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MILL VALLEY SCHOOL DISTRICT

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 COUNTY OF MARIN

9
10 JOHN DOE,

11 Plaintiff/Petitioner,

12 vs.

13 MILL VALLEY SCHOOL DISTRICT,

14 Defendant/Respondent,

15
16 HOLLY MCDEDE,

17 Real Party in Interest.
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Case No. CV0003896

Assigned for all purposes to:
Hon. Sheila S. Lichtblau

**DEFENDANT/RESPONDENT MILL
VALLEY SCHOOL DISTRICT'S
OPPOSITION TO
PLAINTIFF/PETITIONER JOHN DOE'S
EX PARTE APPLICATION FOR A
PROTECTIVE ORDER**

Date: September 18, 2024

Time: 9:00 a.m.

Courtroom: H

**(Exempt from filing fees pursuant to
Gov. Code. § 6103)**

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1 TO PETITIONER, JOHN DOE and his attorneys of record, Shannon DeNatale Boyd, of Price,
2 Postel & Parma LLP:

3 Respondent MILL VALLEY SCHOOL DISTRICT (“District”) hereby submits the following
4 Response to Petitioner’s Ex Parte Application for a Protective Order (“Motion”).

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **INTRODUCTION**

7 This matter arises under the California Public Records Act (“CPRA”), Government Code sections
8 7920.000 et seq., and calls on this Court to determine whether specific personnel records must be disclosed
9 or withheld in response to a request under the CPRA made by requestor Holly McDede (“McDede”). The
10 District respectfully submits that it stands ready and willing to comply with any and all Orders issued by
11 this Court regarding the CPRA requests that are the subject of this lawsuit. At all times, the District has
12 recognized, and has protected, the competing legal rights, and it will continue to do so pursuant to any
13 Orders issued by this Court.

14 **STATEMENT OF FACTS**

15 On or about June 7, 2024, requestor McDede sent the District a request for the following records:

16 *[A]ll public records related to any and all claims of misconduct against teachers or other*
17 *school employees from 2014 to the date this request is fulfilled.*

18 *Such public records should include, but not be limited to, all complaints; allegations;*
19 *claims; investigatory reports; analyses; summaries; memoranda and/or notes; interview*
20 *recordings; transcripts and/or notes; reviews; emails, text or other electronic messages,*
21 *voicemails, and/or other communications and/or correspondence; determinations;*
22 *decisions; orders; resignation letters; employment reclassification documents; offers in*
23 *compromise and/or settlement agreements; termination and/or transfer papers; letters of*
24 *reproval and/or other disciplinary actions, whether imposed or not; referrals to law*
25 *enforcement, administrative, and/or licensing agencies, departments, and/or bodies;*
26 *appeals; court filings and/or rulings; and all similar materials notwithstanding the use of*
27 *other terminology, nomenclature, or categorization by this or other involved public*
28 *agencies.*

25 *I am also requesting records related to any and all reports to the California Commission*
26 *on Teacher Credentialing from 2014 to the date this request is fulfilled.*

27 On or about June 14, 2024, the District sought clarifications regarding the request, pursuant to
28 Government Code section 7922.600, subdivision (a), subsection (1).

1 On June 28, 2024, McDede responded with the following clarified request:

2 *I can narrow this request to public records related to claims of sexual harassment, sexual*
3 *assault, or boundary crossing or grooming behavior made regarding teachers or other*
4 *school employees.*

5 *I can similarly narrow my request for records involving the Teacher Credentialing*
6 *Commission, which would narrow that part of the request to claims of sexual harassment,*
7 *sexual assault, or grooming made to the California Commission on Teacher Credentialing*
8 *from 2014 to the date this request is fulfilled.*

9 On or about July 8, 2024, the District informed McDede that it interpreted the use of the term “claims” in
10 relation to the above-mentioned misconduct as records that satisfy the requirement that the information
11 sought is both of a substantial nature and is well-founded. (See *American Federation v. Regents of*
12 *University of California* (1978) 80 Cal.App.3d 913; see also *Associated Chino Teachers v. Chino Valley*
13 *Unified School District* (2018) 30 Cal.App.5th 530.)

14 The District informed McDede that after an initial review, the District believed it had responsive
15 records in its possession. The District informed McDede that it would make the responsive records
16 available to her once the District had a reasonable time to conduct a search, identify responsive records,
17 and send the legally required notices to the individuals involved. (See *Marken v. Santa Monica-Malibu*
18 *Unified School District* (2012) 202 Cal.App.4th 1250.)

19 After careful consideration, the District determined on balance, the requested records are
20 disclosable to the public with certain redactions to protect legally confidential information. However,
21 respectful of the competing interests arising from the request and, in particular, the need to balance the
22 interests in public disclosure with Petitioner’s interests in privacy, the District did not immediately
23 disclose the requested information. On or about August 23, 2024, the District notified the Petitioner of the
24 opportunity to oppose disclosure in accordance with the procedure outlined in the Appellate Court
25 decision in *Marken v. Santa Monica-Malibu Unified School District* (2012) 202 Cal.App.4th 1250.

