaintiff seeks expedited treatment of this case pursuant to Neb. Rev. Stat. § 84-712.03(3).

18 **FACTUAL ALLEGATIONS**

19 51. The Sommerhauser Symposium on Holocaust Education occurred on March 27, 2023. On
20 April 7, 2023, an attorney writing on behalf of Jewish Legal News sent an email to Renee Hagerman, the
21 custodian of records at the University of Nebraska, requesting copies of the presentations delivered at the
22 Sommerhauser Symposium on Holocaust Education (Email to Renee Hagerman, April 7, 2023, Attached
23 as Exhibit E).

24 52. On April 10, 2023, Ms. Jaclyn Klintoe responded, stating that the University of Nebraska
25 would decline to provide the requested materials due to the Nebraska Public Records Act, which allows
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1 public bodies to withhold ongoing, unpublished research (Email from Jaclyn Klintoe, April 10, 2023,
2 attached as Exhibit F).

3 53. On April 11, 2023, JLN broadened its request and asked for any general materials,
4 nonconfidential parts of the symposium materials, and the event budget (Email to Jaclyn Klintoe, April
5 11, 2023, attached as Exhibit G)

6 54. On April 14, 2023, Ms. Klintoe responded that the University had compiled additional
7 materials but maintained its stance on withholding the presentation materials. She also stated that no public
8 records responsive to the program budget request had been identified (Email from Jaclyn Klintoe, April
9 14, 2023, attached as Exhibit H).

10 55. On April 18, 2023, JLN requested the presentations again, asking for any confidential
11 portions to be redacted. JLN also requested the event's expense report or all related payments if the
12 expense report was unavailable (Email to Jaclyn Klintoe, April 18, 2023, attached as Exhibit I).

13 56. On April 27, 2023, Ms. Klintoe provided expenses related to the symposium and reiterated
14 the University's position on withholding presentation materials due to their status as unpublished academic
15 research materials (Email from Jaclyn Klintoe, April 27, 2023, attached as Exhibit J).

16 57. On May 3, 2023, JLN requested presentations from the most recent previous
17 Sommerhauser Symposium for which the materials would not constitute unpublished research (Email to
18 Jaclyn Klintoe, May 3, 2023, attached as Exhibit K).

19 58. On May 5, 2023, Ms. Klintoe informed JLN that the most recent symposium occurred in
20 2019, and the research and presentations from that event were published and could be purchased in the
21 form of a book for \$35.00. (Email from Jaclyn Klintoe, May 5, 2023, attached as Exhibit L).

22 59. On May 5, 2023, JLN clarified its request for the presentations from the symposium, not
23 the book based on the presentations. If those could not be produced, JLN would request presentations
24 from the next most recent symposium before 2019 (Email to Jaclyn Klintoe, May 5, 2023, Attached as
25 Exhibit M).

1 60. On May 8, 2023, Ms. Klintoe informed JLN that the University was not in possession of
2 copies of individual presentations from the 2019 Symposium as it was not recorded (Email from Jaclyn
3 Klintoe, May 8, 2023, attached as Exhibit N).

4 61. On May 16, 2023, JLN requested any documents related to planning the most recent
5 symposium, including the process for determining invited speakers, communications related to speaker
6 invitations, and any issued calls for papers or requests for proposals for the event (Email to Jaclyn Klintoe,
7 May 16, 2023, attached as Exhibit O).

8 62. On May 22, 2023, Ms. Klintoe responded that the University was in the process of
9 searching for and reviewing potentially responsive messages and expected to complete the process in a
10 week (Email from Jaclyn Klintoe, May 22, 2023, attached as Exhibit P)

11 63. On May 23, 2023, Ms. Klintoe responded again, attaching three documents and stating that
12 “University has identified the attached messages as responsive. Our review efforts are ongoing and I will
13 supplement this production in the event we identify any additional responsive records.” (Email from
14 Jaclyn Klintoe, May 22, 2023, attached as Exhibit Q).

15 64. UNL has failed to disclose all of the requested records in a timely manner and failed to
16 show that the withheld records qualify for one of the limited exemptions to public disclosure set forth in
17 Neb. Rev. Stat. § 84-712.05.

18 65. Months have passed since Plaintiff first requested the public data necessary for its
19 reporting, UNL continues without lawful justification to withhold data that indisputably are subject to
20 timely production under the Nebraska Public Records Act.

21 66. Plaintiff therefore asks this Court to find that UNL has acted contrary to law in refusing to
22 describe and disclose the records sought, and to order UNL immediately to (a) offer a full description of
23 the withheld records and (b) disclose in whole or in part those records that are not properly withheld.

24 67. The public data sought by Plaintiff do not fall within the limited exemptions to disclosure
25 under the Public Records Act enumerated in Neb. Stat. Ann. § 84-712.05.

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INVALID USE OF EXEMPTIONS

68. UNL responded to Plaintiff’s requests in part that some documents would not be produced under Neb. Rev. Stat. § 84-712.05(3) because they constitute unpublished academic research.

