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5 Attorneys for Proposed Intervenor
6 HOLLY McDEDE

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SOLANO

11 MATTHEW SHELTON, an Individual,
12 Plaintiff,
13 v.
14 NAPA VALLEY UNIFIED SCHOOL
DISTRICT; BENECIA UNIFIED SCHOOL
15 DISTRICT; and DOES 1-25, inclusive,
16 Defendants.
17
18 HOLLY McDEDE,
19 Proposed Intervenor.

Case No. CU24-03170
**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF EX
PARTE APPLICATION FOR AN ORDER
GRANTING PROPOSED INTERVENOR
HOLLY McDEDE LEAVE TO
INTERVENE**

Date: TBD
Time: TBD
Dept.: 10

The Hon. Christine N. Donovan

20 **I. INTRODUCTION**

21 Plaintiff Matthew Shelton brought this action to prevent Defendants from disclosing public
22 records sought by Holly McDede, a reporter who covers allegations of sexual misconduct in
23 schools. Shelton obtained a temporary restraining order against disclosure, which Defendants did
24 not oppose, nor do they oppose his request for a preliminary or permanent injunction against
25 disclosure. As a member of the public seeking public records, McDede has a direct interest in the
26 subject matter of this action that is not adequately represented by the existing parties. She is
27 therefore entitled to intervene as of right to protect the public’s right of access to the records at
28 issue in this action.

1 **II. FACTS**

2 Matthew Shelton is a former teacher previously employed by the Napa Valley Unified
3 School District and Benicia Unified School District (“Districts”). After Shelton was charged in
4 this Court with several counts of lewd acts on a child, McDede made requests under the California
5 Public Records Act (“CPRA”) for the Districts to disclose all records related to any complaints of
6 misconduct against Shelton, any separation or severance agreements with Shelton, all other
7 records related to his employment, and any reports of misconduct submitted to the California
8 Commission on Teacher Credentialing. McDede Decl. ¶¶ 2–7.

9 Before the Districts released all records requested by McDede, Shelton filed this reverse-
10 CPRA action on April 25, 2024, contending that disclosure would violate his right to privacy and
11 jeopardize his right to a fair trial and seeking a writ of mandate and preliminary and permanent
12 injunctions prohibiting the Districts from releasing the requested records. On May 1, Shelton
13 obtained a temporary restraining order preventing disclosure, which the Districts did not oppose.
14 The Districts take no position on Shelton’s request for a writ of mandate or preliminary or
15 permanent injunction. Loy Decl. ¶ 7. The Court set a hearing for June 11 on an order to show
16 cause why a preliminary injunction should not be issued, with any opposing briefs due May 31.
17 Through counsel, McDede is prepared to file an opposing brief by May 31 and appear at the June
18 11 hearing. Loy Decl. ¶ 5.

19 **III. ARGUMENT**

20 Code of Civil Procedure section 387 governs intervention and “should be liberally
21 construed in favor of intervention.” *City of Malibu v. Cal. Coastal Comm’n*, 128 Cal. App. 4th
22 897, 902 (2005) (citation omitted). “The purpose of allowing intervention is to promote fairness
23 by involving all parties potentially affected by a judgment.” *Simpson Redwood Co. v. State*, 196
24 Cal. App. 3d 1192, 1199 (1987) (citations omitted).

25 McDede is entitled to compulsory intervention as of right. “The court shall, upon timely
26 application, permit a nonparty to intervene in the action or proceeding” when the “person seeking
27 intervention claims an interest relating to the property or transaction that is the subject of the
28 action and that person is so situated that the disposition of the action may impair or impede that

1 person’s ability to protect that interest, unless that person’s interest is adequately represented by
2 one or more of the existing parties.” Code Civ. Proc. § 387(d)(1)(B). Under controlling authority,
3 that standard is met.