26 On or about August 26, 2024, Petitioner’s legal counsel contacted the District stating that
27 Petitioner does not consent to the release of his records and would pursue any and all legal remedies should
28 the District produce them. Petitioner requested additional time to September 12, 2024, to obtain a court
order.

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1 On or about September 10, 2024, Petitioner’s attorneys served electronic copies of its moving
2 papers, including Petitioner’s Ex Parte Application for a Temporary Restraining Order.

3 **GOVERNING LAW**

4 **A. Temporary Restraining Orders**

5 A temporary restraining order (“TRO”) is a form of provisional injunctive relief issued to preserve
6 the status quo, pending a hearing on an application for preliminary injunction. (See Code Civ. Proc., §§
7 526, 527; *Biasca v. Super. Ct.* (1924) 194 Cal. 366.) When presented with an application for a TRO, a
8 court must balance two factors in determining whether preliminary injunctive relief should be granted: (1)
9 the likelihood that the petitioner will prevail on the merits of the writ; and (2) the interim harm that the
10 petitioner may suffer if injunctive relief is denied as compared to the harm that the respondent will face if
11 granted. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69-70; see also *Butt v. State of California*
12 (1982) 4 Cal.4th 668, 677-78.)

13 Where a petitioner seeks to enjoin public agencies in the performance of their duties, the public
14 interest must also be considered. (*Tahoe Keys Property Owners' Assn. v. State Water Resources Control*
15 *Bd.* (1994) 23 Cal.App.4th 1459, 1472-73.) A strong showing of entitlement to injunctive relief is required
16 where the moving party seeks to enjoin government action taken in the public interest. In such a case, the
17 moving party must establish both underlying irreparable injury and a probability of success on the merits.
18 (*Id.* at 1485.) Injunctive relief through a TRO which alters the status quo (i.e., a mandatory injunction) is
19 subject to higher scrutiny and should not be issued unless the facts and law clearly favor the moving party.
20 (*Teachers Insurance & Annuity Association v. Furlotti* (1999) 70 Cal.App.4th 1487, 1493.) The burden
21 is on the Petitioner to show all elements necessary to support issuance of the injunctive relief sought.
22 (*O’Connell v. Super. Ct.* (2006) 141 Cal.App.4th 1452, 1481.)

23 **B. The Public Records Act**

24 As to the competing interests at issue, the CPRA, while “mindful of the right of individuals to
25 privacy,” also recognizes “a fundamental and necessary right of every person in this state” to have “access
26 to information concerning the conduct of the people’s business.” (Gov. Code, § 7921.000.) Pursuant to
27 the California Constitution, the CPRA must be “broadly construed” because its statutory scheme “furthers
28 the people’s right of access.” (Cal. Const., art. I, § 3, subd. (b)(2).) Thus, while the CPRA provides a

1 right to obtain disclosure, it also enumerates numerous exemptions for certain records, including
2 “personnel ... files, the disclosure of which would constitute an unwarranted invasion of personal
3 privacy.” (Gov. Code, § 7927.700.) In addition, the California Court of Appeal has recognized that “[t]he
4 California Constitution guarantees both the individual’s right of privacy [citations omitted] and the
5 public’s ‘right of access to information concerning the public’s business.’” (*Marken v. Santa Monica-*
6 *Malibu Unified School District* (2012) 202 Cal.App.4th 1250, 1261.) As the Court in *Marken* explained:

7 In the CPRA the Legislature has sought to reconcile these two fundamental, but sometimes
8 conflicting, conditional rights. While “mindful of the right of individuals to privacy” (§
9 6250), the Legislature has declared “access to information concerning the conduct of the
10 people’s business is a fundamental and necessary right of every person in this state.” (*Ibid.*)
11 Thus, the CPRA generally provides “every person has a right to inspect any public record”
12 (§ 6253, subd. (a)), “[e]xcept with respect to records exempt from disclosure by express
13 provisions of law. . . .” (§ 6253, subd. (b).) Section 6254, in turn, lists 29 categories of
14 documents exempt from the requirement of public disclosure, many of which are designed
15 to protect individual privacy, including, “Personnel, medical, or similar files, the disclosure
16 of which would constitute an unwarranted invasion of personal privacy.” (§ 6254, subd.
17 (c); see also § 6254, subd. (k) [exempting “[r]ecords, the disclosure of which is exempted
18 or prohibited pursuant to federal or state law”].) Section 6255, subdivision (a), also permits
19 a public agency to withhold other records if it can demonstrate “on the facts of the particular
20 case the public interest served by not disclosing the record clearly outweighs the public
21 interest served by disclosure of the record.”

22 (*Marken*, 202 Cal.App.4th at 1261-1262.) Under this law, the *Marken* Court recognized that the employee
23 whose records are sought to be disclosed may pursue a reverse-CPRA lawsuit to prevent the requested
24 disclosure, while also recognizing that the party requesting disclosure is “allowed to intervene in a reverse-
25 CPRA lawsuit if he or she wishes.” (*Id.* at 1267, 1268.)