69. On April 10, 2023, JLN received an email from Jaclyn Klintoe, the Director of University Records at the University of Nebraska. Ms. Klintoe informed JLN that the University would decline to provide the materials requested in the April 7, 2023 email. Specifically, she cited Neb. Rev. Stat. § 84-712.05(3), explaining that the presentations from the Sommerhauser Symposium on Holocaust Education were ongoing, unpublished research and, thus, not subject to disclosure under Nebraska's public records laws. This response was attached as Exhibit F.

70. On April 14, 2023, Ms. Klintoe sent another response to JLN’s modified request of April 11, 2023. She maintained the University’s position that the presentation materials could be withheld under Neb. Rev. Stat. § 84-712.05(3) as they were considered unpublished academic research materials.

71. This exemption is invalid. The exemption does not apply if the data has been publicly disclosed in open court, open administrative proceeding, or open meeting, or disclosed by a public entity pursuant to its duties. Plaintiff requested presentations that had been presented publicly.

72. For the same reason, presentations at a symposium cannot be considered unpublished academic research.

73. Further, the records cannot be withheld as being “in progress,” because they were presented in final form at the Symposium. The presentations were finalized and delivered at a public event.

FAILING TO CONDUCT AN ADEQUATE SEARCH

74. On May 8, 2023, JLN received an email from Jaclyn Klintoe, the Director of University Records at UNL, responding to JLN’s request dated May 5, 2023. Ms. Klintoe stated that, following internal discussions, the University did not possess copies of the individual presentations from the 2019 Sommerhauser Symposium on Holocaust Education. This response is attached as Exhibit N.

1 75. Defendants’ production remains incomplete because actual possession is not required,
2 possession includes any documents or records that a public body is entitled to possess—regardless of
3 whether the public body takes possession.

4 76. Defendants’ production also remains incomplete because Defendants did not sufficiently
5 describe how they searched their records.

6 77. Plaintiff now brings this petition for a Writ of Mandamus in order to compel the Defendants
7 to comply with the law, and to produce the withheld records, or any portions thereof that are not properly
8 exempt. Defendants must also provide a detailed description of any records that are withheld, along with
9 specific explanations for why each record (or portion thereof) falls under a particular basis for withholding.
10 Plaintiff has no available remedies other than this proceeding, and Plaintiff has not previously applied for
11 the relief requested herein.

12 **First Cause of Action**
13 **Violation of Nebraska Public Records Act**
14 **Invalid Use of Exemption 3**
15 **Neb. Rev. Stat. §§ 84-712.03(1)(a)**

16 78. Plaintiff repeats and re-alleges paragraphs 1 through 77 as if set forth in full.

17 79. The University of Nebraska is a public agency for the purposes of the Nebraska Public
18 Records Act.

19 80. Under the Nebraska Public Records Act, all of the documentary materials in possession of
20 the UNL are presumptively open and available for public examination, unless otherwise provided by law.
21 Neb. Rev. Stat. §§ 84-712, 712.01(1).

22 81. JLN requested records from UNL. The requested records are public records as defined by
23 § 84-712.01.

24 82. In response to a request for presentations held at the 2023 Sommerhauser Holocaust
25 Symposia., UNL asserted that it was exempted under: Neb. Rev. Stat. § 84-712.05(3), which exempts
26 “Trade secrets, academic and scientific research work which is in progress and unpublished, and other
27 proprietary or commercial information which if released would give advantage to business competitors
28 and serve no public purpose”

1 83. In refusing to timely produce data, Defendants relied on the exemption for unpublished
2 research, but the requested materials were published at symposia, so they cannot be considered
3 unpublished.

4 84. § 84-712.05(3) is an exemption from disclosure that the public body must prove applies by
5 clear and convincing evidence.

6 85. Defendants failed to prove by clear and conclusive evidence that any of the requested
7 records are exempt as unpublished research.

8 86. By Defendants' refusal to provide timely compliance with the Act, by Defendant's reliance
9 on an inapplicable exemption classification, by Defendants' continuing willful refusal to provide
10 documents responsive to three of Plaintiff's requests (Exhibits F, H, and N), and by production of only a
11 partial response of the documents in Defendants' custody responsive to the three requests (Exhibits J, L
12 and Q), Defendants violated the Nebraska Public Records Act, Neb. Rev. Stat. § 84.712 et seq., and
13 thereby caused Plaintiff to obtain legal counsel to obtain the desired relief.

14 87. WHEREFORE, Plaintiff prays for judgment as set forth below.

15 **Second Cause of Action**
16 **Violation of Nebraska Public Records Act**
17 **Failure to Conduct Adequate Search and Disclose Results**
18 **Neb. Rev. Stat 84-712.03(1)(a)**

18 88. Plaintiff repeats and re-alleges paragraphs 1 through 87 as if set forth in full.