4 In a similar case, the Court of Appeal held that persons seeking public records are entitled
5 to intervene as of right in a reverse-CPRA action brought to prevent public agencies from
6 disclosing the requested records. *Carlsbad Police Officers Ass’n v. City of Carlsbad*, 49 Cal. App.
7 5th 135, 149 (2020) [hereinafter *Carlsbad*]. In that case, police officer associations sued to prevent
8 local agencies from disclosing records sought by several requesters, and the associations sought “a
9 temporary stay barring disclosure,” which the “agencies did not oppose.” *Id.* at 142.
10 The requesters promptly sought leave to intervene. *Id.*

11 In those circumstances, the requesters “qualified for intervention of right” because they
12 “had direct interests in the subject matter of the litigation” that were not adequately represented by
13 the existing parties. *Id.* at 149. As the court noted, a “reverse-CPRA lawsuit seeking to prevent a
14 public agency from releasing information on the ground the requested disclosure is prohibited by
15 law will necessarily affect the rights of the party requesting the information.” *Id.* (quoting *Marken*
16 *v. Santa Monica-Malibu Unified Sch. Dist.*, 202 Cal. App. 4th 1250, 1269 (2012)).

17 For procedural purposes, *Carlsbad* is indistinguishable and requires the Court to allow
18 McDede to intervene as of right to protect her right of access to the public records at issue.
19 Because she requested records that Plaintiff is seeking to prevent Defendants from disclosing, she
20 has a direct interest in this action. Defendants are not opposing Plaintiff’s lawsuit, and therefore no
21 party is adequately representing her interest in access to public records. Accordingly, she is
22 entitled to intervene as of right to defend her rights under the CPRA. *See also Marken*, 202 Cal.
23 App. 4th at 1270 (“The requestor plainly has a stake in the outcome of the reverse-CPRA
24 proceedings, and his or her interests generally should be represented, if not by joinder as a real
25 party in interest, then at least upon motion to be allowed to intervene in the action.”).

26 McDede’s application to intervene is timely and will not impair or impede the prompt
27 resolution of the issues presented in this action. This action was recently filed on April 25, 2024.
28 The Court issued a temporary restraining order on May 1 prohibiting Defendants from disclosing

1 the requested records. Defendants did not oppose that order, making it clear at that time that
2 McDede’s “interests in the litigation were not being adequately represented.” *Ziani Homeowners*
3 *Ass’n v. Brookfield Ziani LLC*, 243 Cal. App. 4th 274, 282 (2015). McDede is now promptly
4 seeking leave to intervene in advance of the Court’s next hearing on June 11, and she is prepared
5 to comply with the existing briefing schedule. McDede should therefore be allowed to intervene as
6 of right and participate in that hearing to protect her right of access to public records.

7 In the alternative, the Court should grant leave to intervene on permissive grounds. Code
8 Civ. Proc. § 387(d)(2) (“The court may, upon timely application, permit a nonparty to intervene in
9 the action or proceeding if the person has an interest in the matter in litigation, or in the success of
10 either of the parties, or an interest against both.”). Permissive intervention is appropriate when “(1)
11 the proper procedures have been followed; (2) the nonparty has a direct and immediate interest in
12 the action; (3) the intervention will not enlarge the issues in the litigation; and (4) the reasons for
13 the intervention outweigh any opposition by the parties presently in the action.” *Reliance Ins. Co.*
14 *v Superior Ct.*, 84 Cal. App. 4th 383, 386 (2000) (citation omitted). That standard is met here.
15 McDede has followed the proper procedures and has a direct and immediate interest in the public
16 records at issue. Her intervention will not enlarge the issue before the Court, which is whether
17 Shelton can justify an order prohibiting disclosure of public records. Because no other party is
18 advocating for the public’s right to disclosure of the records at issue, there can be no plausible
19 reason to prevent her from intervening.

20 **IV. CONCLUSION**

21 For the foregoing reasons, the Court is respectfully requested to grant McDede leave to
22 intervene in this action as of right or in the alternative to grant leave for permissive intervention.

23 Dated: May 8, 2024

24 FIRST AMENDMENT COALITION

25 By



26 _____
27 DAVID LOY
28 ANN CAPPETTA
Attorneys for HOLLY McDEDE

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PROOF OF SERVICE

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Marin, State of California. My business address is 534 4th Street, Suite B, San Rafael, CA 94901-3334.

On May 8, 2024, I served true copies of the following document(s) described as **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EX PARTE APPLICATION FOR AN ORDER GRANTING PROPOSED INTERVENOR HOLLY McDEDE LEAVE TO INTERVENE** on the interested parties in this action as follows:

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BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address rregnier@firstamendmentcoalition.org to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on May 8, 2024, at East Palo Alto, California.



Robin P. Regnier