26 To determine whether a record falls within the personnel exception, a two-part test must be applied.
27 (*BRV, Inc. v. Superior Court* (2006) 143 Cal.App.4th 742, 755, *as modified on denial of reh'g* (Oct. 26,
28 2006) [“BRV”].) First, the court examines whether the disclosure of the record, in whole or in part, would
compromise substantial privacy interests. (*Id.*) Second, the court determines whether the potential harm
to such privacy interests resulting from disclosure would outweigh the public interest in disclosing the
records. (*Id.*) In *BRV*, the court held that there was a significant public interest in an investigation report
related to the school district’s Superintendent. (*BRV, supra*, at p. 759.) The court emphasized the
importance of the Superintendent holding a position of authority as a public official and that the allegations

1 were of a public nature. (*Id.*) The *BRV* court ultimately held that the public interest outweighed the
2 competing privacy interests and that the report must be disclosed with appropriate redactions. (*BRV*,
3 *supra*, at p. 760.)

4 ARGUMENT

5 Here, the District has respected and protected the competing constitutional interests raised by the
6 CPRA request at issue. While the District recognizes and respects the privacy interests of its current and
7 former employees, it disputes Petitioner’s claim that he was never disciplined for alleged misconduct. The
8 facts show that Petitioner elected to resign mid-school year in response to the allegations against him.
9 Publicly available school board agendas indicate that the 2021-2022 school year ran from August 21,
10 2021, to June 9, 2022, yet Petitioner resigned on December 31, 2021, well before the school year’s
11 conclusion.

12 While the Commission on Teacher Credentialing did not take administrative action against
13 Petitioner’s credential, the District found the allegations against him to be well-founded and constituting
14 “boundary crossing or grooming behavior.” As such, these allegations fall within the scope of disclosure
15 under the CPRA. The nature of these allegations creates a significant public interest in understanding the
16 truth of what occurred. This public interest in transparency and accountability regarding potential
17 misconduct by educators is particularly compelling and, in this case, outweighs Petitioner’s privacy
18 interests.

19 In determining whether preliminary injunctive relief should be granted, the Court must evaluate
20 two key factors: (1) whether Petitioner has shown a probability of success on the merits; and (2) that he
21 will suffer irreparable injury. In this case, Petitioner has failed to demonstrate either of these elements.
22 The probability of success on the merits under current CPRA precedent is extremely low. Courts have
23 consistently favored disclosure in cases involving allegations of misconduct by public employees,
24 especially those in positions of authority or trust, such as educators. (*American Federation of State etc.*
25 *Employees v. Regents of University of California* (1978) 80 Cal.App.3d 913; *Bakersfield City School Dist.*
26 *v. Superior Court* (2004) 118 Cal.App.4th 1041.) Moreover, Petitioner has not adequately demonstrated
27 how he would suffer irreparable injury if the records were disclosed. Any potential harm to his reputation
28


1 must be weighed against the public’s right to information about the conduct of public employees,
2 especially in matters involving the safety and well-being of students.

3 Therefore, and as indicated above, the District is able and willing to comply with the direction of
4 this Court in any Orders that will issue in this proceeding, including any Order issued as a result of
5 Petitioner’s pending motion for a protective order. The District thanks the Court for its consideration and
6 guidance, and the District stands ready to provide any additional information that the Court may deem of
7 assistance in its determinations.

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9 Dated: September 17, 2024

Respectfully submitted,

10 **LOZANO SMITH LLP**

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12 _____
13 Roman J. Muñoz
14 Jaspreet Lochab-Dogra
15 Attorneys for Defendant/Respondent
16 MILL VALLEY SCHOOL DISTRICT
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PROOF OF SERVICE

I, Mecia Gill, am employed in the County of Sacramento, State of California. I am over the age of eighteen years and not a party to the within entitled cause; my business address is One Capitol Mall, Suite 640, Sacramento, CA 95814. My email address is mgill@lozanosmith.com.

On September 17, 2024, I served the attached:

DEFENDANT/RESPONDENT MILL VALLEY SCHOOL DISTRICT’S OPPOSITION TO PLAINTIFF/PETITIONER JOHN DOE’S EX PARTE APPLICATION FOR A PROTECTIVE ORDER

on the interested parties in said cause, by placing a true copy thereof enclosed in a sealed envelope addressed as follows and I caused delivery to be made by the mode of service indicated below:

Shannon DeNatale Boyd Jeff F. Tchakarov Price, Postel & Parma LLP 200 East Carrillo Street, Fourth Floor Santa Barbara, CA 93101 sdb@ppplaw.com jft@ppplaw.com	Holly J. McDede University of California, Berkeley Investigative Reporting Program hollyjmcdede@gmail.com
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(**Regular U.S. Mail**) on all parties in said action in accordance with Code of Civil Procedure section 1013, by placing a true and correct copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth above, at Lozano Smith, which mail placed in that designated area is given the correct amount of postage and is deposited at the Post Office that same day, in the ordinary course of business, in a United States mailbox in the County of Sacramento.

(**By Electronic Mail**) on all parties in said action by transmitting a true and correct copy to the persons at the email addresses listed above. 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 September 17, 2024, at Sacramento, California.



MECIA L. GILL