19 89. The Public Records Act requires that when a public body denies a request for records, it
20 must provide a full description of the contents of the records withheld and a statement of the specific
21 reasons for denial, correlating specific portions of the records to specific reasons for denial. Neb. Rev.
22 Stat. § 84-712.04.

23 90. JLN requested records from UNL.

24 91. The requested records are public records as defined by § 84-712.01.

25 92. UNL failed to describe how it conducted its search, including what keywords were used.

26 93. In the Exhibit H Email of April 14, 2023, again, UNL claimed exemptions to the release
27 of some records, but did not describe its search or the records withheld.

1 94. In the Exhibit J Email of April 27, 2023, UNL reiterated its position that it would withhold
2 records as unpublished research, without describing the search or providing any description of the records
3 that were being withheld.

4 95. In the Exhibit L Email of May 5, 2023, again, UNL claimed the only material available
5 was a published book and failed to describe the search conducted or the documents being withheld.

6 96. In the Exhibit N of Email of May 8, 2023, UNL again denied the request for certain records
7 without offering a description of the search or the records being withheld.

8 97. In the Exhibit Q of Email of May 30, 2023, UNL provided partially responsive documents
9 but never indicated its search was complete.

10 98. UNL failed to describe records and justify its refusal to disclose. For example, Defendants
11 have not provided a description of the contents of the records or specific reasons for denial, stating only
12 that the presentations were exempt from disclosure as unpublished research.

13 99. Defendants have therefore failed to justify its refusal to disclose the withheld records as
14 specifically required by law. In the absence of such a justification, the withheld records must be released.

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16 **Third Cause of Action**
17 **Violation of Nebraska Public Records Act**
18 **Failure to Reasonably Segregate**
19 **Neb. Rev. Stat 84-712.06**

20 100. Plaintiff repeats and re-alleges paragraphs 1 through 99 as if set forth in full.

21 101. The University of Nebraska is a public agency for the purposes of the Nebraska Public
22 Records Act.

23 102. Under the Nebraska Public Records Act, all of the documentary materials in possession of
24 the UNL are presumptively open and available for public examination, unless otherwise provided by law.
25 Neb. Rev. Stat. §§ 84-712, 712.01(1).

26 103. In response to a request for presentations held at the 2023 Sommerhauser Holocaust
27 Symposia., UNL asserted that it was exempted, but it failed to reasonably segregate the exempt portions.

28 104. The requested records are public records as defined by § 84-712.01.

1 105. Section 84-712.06 of the public records statutes requires that “[a]ny reasonably segregable
2 portion of a record shall be provided to the public as a public record upon request after deletion of the
3 portions which may be withheld.”

4 106. Effectively, each document consists of “discrete units of information,” all of which must
5 fall within a statutory exemption in order for the entire document to be withheld. *Mo. Coalition for*
6 *Environment v. U.S. Army Corps*, 542 F.3d 1204 (8th Cir. 2008).

7 107. In the Exhibit H Email of April 14, 2023, again, UNL claimed exemptions to the release
8 of some records, but failed to reasonably segregate the purportedly exemption portion from the
9 purportedly non-exempt portion.

10 108. In the Exhibit J Email of April 27, 2023, UNL reiterated its position that it would withhold
11 records as unpublished research, but failed to reasonably segregate the purportedly exemption portion
12 from the purportedly non-exempt portion.

13 109. In the Exhibit L Email of May 5, 2023, again, UNL claimed the only material available
14 was a published book, but failed to reasonably segregate the purportedly exemption portion from the
15 purportedly non-exempt portion.

16 110. In the Exhibit N of Email of May 8, 2023, UNL again denied the request for certain records
17 but failed to reasonably segregate the purportedly exemption portion from the purportedly non-exempt
18 portion.

19 111. The withholding of an entire document by an agency is not justifiable simply because some
20 of the material therein is subject to an exemption. Agencies are required to disclose nonexempt portions
21 of a document, unless those nonexempt portions are inextricably intertwined with exempt portions. *State*
22 *ex rel. BH Media Group v. Frakes*, 305 Neb. 780, 943 N.W.2d 231 (2020).

23 112. Defendants have therefore failed to justify their refusal to reasonably segregate the
24 withheld materials specifically required by law. In the absence of such a justification, the withheld records
25 must be released.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff, prays for the following relief:

- A. Enjoining Defendants from withholding the records requested by Plaintiff;
- B. Declaring that Defendants have violated the Public Records Act in failing to perform an adequate search and properly justify its refusal to disclose all of the records requested by Plaintiff;
- C. Declaring that Defendants have violated the Public Records Act in withholding the records requested by Plaintiff;
- D. Ordering the Defendants to disclose the requested records to the Plaintiff;
- E. Awarding Plaintiff's costs and reasonable attorneys' fees pursuant to Neb. Rev. Stat. § 25-2165 and § 84-712.07;
- F. Granting Plaintiff such other and further relief as this Court deems just and proper.

Dated: August 10, 2023

Respectfully submitted,

By: /s/Wolfgang Mateus Tattenbach
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